

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2017

GOV. MSG. NO. 1252

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2017, the following bill was signed into law:

SB952 SD1 HD1 CD1

RELATING TO INSURANCE
ACT 151 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to provide the
2 insurance commissioner with express prior approval authority
3 over long-term care insurance rates.

4 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
5 amended by adding a new section to part II of article 10H to be
6 appropriately designated and to read as follows:

7 "§431:10H- Disapproval of filings. If the commissioner
8 finds that a filing does not meet the requirements of this
9 chapter in whole or in part and disapproves the filing, a
10 written request for a hearing may be filed pursuant to section
11 431:14G-112. The insurer shall bear the burden of proving that
12 the filing meets the requirements of this article."

13 SECTION 3. Section 431:10H-104, Hawaii Revised Statutes,
14 is amended by amending the definition of "incidental" to read as
15 follows:

16 ""Incidental", as used in section [~~431:10H-207.5(j),~~]
17 431:10H-207.5(1), means that the value of the long-term care
18 benefits provided is less than ten per cent of the total value



1 of the benefits provided over the life of the policy. These
2 values shall be measured as of the date of issue."

3 SECTION 4. Section 431:10H-207.5, Hawaii Revised Statutes,
4 is amended to read as follows:

5 "[+]§431:10H-207.5[+] Premium rate schedule increases.

6 (a) This section shall apply as follows:

7 (1) Except as provided in paragraph (2), this section
8 applies to any long-term care policy or certificate
9 issued in this State after December 31, 2007; and

10 (2) For certificates issued after June 30, 2007, under a
11 group long-term care insurance policy, as defined in
12 paragraph (1) of the definition of "group long-term
13 care insurance" in section 431:10H-104, which policy
14 was in force on July 1, 2007, this section shall apply
15 on the policy anniversary following July 1, 2007.

16 (b) An insurer shall [~~provide notice of a pending~~] request
17 approval from the commissioner of a premium rate schedule
18 increase, including an exceptional increase, [to the
19 commissioner] at least [~~thirty~~] sixty days prior to the notice
20 to the policyholders and shall include:

21 (1) Information required by section 431:10H-221;



- 1 (2) A certification by a qualified actuary that:
- 2 (A) If the requested premium rate schedule increase
- 3 is implemented and the underlying assumptions [~~7~~
- 4 ~~which~~] that reflect moderately adverse
- 5 conditions [~~7~~] are realized, no further premium
- 6 rate schedule increases are anticipated; and
- 7 (B) The premium rate filing [~~is in compliance~~]
- 8 complies with this section;
- 9 (3) An actuarial memorandum justifying the rate schedule
- 10 change request that includes:
- 11 (A) Lifetime projections of earned premiums and
- 12 incurred claims based on the filed premium rate
- 13 schedule increase and the method and assumptions
- 14 used [~~in determining~~] to determine the projected
- 15 values, including reflection of any assumptions
- 16 that deviate from those used for pricing other
- 17 forms currently available for sale; provided
- 18 that:
- 19 (i) Annual values for the five years preceding
- 20 and the three years following the valuation
- 21 date shall be provided separately;



- 1 (ii) The projections shall include the
- 2 development of the lifetime loss ratio,
- 3 unless the rate increase is an exceptional
- 4 increase;
- 5 (iii) The projections shall demonstrate compliance
- 6 with subsection (c); and
- 7 (iv) For exceptional increases, the projected
- 8 experience should be limited to the
- 9 increases in claims expenses attributable to
- 10 the approved reasons for the exceptional
- 11 increase. If the commissioner determines,
- 12 as provided in paragraph (4) of the
- 13 definition of "exceptional increase" in
- 14 section 431:10H-104, that offsets may exist,
- 15 the insurer shall use appropriate net
- 16 projected experience;
- 17 (B) Disclosure of how reserves have been incorporated
- 18 in this rate increase whenever the rate increase
- 19 will trigger a contingent benefit upon lapse;
- 20 (C) Disclosure of the analysis performed to determine
- 21 why a rate adjustment is necessary, which pricing



1 assumptions were not realized and why, and what
2 other actions taken by the company have been
3 relied on by the actuary;

4 (D) A statement that policy design, underwriting, and
5 claims adjudication practices have been taken
6 into consideration; and

7 (E) [~~If it is necessary to maintain consistent~~
8 ~~premium rates for new certificates and~~
9 ~~certificates receiving a rate increase, the~~
10 ~~insurer shall file composite] Composite rates
11 reflecting projections of new certificates [7], if
12 it is necessary to maintain consistent premium
13 rates for new certificates and certificates
14 receiving a rate increase;~~

15 (4) A statement that renewal premium rate schedules are
16 not greater than new business premium rate schedules
17 except for differences attributable to benefits,
18 unless sufficient justification is provided to the
19 commissioner; and



1 (5) Sufficient information for ~~[the review]~~ approval by
2 the commissioner of the premium rate schedule increase
3 ~~[by the commissioner]~~.

4 (c) All premium rate schedule increases shall be
5 determined in accordance with the following requirements:

6 (1) Exceptional increases shall provide that seventy per
7 cent of the present value of projected additional
8 premiums from the exceptional increase shall be
9 returned to policyholders in benefits;

10 (2) Premium rate schedule increases shall be calculated so
11 that the sum of the accumulated value of incurred
12 claims, without the inclusion of active life reserves,
13 and the present value of future projected incurred
14 claims, without the inclusion of active life reserves,
15 will not be less than the sum of the following:

16 (A) The accumulated value of the initial earned
17 premium times fifty-eight per cent;

18 (B) Eighty-five per cent of the accumulated value of
19 prior premium rate schedule increases on an
20 earned basis;



- 1 (C) The present value of future projected initial
- 2 earned premiums times fifty-eight per cent; and
- 3 (D) Eighty-five per cent of the present value of
- 4 future projected premiums not in subparagraph (C)
- 5 on an earned basis;
- 6 (3) If a policy form has both exceptional and other
- 7 increases, the values in paragraph (2) (B) and (D)
- 8 shall also include seventy per cent for exceptional
- 9 rate increase amounts; and
- 10 (4) All present and accumulated values used to determine
- 11 rate increases shall use the maximum valuation
- 12 interest rate for contract reserves, as applicable, as
- 13 specified in sections 431:5-303 and 431:5-307. The
- 14 actuary shall disclose as part of the actuarial
- 15 memorandum the use of any appropriate averages.
- 16 (d) For each rate increase that is implemented, the
- 17 insurer shall file for review by the commissioner updated
- 18 projections, as provided in subsection (b) (3) (A), annually for
- 19 the next three years, and include a comparison of actual results
- 20 to projected values. The commissioner may extend the period to
- 21 greater than three years if actual results are not consistent

1 with projected values from prior projections. For group
2 insurance policies that meet the conditions in subsection [~~(k)~~]
3 (m), the projections required by this subsection shall be
4 provided to the policyholder in lieu of filing with the
5 commissioner.

6 (e) If any premium rate in the revised premium rate
7 schedule is greater than two hundred per cent of the comparable
8 rate in the initial premium schedule, lifetime projections, as
9 provided in subsection (b)(3)(A), shall be filed for review by
10 the commissioner every five years following the end of the
11 required period in subsection (d). For group insurance policies
12 that meet the conditions in subsection [~~(k)~~] (m), the
13 projections required by this subsection shall be provided to the
14 policyholder in lieu of filing with the commissioner.

15 (f) If the commissioner has determined that the actual
16 experience following a rate increase does not adequately match
17 the projected experience and that the current projections under
18 moderately adverse conditions demonstrate that incurred claims
19 will not exceed proportions of premiums specified in subsection
20 (c), the commissioner may require the insurer to implement any
21 of the following:



- 1 (1) Premium rate schedule adjustments; or
- 2 (2) Other measures to reduce the difference between the
- 3 projected and actual experience.

4 In determining whether the actual experience adequately
 5 matches the projected experience, consideration should be given
 6 to subsection (b) (3) (E), if applicable.

7 (g) If the majority of the policies or certificates to
 8 which the increase is applicable are eligible for the contingent
 9 benefit upon lapse, the insurer shall file:

10 (1) A plan, subject to the commissioner's approval, for
 11 improved administration or claims processing designed
 12 to eliminate the potential for further deterioration
 13 of the policy form requiring further premium rate
 14 schedule increases, or both, or to demonstrate that
 15 appropriate administration and claims processing have
 16 been implemented or are in effect; otherwise the
 17 commissioner may impose the condition in subsection
 18 (h); and

19 (2) The original anticipated lifetime loss ratio and the
 20 premium rate schedule increase that would have been
 21 calculated according to subsection (c), had the



1 greater of the original anticipated lifetime loss
2 ratio or fifty-eight per cent been used in the
3 calculations described in subsection (c) (2) (A) and
4 (C).

5 (h) For a rate increase filing that meets the following
6 criteria, the commissioner shall review, for all policies
7 included in the filing, the projected lapse rates and past lapse
8 rates during the twelve months following each increase to
9 determine if significant adverse lapsing has occurred or is
10 anticipated:

- 11 (1) The rate increase is not the first rate increase
12 requested for the specific policy form or forms;
- 13 (2) The rate increase is not an exceptional increase; and
- 14 (3) The majority of the policies or certificates to which
15 the increase is applicable are eligible for the
16 contingent benefit upon lapse.

17 If significant adverse lapsing has occurred, is anticipated
18 in the filing, or is evidenced in the actual results as
19 presented in the updated projections provided by the insurer
20 following the requested rate increase, the commissioner may
21 determine that a rate spiral exists. Following the



1 determination that a rate spiral exists, the commissioner may
2 require the insurer to offer, without underwriting, to all in
3 force insureds, subject to the rate increase, the option to
4 replace existing coverage with one or more reasonably comparable
5 products being offered by the insurer or its affiliates;
6 provided that the offer shall be subject to the approval of the
7 commissioner, be based on actuarially sound principles but not
8 on attained age, and provide that maximum benefits under any new
9 policy accepted by an insured shall be reduced by comparable
10 benefits already paid under the existing policy.

11 The insurer shall maintain the experience of all the
12 replacement insureds separate from the experience of insureds
13 originally issued the policy forms. In the event of a request
14 for a rate increase on the policy form, the rate increase shall
15 be limited to the lesser of the maximum rate increase determined
16 based on the combined experience or the maximum rate increase
17 determined based only on the experience of the insureds
18 originally issued the form plus ten per cent.

19 (i) When a filing is not accompanied by supporting
20 information or the commissioner does not have sufficient
21 information to determine whether the filing meets the



1 requirements of this article, the commissioner shall require the
2 insurer to furnish additional information, and the waiting
3 period shall commence as of the date the information is
4 furnished. Until the requested information is provided, the
5 filing shall not be deemed complete or filed, and the filing
6 shall not be used by the insurer. If the requested information
7 is not provided within a reasonable time period, the filing may
8 be returned to the insurer as not filed and not available for
9 use.

10 (j) Except as provided in this subsection, each filing
11 shall be on file for a waiting period of sixty days before the
12 filing becomes effective. The waiting period may be extended by
13 the commissioner for not more than fifteen days if the
14 commissioner gives written notice within the waiting period to
15 the insurer that made the filing that the commissioner needs
16 additional time to consider the filing. Upon written
17 application by the insurer, the commissioner may authorize a
18 filing that the commissioner has reviewed to become effective
19 before the expiration of the waiting period or any extension
20 thereof. A filing shall be deemed to meet the requirements of
21 this article unless disapproved by the commissioner, as provided



1 in section 431:10H- , within the waiting period or any
2 extension thereof. The rates shall be deemed to meet the
3 requirements of this article until the time the commissioner
4 reviews the filing and so long as the filing remains in effect.

5 ~~[(i)]~~ (k) If the commissioner determines that the insurer
6 has exhibited a persistent practice of filing inadequate initial
7 premium rates for long-term care insurance, the commissioner, in
8 addition to subsection (h), may prohibit the insurer from either
9 of the following:

- 10 (1) Filing and marketing comparable coverage for a period
11 of up to five years; or
12 (2) Offering all other similar coverages and limiting
13 marketing of new applications to the products subject
14 to recent premium rate schedule increases.

15 ~~[(j)]~~ (1) Subsections (a) to ~~[(i)]~~ (k) shall not apply to
16 policies for which the long-term care benefits provided by the
17 policy are incidental, as defined in section 431:10H-104, if the
18 policy complies with all of the following ~~[provisions]~~:

- 19 (1) The interest credited internally to determine cash
20 value accumulations, including long-term care, if any,
21 are guaranteed not to be less than the minimum



- 1 guaranteed interest rate for cash value accumulations
2 without long-term care set forth in the policy;
- 3 (2) The portion of the policy that provides insurance
4 benefits, other than long-term care coverage, meets
5 the nonforfeiture requirements as applicable in any of
6 the following:
- 7 (A) Section 431:10D-104; and
8 (B) Section 431:10D-107;
- 9 (3) The policy meets the disclosure requirements of
10 sections 431:10H-113 and 431:10H-114;
- 11 (4) The portion of the policy that provides insurance
12 benefits, other than long-term care coverage, meets
13 the requirements as applicable in the following:
- 14 (A) Policy illustrations as required by part IV of
15 article 10D; and
16 (B) Disclosure requirements, as applicable, in
17 article [H] 10D [H]; and
- 18 (5) An actuarial memorandum is filed with the commissioner
19 that includes:
- 20 (A) A description of the basis on which the long-term
21 care rates were determined;



- 1 (B) A description of the basis for the reserves;
- 2 (C) A summary of the type of policy, benefits,
- 3 renewability, general marketing method, and
- 4 limits on ages of issuance;
- 5 (D) A description and a table of each actuarial
- 6 assumption used. For expenses, an insurer shall
- 7 include per cent of premium dollars per policy
- 8 and dollars per unit of benefits, if any;
- 9 (E) A description and a table of the anticipated
- 10 policy reserves and additional reserves to be
- 11 held in each future year for active lives;
- 12 (F) The estimated average annual premium per policy
- 13 and the average issue age;
- 14 (G) A statement as to whether underwriting is
- 15 performed at the time of application. The
- 16 statement shall indicate whether underwriting is
- 17 used and, if used, the statement shall include a
- 18 description of the type or types of underwriting
- 19 used, such as medical underwriting or functional
- 20 assessment underwriting. Concerning a group
- 21 policy, the statement shall indicate whether the



1 enrollee or any dependent will be underwritten
2 and when that underwriting occurs; and
3 (H) A description of the effect of the long-term care
4 policy provision on the required premiums,
5 nonforfeiture values, and reserves on the
6 underlying insurance policy, both for active
7 lives and those in long-term care claim status.

8 [~~(k)~~] (m) Subsections (f) and (h) shall not apply to group
9 insurance policies as defined in paragraph (1) of the definition
10 of "group long-term care insurance" in section 431:10H-104
11 where:

12 (1) The policies insure two hundred fifty or more persons
13 and the policyholder has five thousand or more
14 eligible employees of a single employer; or

15 (2) The policyholder, and not the certificate holders,
16 pays a material portion of the premium[~~, which~~] that
17 shall not be less than twenty per cent of the total
18 premium for the group in the calendar year prior to
19 the year a rate increase is filed.

20 [~~(l)~~] (n) "Exceptional increase", for purposes of this
21 section, shall be as defined in section 431:10H-104."



1 SECTION 5. Section 431:10H-226, Hawaii Revised Statutes,
2 is amended by amending subsection (a) to read as follows:

3 "(a) Benefits under long-term care insurance policies
4 shall be deemed reasonable in relation to premiums; provided
5 that the expected loss ratio is at least sixty per cent~~[7]~~ and
6 calculated in a manner that provides for adequate reserving of
7 the long-term care insurance risk. ~~[In evaluating]~~ Prior to any
8 approval, the commissioner shall evaluate the expected loss
9 ratio, and due consideration shall be given to all relevant
10 factors, including:

- 11 (1) Statistical credibility of incurred claims experience
12 and earned premiums;
- 13 (2) The period for which rates are computed to provide
14 coverage;
- 15 (3) Experienced and projected trends;
- 16 (4) Concentration of experience within early policy
17 duration;
- 18 (5) Expected claim fluctuation;
- 19 (6) Experience refunds, adjustments, or dividends;
- 20 (7) Renewability features;
- 21 (8) All appropriate expense factors;



- 1 (9) Interest;
- 2 (10) Experimental nature of the coverage;
- 3 (11) Policy reserves;
- 4 (12) Mix of business by risk classification, if applicable;
- 5 and
- 6 (13) Product features such as long elimination periods,
- 7 high deductibles, and high maximum limits."

8 SECTION 6. Section 431:10H-226.5, Hawaii Revised Statutes,
9 is amended by amending subsection (b) to read as follows:

10 "(b) An insurer shall provide the information listed in
11 this subsection to the commissioner [~~thirty~~] for approval sixty
12 days prior to making a long-term care insurance form available
13 for sale as follows:

- 14 (1) A copy of the disclosure documents required in section
15 431:10H-217.5; and
- 16 (2) An actuarial certification consisting of at least the
17 following:
 - 18 (A) A statement that the initial premium rate
19 schedule is sufficient to cover anticipated costs
20 under moderately adverse experience and that the
21 premium rate schedule is reasonably expected to



1 be sustainable over the life of the form with no
2 future premium increases anticipated;

3 (B) A statement that the policy design and coverage
4 provided have been reviewed and taken into
5 consideration;

6 (C) A statement that the underwriting and claims
7 adjudication processes have been reviewed and
8 taken into consideration;

9 (D) A complete description of the basis for contract
10 reserves that are anticipated to be held under
11 the form [~~, to include:~~] and that includes:

12 (i) Sufficient detail or sample calculations
13 [~~provided so as~~] to have a complete
14 depiction of the reserve amounts to be held;

15 (ii) A statement that the assumptions used for
16 reserves contain reasonable margins for
17 adverse experience;

18 (iii) A statement that the net valuation premium
19 for renewal years does not increase,
20 [~~+~~] except for attained-age rating where
21 permitted [~~+~~]; and



1 (iv) A statement that the difference between the
2 gross premium and the net valuation premium
3 for renewal years is sufficient to cover
4 expected renewal expenses; or if that
5 statement cannot be made, a complete
6 description of the situations where this
7 does not occur; provided that an aggregate
8 distribution of anticipated issues may be
9 used as long as the underlying gross
10 premiums maintain a reasonably consistent
11 relationship; provided further that if the
12 gross premiums for certain age groups are
13 inconsistent with this requirement, the
14 commissioner may request a demonstration
15 under subsection (c) based on a standard age
16 distribution; and

17 (E) With respect to premium rate schedules:

18 (i) A statement that the premium rate schedule
19 is not less than the premium rate schedule
20 for existing similar policy forms also
21 available from the insurer, except for



1 reasonable differences attributable to
2 benefits; or

3 (ii) A comparison of the premium schedules for
4 similar policy forms that are currently
5 available from the insurer, with an
6 explanation of the differences."

7 SECTION 7. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on January 1, 2018.

10

APPROVED this 10 day of JUL, 2017




GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.


President of the Senate


Clerk of the Senate

SB No. 952, SD 1, HD 1, CD 1

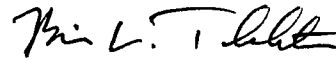
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives