
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



1 benefits provided is less than ten per cent of the total value
2 of the benefits provided over the life of the policy. These
3 values shall be measured as of the date of issue."

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

6 "[+]§431:10H-207.5[+] Premium rate schedule increases.

7 (a) This section shall apply as follows:

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

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

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



- 1 (1) Information required by section 431:10H-221;
- 2 (2) A certification by a qualified actuary that:
 - 3 (A) If the requested premium rate schedule increase
 - 4 is implemented and the underlying assumptions [~~7~~
 - 5 ~~which~~] that reflect moderately adverse
 - 6 conditions [~~7~~] are realized, no further premium
 - 7 rate schedule increases are anticipated; and
 - 8 (B) The premium rate filing [~~is in compliance~~]
 - 9 complies with this section;
- 10 (3) An actuarial memorandum justifying the rate schedule
- 11 change request that includes:
 - 12 (A) Lifetime projections of earned premiums and
 - 13 incurred claims based on the filed premium rate
 - 14 schedule increase and the method and assumptions
 - 15 used [~~in determining~~] to determine the projected
 - 16 values, including reflection of any assumptions
 - 17 that deviate from those used for pricing other
 - 18 forms currently available for sale; provided
 - 19 that:



- 1 (i) Annual values for the five years preceding
- 2 and the three years following the valuation
- 3 date shall be provided separately;
- 4 (ii) The projections shall include the
- 5 development of the lifetime loss ratio,
- 6 unless the rate increase is an exceptional
- 7 increase;
- 8 (iii) The projections shall demonstrate compliance
- 9 with subsection (c); and
- 10 (iv) For exceptional increases, the projected
- 11 experience should be limited to the
- 12 increases in claims expenses attributable to
- 13 the approved reasons for the exceptional
- 14 increase. If the commissioner determines,
- 15 as provided in paragraph (4) of the
- 16 definition of "exceptional increase" in
- 17 section 431:10H-104, that offsets may exist,
- 18 the insurer shall use appropriate net
- 19 projected experience;



- 1 (B) Disclosure of how reserves have been incorporated
2 in this rate increase whenever the rate increase
3 will trigger a contingent benefit upon lapse;
- 4 (C) Disclosure of the analysis performed to determine
5 why a rate adjustment is necessary, which pricing
6 assumptions were not realized and why, and what
7 other actions taken by the company have been
8 relied on by the actuary;
- 9 (D) A statement that policy design, underwriting, and
10 claims adjudication practices have been taken
11 into consideration; and
- 12 (E) [~~If it is necessary to maintain consistent~~
13 ~~premium rates for new certificates and~~
14 ~~certificates receiving a rate increase, the~~
15 ~~insurer shall file composite] Composite rates
16 reflecting projections of new certificates [7], if
17 it is necessary to maintain consistent premium
18 rates for new certificates and certificates
19 receiving a rate increase;~~
- 20 (4) A statement that renewal premium rate schedules are
21 not greater than new business premium rate schedules



1 except for differences attributable to benefits,
2 unless sufficient justification is provided to the
3 commissioner; and

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

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

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

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

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



1 (B) Eighty-five per cent of the accumulated value of
2 prior premium rate schedule increases on an
3 earned basis;

4 (C) The present value of future projected initial
5 earned premiums times fifty-eight per cent; and

6 (D) Eighty-five per cent of the present value of
7 future projected premiums not in subparagraph (C)
8 on an earned basis;

9 (3) If a policy form has both exceptional and other
10 increases, the values in paragraph (2) (B) and (D)
11 shall also include seventy per cent for exceptional
12 rate increase amounts; and

13 (4) All present and accumulated values used to determine
14 rate increases shall use the maximum valuation
15 interest rate for contract reserves, as applicable, as
16 specified in sections 431:5-303 and 431:5-307. The
17 actuary shall disclose as part of the actuarial
18 memorandum the use of any appropriate averages.

19 (d) For each rate increase that is implemented, the
20 insurer shall file for review by the commissioner updated
21 projections, as provided in subsection (b) (3) (A), annually for



1 the next three years, and include a comparison of actual results
2 to projected values. The commissioner may extend the period to
3 greater than three years if actual results are not consistent
4 with projected values from prior projections. For group
5 insurance policies that meet the conditions in subsection [~~(k)~~],
6 (m), the projections required by this subsection shall be
7 provided to the policyholder in lieu of filing with the
8 commissioner.

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

18 (f) If the commissioner has determined that the actual
19 experience following a rate increase does not adequately match
20 the projected experience and that the current projections under
21 moderately adverse conditions demonstrate that incurred claims



1 will not exceed proportions of premiums specified in subsection
2 (c), the commissioner may require the insurer to implement any
3 of the following:

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

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

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

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



1 (2) The original anticipated lifetime loss ratio and the
2 premium rate schedule increase that would have been
3 calculated according to subsection (c), had the
4 greater of the original anticipated lifetime loss
5 ratio or fifty-eight per cent been used in the
6 calculations described in subsection (c)(2)(A) and
7 (C).

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

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

20 If significant adverse lapsing has occurred, is anticipated
21 in the filing, or is evidenced in the actual results as



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

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



1 (i) When a filing is not accompanied by supporting
2 information or the commissioner does not have sufficient
3 information to determine whether the filing meets the
4 requirements of this article, the commissioner shall require the
5 insurer to furnish additional information, and the waiting
6 period shall commence as of the date the information is
7 furnished. Until the requested information is provided, the
8 filing shall not be deemed complete or filed, and the filing
9 shall not be used by the insurer. If the requested information
10 is not provided within a reasonable time period, the filing may
11 be returned to the insurer as not filed and not available for
12 use.

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



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

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

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

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



- 1 (1) The interest credited internally to determine cash
2 value accumulations, including long-term care, if any,
3 are guaranteed not to be less than the minimum
4 guaranteed interest rate for cash value accumulations
5 without long-term care set forth in the policy;
- 6 (2) The portion of the policy that provides insurance
7 benefits, other than long-term care coverage, meets
8 the nonforfeiture requirements as applicable in any of
9 the following:
 - 10 (A) Section 431:10D-104; and
 - 11 (B) Section 431:10D-107;
- 12 (3) The policy meets the disclosure requirements of
13 sections 431:10H-113 and 431:10H-114;
- 14 (4) The portion of the policy that provides insurance
15 benefits, other than long-term care coverage, meets
16 the requirements as applicable in the following:
 - 17 (A) Policy illustrations as required by part IV of
18 article 10D; and
 - 19 (B) Disclosure requirements, as applicable, in
20 article [H]10D[H]; and



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



1 description of the type or types of underwriting
 2 used, such as medical underwriting or functional
 3 assessment underwriting. Concerning a group
 4 policy, the statement shall indicate whether the
 5 enrollee or any dependent will be underwritten
 6 and when that underwriting occurs; and

7 (H) A description of the effect of the long-term care
 8 policy provision on the required premiums,
 9 nonforfeiture values, and reserves on the
 10 underlying insurance policy, both for active
 11 lives and those in long-term care claim status.

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

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

19 (2) The policyholder, and not the certificate holders,
 20 pays a material portion of the premium [~~which~~] that
 21 shall not be less than twenty per cent of the total



1 premium for the group in the calendar year prior to
2 the year a rate increase is filed.

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

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

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

- 15 (1) Statistical credibility of incurred claims experience
16 and earned premiums;
- 17 (2) The period for which rates are computed to provide
18 coverage;
- 19 (3) Experienced and projected trends;
- 20 (4) Concentration of experience within early policy
21 duration;



- 1 (5) Expected claim fluctuation;
- 2 (6) Experience refunds, adjustments, or dividends;
- 3 (7) Renewability features;
- 4 (8) All appropriate expense factors;
- 5 (9) Interest;
- 6 (10) Experimental nature of the coverage;
- 7 (11) Policy reserves;
- 8 (12) Mix of business by risk classification, if applicable;
- 9 and
- 10 (13) Product features such as long elimination periods,
- 11 high deductibles, and high maximum limits."

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

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

- 18 (1) A copy of the disclosure documents required in section
 19 431:10H-217.5; and
- 20 (2) An actuarial certification consisting of at least the
 21 following:



- 1 (A) A statement that the initial premium rate
- 2 schedule is sufficient to cover anticipated costs
- 3 under moderately adverse experience and that the
- 4 premium rate schedule is reasonably expected to
- 5 be sustainable over the life of the form with no
- 6 future premium increases anticipated;
- 7 (B) A statement that the policy design and coverage
- 8 provided have been reviewed and taken into
- 9 consideration;
- 10 (C) A statement that the underwriting and claims
- 11 adjudication processes have been reviewed and
- 12 taken into consideration;
- 13 (D) A complete description of the basis for contract
- 14 reserves that are anticipated to be held under
- 15 the form [~~to include~~] and that includes:
- 16 (i) Sufficient detail or sample calculations
- 17 [~~provided so as~~] to have a complete
- 18 depiction of the reserve amounts to be held;
- 19 (ii) A statement that the assumptions used for
- 20 reserves contain reasonable margins for
- 21 adverse experience;



1 (iii) A statement that the net valuation premium
2 for renewal years does not increase,
3 [+]except for attained-age rating where
4 permitted[+] ; and

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

21 (E) With respect to premium rate schedules:



- 1 (i) A statement that the premium rate schedule
- 2 is not less than the premium rate schedule
- 3 for existing similar policy forms also
- 4 available from the insurer, except for
- 5 reasonable differences attributable to
- 6 benefits; or
- 7 (ii) A comparison of the premium schedules for
- 8 similar policy forms that are currently
- 9 available from the insurer, with an
- 10 explanation of the differences."

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

13 SECTION 8. This Act shall take effect upon its approval;
14 provided that section 2 shall take effect on January 1, 2018.



Report Title:

Insurance Commissioner; Prior Approval Authority; Long-term Care Insurance; Insurance Rates; Rate Regulation

Description:

Provides the insurance commissioner express prior approval authority over long-term care insurance rates. Makes housekeeping amendments. (SD1)

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