



GOV. MSG. NO. 1243

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 29, 2016

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

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

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

This is to inform you that on June 29, 2016, the following bill was signed into law:

SB2854 SD2 HD1 CD1

RELATING TO INSURANCE
ACT 141 (16)

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. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding a new part to article 10E to be appropriately
3 designated and to read as follows:

4 "PART . COVERAGES

5 §431:10E- Notice requirement. Thirteen months prior to
6 discontinuation of writing property insurance coverage, an
7 insurer shall file an affidavit with the commissioner stating
8 the reasons for the discontinuation.

9 §431:10E- Extended coverage. Insurers seeking to
10 provide multi-peril coverage for residential property after July
11 1, 2016, shall submit to the commissioner a written request for
12 permission to write the coverage. The commissioner may
13 disapprove the request. If the request is disapproved, the
14 insurer shall not write the coverage."

15 SECTION 2. Section 431:2D-107, Hawaii Revised Statutes, is
16 amended by amending subsection (g) to read as follows:

17 "(g) (1) Except as provided in subsections (h) and (i), an
18 insurance compliance self-evaluative audit is



1 privileged information and is not discoverable or
2 admissible as evidence in any legal action in any
3 civil, criminal, or administrative proceeding. The
4 privilege created herein is a matter of substantive
5 law of this State and is not merely a procedural
6 matter governing civil or criminal procedures in the
7 courts of this State;

8 (2) If any company, person, or entity performs or directs
9 the performance of an insurance compliance audit, an
10 officer, employee, or agent involved with the
11 insurance audit, or any consultant who is hired for
12 the purpose of performing the insurance compliance
13 audit may not be examined in any civil, criminal, or
14 administrative proceeding as to the insurance
15 compliance audit or any insurance compliance self-
16 evaluative audit document, as defined in this section.
17 This subsection does not apply if the privilege set
18 forth in ~~[subsection (g)(1) of this section]~~ paragraph
19 (1) is determined under subsection (h) or (i) not to
20 apply;



1 (3) A company may voluntarily submit, in connection with
2 examinations conducted under this article, an
3 insurance compliance self-evaluative audit document to
4 the commissioner or the commissioner's designee, as a
5 confidential document under this section without
6 waiving the privilege set forth in this section to
7 which the company would otherwise be entitled;
8 provided[~~, however,~~] that the provisions in this
9 section permitting the commissioner to make
10 confidential documents public pursuant to this section
11 and access to the National Association of Insurance
12 Commissioners shall not apply to the insurance
13 compliance self-evaluative audit document under other
14 provisions of applicable law, any such report
15 furnished to the commissioner shall not be provided to
16 any other persons or [+]entities[+] and shall be
17 accorded the same confidentiality and other
18 protections as provided above for voluntarily
19 submitted documents. Any use of an insurance
20 compliance self-evaluative audit document [~~furnished~~
21 ~~as a result of the~~] shall be limited to determining



1 whether or not any disclosed defects in an insurer's
2 policies and procedures or inappropriate treatment of
3 customers has been remedied or that an appropriate
4 ~~[plan for their]~~ remedy is in place.

5 A company's insurance compliance self-evaluative
6 audit document submitted to the commissioner shall
7 remain subject to all applicable statutory or common
8 law privileges including, but not limited to, the work
9 product doctrine, attorney-client privilege, or the
10 subsequent remedial measures exclusion.

11 Any compliance self-evaluative audit document so
12 submitted and in the possession of the commissioner
13 shall remain the property of the company and shall not
14 be subject to any disclosure or production under
15 chapter ~~[92F]~~ 92F;

- 16 (4) Disclosure of an insurance compliance self-evaluative
17 audit document to a governmental agency, whether
18 voluntary or pursuant to compulsion of law, shall not
19 constitute a waiver of the privilege set forth in
20 ~~[subsection (g)(1)]~~ paragraph (1) with respect to any
21 other persons or any other governmental agencies."



1 SECTION 3. Section 431:7-201, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:7-201 Annual and monthly tax statements. (a) Each
4 authorized insurer shall electronically file with the
5 commissioner annually, on or before March 1 in each year, a
6 statement signed by a duly authorized person on its behalf,
7 setting forth the total business transacted, and the amount of
8 gross premiums reported by the insurer, pursuant to section
9 431:7-202, during the year ending on the preceding December 31,
10 from all risks or property resident, situated, or located within
11 this State, together with such other information as may be
12 required by the commissioner to determine the taxability of
13 premiums. The term "gross premiums" as used in this part shall
14 not include consideration paid for annuities.

15 (b) Each authorized insurer shall electronically file with
16 the commissioner monthly, on or before the twentieth day of the
17 calendar month following the month in which the taxes accrue, a
18 statement signed by a duly authorized person on its behalf,
19 setting forth the total business transacted and the amount of
20 gross premiums reported by the insurer, pursuant to section
21 431:7-202, during the month from all risks or property resident,



1 situated, or located within this State, together with other
2 information as may be required by the commissioner to determine
3 the taxability of premiums.

4 (c) Any insurer failing or refusing to electronically file
5 the annual tax statement on or before March 1, or the monthly
6 statement on or before the twentieth day of the calendar month
7 following the month in which the taxes accrue, shall be liable
8 for a fine in an amount not less than \$100 and not more than
9 \$500 for each day of delinquency."

10 SECTION 4. Section 431:7-202, Hawaii Revised Statutes, is
11 amended by amending subsection (f) to read as follows:

12 "(f) The taxes imposed by subsections (a), (b), (c), and
13 (d) shall be paid monthly. The monthly tax shall be due and
14 payable by electronic payment via the Automated Clearing House
15 debit or credit payment system on or before the twentieth day of
16 the calendar month following the month in which it accrues,
17 coinciding with the filing of the statement provided for in
18 section 431:7-201.

19 In addition to the monthly tax and monthly tax statement,
20 the annual tax shall be due and payable by electronic payment
21 via the Automated Clearing House debit or credit payment system



1 on or before March 1 coinciding with the filing of the statement
2 provided for in section 431:7-201.

3 All amounts paid under this subsection, other than fines,
4 shall be allowed as a credit on the annual tax imposed by
5 subsections (a), (b), (c), and (d).

6 If the total amount of installment payments for any
7 calendar year exceeds the amount of annual tax for that year,
8 the excess shall be treated as an overpayment of the annual tax
9 and be allowed as a refund under section 431:7-203.

10 Any insurer failing or refusing to pay the required taxes
11 above stated when due and payable shall be liable for a fine of
12 \$500 or ten per cent of the tax due, whichever is greater; plus
13 interest at a rate of twelve per cent per annum on the
14 delinquent taxes. The taxes may be collected by distraint, or
15 the taxes, fine, and interest may be recovered by an action to
16 be instituted by the commissioner in the name of this State, in
17 any court of competent jurisdiction. The commissioner may
18 suspend the certificate of authority of the delinquent insurer
19 until the taxes, fine, and interest, should any be imposed, are
20 fully paid.



1 As used in this subsection, "Automated Clearing House debit
2 or credit payment system" means the network for the interbank
3 clearing of electronic payments for participating depository
4 financial institutions."

5 SECTION 5. Section 431:10-104, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§431:10-104 General readability requirements. In addition
8 to any other requirements of law, no contract shall be delivered
9 or issued for delivery in this State unless:

10 (1) The text is in plain language, achieving a minimum
11 score of forty on the Flesch reading ease test or an
12 equivalent score on any other comparable test
13 prescribed by the commissioner under section 431:10-
14 105(a);

15 (2) The contract is printed, except for specification
16 pages, schedules, and tables, in not less than ten,
17 point type, one point leaded;

18 (3) The style, arrangement, and general appearance of the
19 contract [~~gives~~] give no undue prominence to any
20 endorsements, riders, or other portions of the text;
21 [and]



1 (4) A table of contents or index of principal sections is
2 provided with the contract when the text consists of
3 more than three thousand words printed on three or
4 less pages or when the text has more than three pages
5 regardless of the total number of printed words [-] ;
6 and

7 (5) For any short-term health insurance policies that
8 impose preexisting conditions provisions, any policy,
9 application, or sales brochure shall disclose in a
10 conspicuous manner in not less than fourteen point
11 bold face type the following statement:

12 "THIS POLICY EXCLUDES COVERAGE FOR CONDITIONS FOR
13 WHICH MEDICAL ADVICE, DIAGNOSIS, CARE, OR TREATMENT
14 WAS RECOMMENDED OR RECEIVED DURING THE [insert
15 exclusion period] IMMEDIATELY PRECEDING THE EFFECTIVE
16 DATE OF COVERAGE."

17 SECTION 6. Section 431:10A-116.6, Hawaii Revised Statutes,
18 is amended by amending subsection (d) to read as follows:

19 "(d) For purposes of this section:

20 "Contraceptive services" means physician-delivered,
21 physician-supervised, physician assistant-delivered, [nurse



1 ~~practitioner delivered, certified nurse midwife delivered,~~
2 advanced practice registered nurse-delivered, nurse-delivered,
3 or pharmacist-delivered medical services intended to promote the
4 effective use of contraceptive supplies or devices to prevent
5 unwanted pregnancy.

6 "Contraceptive supplies" means all United States Food and
7 Drug Administration-approved contraceptive drugs or devices used
8 to prevent unwanted pregnancy."

9 SECTION 7. Section 431:10A-116.7, Hawaii Revised Statutes,
10 is amended by amending subsection (g) to read as follows:

11 "(g) For purposes of this section:

12 "Contraceptive services" means physician-delivered,
13 physician-supervised, physician assistant-delivered, [nurse
14 ~~practitioner delivered, certified nurse midwife delivered,~~
15 advanced practice registered nurse-delivered, nurse-delivered,
16 or pharmacist-delivered medical services intended to promote the
17 effective use of contraceptive supplies or devices to prevent
18 unwanted pregnancy.

19 "Contraceptive supplies" means all United States Food and
20 Drug Administration-approved contraceptive drugs or devices used
21 to prevent unwanted pregnancy."



1 SECTION 8. Section 431:10A-206.5, Hawaii Revised Statutes,
2 is amended as follows:

3 1. By amending subsection (a) to read as:

4 "(a) All accident and health or sickness insurance
5 policies issued in this State [~~which~~] that provide coverage for
6 the children of the insured shall provide coverage for child
7 health supervision services from the moment of birth through age
8 five years. These services shall be exempt from any deductible
9 provisions, and immunizations shall be exempt from any copayment
10 provisions, which may be in force in these policies or
11 contracts."

12 2. By amending subsection (e) to read:

13 "(e) For the purposes of this section, "child health
14 supervision services" means physician-delivered, physician-
15 supervised, physician assistant-delivered, or nurse-delivered
16 services as defined by section 457-2 ("registered nurse"), which
17 shall include as the minimum benefit coverage for services
18 delivered at intervals and scope stated in this section."

19 SECTION 9. Section 431:13-108, Hawaii Revised Statutes, is
20 amended by amending subsection (c) to read as follows:



1 "(c) If a claim is contested or denied or requires more
2 time for review by an entity, the entity shall notify the health
3 care provider, insured, or member filing a claim from a non-
4 contracted provider in writing or electronically not more than
5 fifteen calendar days after receiving a claim filed in writing,
6 or not more than seven calendar days after receiving a claim
7 filed electronically, as appropriate. The notice shall identify
8 the contested portion of the claim and the specific reason for
9 contesting or denying the claim, and may request additional
10 information; provided that a notice shall not be required if the
11 entity provides a reimbursement report containing the
12 information, at least monthly, to the health care provider."

13 SECTION 10. Section 431:19-304, Hawaii Revised Statutes,
14 is amended to read as follows:

15 "[-]§431:19-304[+] Qualification of sponsors. A sponsor
16 of a sponsored captive insurance company shall be an insurer
17 licensed under laws of any state, a reinsurer authorized or
18 approved under the laws of any state, a captive insurance
19 company formed or licensed under this article, or any other
20 person, company, or organization approved by the commissioner in
21 the exercise of the commissioner's discretion, after finding



1 that the approval of that person, company, or organization as a
2 sponsor is not inconsistent with the purposes of this article.
3 A risk retention group shall not be [either] a sponsor [~~or a~~
4 ~~participant~~] of a sponsored captive insurance company."

5 SECTION 11. Section 431:19-305, Hawaii Revised Statutes,
6 is amended by amending subsection (a) to read as follows:

7 "(a) Associations, corporations, limited liability
8 companies, partnerships, trusts, risk retention groups, and
9 other business entities may be participants in any sponsored
10 captive insurance company formed or licensed under this
11 chapter."

12 SECTION 12. Section 431M-1, Hawaii Revised Statutes, is
13 amended by adding a new definition to be appropriately inserted
14 and to read as follows:

15 ""Licensed dietitian" means a person who uses the title of
16 licensed dietitian or dietitian and has been licensed to
17 practice dietetics under chapter 448B."

18 SECTION 13. Section 431M-4, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) Mental illness benefits.



- 1 (1) Covered benefits for mental health services set forth
2 in this subsection shall be limited to coverage for
3 diagnosis and treatment of mental disorders. All
4 mental health services shall be provided under an
5 individualized treatment plan approved by a physician,
6 psychologist, licensed clinical social worker,
7 marriage and family therapist, licensed mental health
8 counselor, [~~or~~] advanced practice registered nurse, or
9 licensed dietitian treating eating disorders, and must
10 be reasonably expected to improve the patient's
11 condition. An individualized treatment plan approved
12 by a licensed clinical social worker, marriage and
13 family therapist, licensed mental health counselor,
14 [~~or an~~] advanced practice registered nurse, or a
15 licensed dietitian treating eating disorders, for a
16 patient already under the care or treatment of a
17 physician or psychologist shall be done in
18 consultation with the physician or psychologist;
- 19 (2) In-hospital and nonhospital residential mental health
20 services as a covered benefit under this chapter shall
21 be provided in a hospital or a nonhospital residential



1 facility. The services to be covered shall include
2 those services required for licensure and
3 accreditation;

4 (3) Mental health partial hospitalization as a covered
5 benefit under this chapter shall be provided by a
6 hospital or a mental health outpatient facility. The
7 services to be covered under this paragraph shall
8 include those services required for licensure and
9 accreditation; and

10 (4) Mental health outpatient services shall be a covered
11 benefit under this chapter."

12 SECTION 14. Section 431P-10, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) ~~[Upon the authorization of the commissioner, insurers~~
15 ~~may]~~ Insurers seeking to provide [standard extended] multi-peril
16 coverage [endorsements] for residential property, including
17 multi-peril coverage of the hurricane [risks,] peril, subject to
18 the fund's program for incentives and credits[+], shall submit
19 to the commissioner a written request for permission to write
20 the coverage; provided that in the absence of such
21 authorization, no other policy of residential property insurance



1 or endorsement to a policy of residential property insurance on
 2 eligible residential property located in this State shall be
 3 issued to provide insurance for damages or losses caused by a
 4 covered event if such coverage is less than that offered by the
 5 fund. If [~~standard-extended~~] multi-peril coverage
 6 [~~endorsements~~] on commercial property [~~are~~] is no longer being
 7 offered by the fund, any [~~standard-extended~~] multi-peril
 8 coverage [~~endorsements~~] on commercial property offered by an
 9 insurer shall qualify as a comparable coverage under section
 10 431P-5(b)(8)(A). [~~Standard-extended~~] Multi-peril coverage
 11 [~~endorsements~~] on residential property which include coverage
 12 for hurricane losses offered by an insurer shall qualify as a
 13 comparable coverage under section 431P-5(b)(8)(A)."

14 SECTION 15. Section 431R-5, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "[~~f~~]~~§431R-5~~[~~]~~ Violations; penalties. (a) The insurance
 17 commissioner may assess a fine of up to \$10,000 for each
 18 violation by a pharmacy benefit manager or prescription drug
 19 benefit plan provider who is in violation of section 431R-2 or
 20 431R-3. In addition, the insurance commissioner may order the



1 pharmacy benefit manager to take specific affirmative corrective
2 action or make restitution.

3 (b) Failure of a pharmacy benefit manager to comply with a
4 previously agreed upon contractual retail pharmacy network
5 agreement pursuant to section 431R-2 or 431R-3 shall be an
6 unfair or deceptive act or practice as provided in section
7 431:13-102.

8 (c) A pharmacy benefit manager or prescription drug
9 benefit plan provider may appeal any decision made by the
10 insurance commissioner in accordance with chapter 91.

11 (d) Every person and its officers, employees, and
12 representatives subject to investigation or examination by the
13 commissioner under this chapter shall produce and make freely
14 accessible to the commissioner the accounts, records, documents,
15 and files in the person's possession or control relating to the
16 subject of the investigation or examination and shall otherwise
17 facilitate the investigation or examination.

18 (e) Every person and its officers, employees, and
19 representatives subject to investigation or examination by the
20 commissioner under this chapter shall issue a written response
21 no later than fifteen working days after receiving a written



1 inquiry from the commissioner regarding a claim or complaint.
2 The response shall be more than an acknowledgment that the
3 commissioner's communication has been received and shall
4 adequately address the concerns stated in the communication."

5 SECTION 16. Section 432:1-102, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Article 2, article 2D, parts II and IV of article 3,
8 article 6, part III of article 7, article 9A, article 13,
9 article 14G, and article 15 of chapter 431, sections 431:3-301,
10 431:3-302, 431:3-303, 431:3-304, 431:3-305, [and] 431:10-102,
11 431:10-225, 431:10-226.5, and 431:10A-116(1) and (2), and the
12 powers granted by those provisions to the commissioner, shall
13 apply to managed care plans, health maintenance organizations,
14 or medical indemnity or hospital service associations that are
15 owned or controlled by mutual benefit societies so long as the
16 application in any particular case is in compliance with and is
17 not preempted by applicable federal statutes and regulations."

18 SECTION 17. Section 432:1-602.5, Hawaii Revised Statutes,
19 is amended by amending subsection (e) to read as follows:

20 "(e) For the purposes of this section, "child health
21 supervision services" means physician-delivered, physician-



1 supervised, physician assistant-delivered, or nurse-delivered
2 services as defined by section 457-2 ("registered nurse"), which
3 shall include as the minimum benefit coverage for services
4 delivered at intervals and scope stated in this section."

5 SECTION 18. Section 432:1-604.5, Hawaii Revised Statutes,
6 is amended by amending subsection (d) to read as follows:

7 "(d) For purposes of this section:

8 "Contraceptive services" means physician-delivered,
9 physician-supervised, physician assistant-delivered, [~~nurse~~
10 ~~practitioner-delivered, certified nurse midwife delivered, or~~
11 advanced practice registered nurse-delivered, nurse-delivered
12 [~~medical services~~], or pharmacist-delivered medical services
13 intended to promote the effective use of contraceptive supplies
14 or devices to prevent unwanted pregnancy.

15 "Contraceptive supplies" means all Food and Drug
16 Administration-approved contraceptive drugs or devices used to
17 prevent unwanted pregnancy."

18 SECTION 19. Section 432D-14, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) In addition to, or in lieu of, suspension or
21 revocation of a certificate of authority pursuant to this



1 section, the commissioner[~~, after hearing,~~] may levy an
2 administrative fine upon the health maintenance organization in
3 an amount not less than \$500 and not more than \$50,000 pursuant
4 to section 431:3-221."

5 SECTION 20. Section 432D-19, Hawaii Revised Statutes, is
6 amended by amending subsection (d) to read as follows:

7 "(d) Article 2, article 2D, part IV of article 3, article
8 6, part III of article 7, article 9A, article 13, article 14G,
9 and article 15 of chapter 431, and sections 431:3-301, 431:3-
10 302, 431:3-303, 431:3-304, [and] 431:3-305, 431:10-225, and
11 431:10-226.5, and the powers granted by those provisions to the
12 commissioner shall apply to health maintenance organizations, so
13 long as the application in any particular case is in compliance
14 with and is not preempted by applicable federal statutes and
15 regulations."

16 SECTION 21. Section 431P-17, Hawaii Revised Statutes, is
17 repealed.

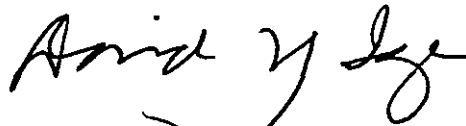
18 [~~"[§431P-17] Additional notice requirement. Thirteen~~
19 ~~months prior to discontinuation of writing property insurance~~
20 ~~coverage, an insurer shall file an affidavit with the~~
21 ~~commissioner stating the reasons for the discontinuation."]~~



1 SECTION 22. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 23. This Act shall take effect on July 1, 2016;
4 provided that sections 3 and 4 shall take effect on January 1,
5 2017.

APPROVED this 29 day of JUN, 2016



GOVERNOR OF THE STATE OF HAWAII