

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 171

MISCELLANEOUS INSURANCE RULES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-171-101 Definitions. As used in this chapter:

"Commissioner" means the insurance commissioner.

"Enrollee" means a person covered for health insurance by the insurer.

"Insured" means a person covered for insurance by the insurer.

"Insurer" means a person defined as an insurer pursuant to section 431:1-202, Hawaii Revised Statutes ("HRS").

"Managed care plan" means a health plan defined as a managed care plan pursuant to section 431:14F-102, HRS. [Eff 1/1/05; am and comp 12/26/06; comp 03/28/08] (Auth: HRS §431:2-201) (Imp: HRS §§431:1-202, 431:2-102, 431:2-201, 431:14F-102)

§16-171-102 Repealed. [R 12/26/06]

§16-171-103 Written notice to claimants of payment of claims in third-party settlements. (a) Upon payment in settlement of any third-party liability claim, the insurer shall provide written notice to the claimant where:

- (1) The claimant is a natural person; and
- (2) The payment is delivered to the claimant's lawyer by draft, check, or otherwise.

(b) A written notice shall be required when the insurer or the insurer's representative, including the insurer's lawyer, makes payment to a claimant. [Eff and comp 12/26/06; comp 03/28/08] (Auth: HRS §431:2-201) (Imp: HRS §§431:1-202, 431:10-230)

SUBCHAPTER 2

HEALTH PROVISIONS

§16-171-201 Disclosure to enrollee or authorized representative. (a) Upon written request and payment of fifty dollars to a managed care plan by an enrollee or authorized representative, a managed care plan shall deliver, within ten business days of that request, to that enrollee or authorized representative data that

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forms the basis for the premium rates that the managed care plan seeks to charge the enrollee in the next enrollment period.

(b) Subject to subsection (c), the enrollee or authorized representative may request all pertinent information as to the rate including, but not limited to, the managed care plan's data for the enrollee relating to:

- (1) loss trend;
- (2) loss ratio;
- (3) annual financial statements of the managed care plan; and
- (4) its rate filing.

(c) A managed care plan shall not be required to disclose supporting information or supplementary rating information that:

- (1) Consists of proprietary information, including trade secrets, commercial information, and business plans that the commissioner deems may result in competitive harm to the managed care plan if disclosed;
- (2) Is confidential in accordance with federal or Hawaii law; or
- (3) Is exempt from disclosure by federal or Hawaii law. [Eff 1/1/05; comp 12/26/06; am and comp 03/28/08] (Auth: HRS §431:2-201) (Imp: HRS §§ 92F-13, 92F-22, 431:2-209, 431:14G-105, 431:14G-109)

§16-171-202 Accident and health or sickness filing requirement. Notwithstanding the need to have a plan qualified under section 393-7, HRS, a managed care plan shall file accident and health or sickness insurance contract rates with the commissioner that comply with the Title 24, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 432:1-102, 432D-2) (Imp: HRS §431:14G-105)

SUBCHAPTER 3

LICENSING REQUIREMENTS

§16-171-301 Term of license. The term of the license granted pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, shall be not less than one year and not more than three years. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9-232, 431:9A-107, 432:2-609)

§16-171-302 License renewal or extension for a natural person. (a) The day for renewal or extension of a license issued to a natural person pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, shall be the sixteenth day of the licensee's birth month.

(b) The year for renewal or extension of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, to a natural person born in even-numbered months shall be the next succeeding even numbered year. The year for renewal or extension of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, to a natural person born in odd-numbered months shall be the next succeeding odd numbered year.

(c) The term of a license issued pursuant to articles 9 and 9A of chapter 431, HRS, and article 2 of chapter 432, HRS, shall be not less than one year and no more than three years, as determined by the commissioner.

(d) This section shall not apply to provider certificates issued for continuing education courses. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9-232, 431:9A-107, 432:2-609)

§16-171-303 Term of surplus lines broker; license. The term of the surplus lines broker license issued pursuant to article 8 of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:8-310, 431:9A-108)

§16-171-304 License renewal or extension for a business entity. (a) The day for renewal or extension of a license issued to a business entity pursuant to articles 9 and 9A of chapter 431, HRS, shall be the sixteenth day of April for a nonresident licensee and the sixteenth day of July for a resident licensee.

(b) The year for renewal or extension for a nonresident business entity licensee shall be the next succeeding even numbered year.

(c) The year for renewal or extension for a resident business entity licensee shall be the next succeeding odd numbered year.

(d) The term of the license issued to a business entity pursuant to articles 9 and 9A of chapter 431, HRS, shall be not less than one year and no more than three years, as determined by the commissioner.

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(e) This section shall not apply to provider certificates issued for continuing education courses. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-106, 431:9A-107)

§16-171-305 Payment of licensing fees and penalties. Prior to the issuance, renewal, or extension of a license, the licensee shall pay all applicable fees and penalties. A service fee, consisting of annual fees for each full year or partial year included in the term, shall be paid by the licensee. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9-232, 431:9A-107, 431:9A-107.5, 432:2-609)

§16-171-306 Continuing education course credit. Credits earned for a continuing education course shall be valid for twenty-four months after the course provider determines that the licensee has successfully completed all course requirements. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-124, 431:9A-155)

§16-171-307 Continuing education requirement for licensee that acquires additional line of authority. Except for nonresident licensees subject to the reciprocity provisions of section 431:9A-116(b), HRS, a licensed producer or fraternal benefit society producer who acquires an additional line of insurance through the examination process within the twenty-three months preceding the producer's renewal or extension date shall complete the continuing education requirement for the additional acquired line by the producer's next succeeding renewal or extension date. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-124, 431:9A-142, 431:9A-155, 432:2-609)

§16-171-308 Continuing education requirement for licensee reactivating a line of authority. Except for nonresident licensees subject to the reciprocity provisions of section 431:9A-116(b), HRS, a licensed producer or fraternal benefit society producer who applies to reactivate a line of authority shall fulfill the continuing education requirement for the line of authority prior to its reactivation. [Eff 1/1/05; comp 12/26/06L; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-124, 431:9A-142, 431:2-609)

§16-171-309 Continuing education prerequisite for business entity license renewal. Unless the commissioner grants an extension of time in advance of the due date, a business entity subject to the continuing education requirements of article 9A of chapter 431, HRS, shall complete its continuing education requirement through its designated representative. Failure by the designated representative to complete the continuing education requirement on behalf of the business entity shall result in the business entity's and, if applicable, the designated representative's license being automatically placed on "inactive" status. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9A-106, 431:9A-124, 431:9A-142)

§16-171-310 Application for approval of a continuing education course. (a) A continuing education course provider seeking approval of a continuing education course shall submit an application to the commissioner at least sixty days prior to the proposed date the course will be offered.

(b) A continuing education course provider shall obtain the commissioner's prior approval for the course before advertising or soliciting for that course. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §431:9A-153)

§16-171-311 Passing examination score. An applicant for licensure under article 9 or article 9A of chapter 431, HRS, or article 2 of chapter 432, HRS, shall obtain a score of seventy-five or higher to pass the examination. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:9-206, 431:9A-105, 432:2-609)

§16-171-312 Term of managing general agent license. The term of licensure for a managing general agent license issued pursuant to article 9C of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-107, 431:9A-108, 431:9C-102)

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§16-171-313 Managing general agent's bond or errors and omissions policy. A managing agent shall ensure that the bond or errors and omissions policy required by section 431:9C-102(c), HRS, shall remain in force until the commissioner approves its discharge, or until cancelled by the issuer. Without prejudice to any liability accrued prior to cancellation, the issuer may cancel a bond or errors and omissions policy upon sixty days advance notice in writing filed with the commissioner. The issuer shall include this notice requirement in its contracts with the Managing General Agent. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §431:9C-102)

§16-171-314 Term of reinsurance intermediary broker and reinsurance intermediary manager licenses. The term of licensure for reinsurance intermediary broker and reinsurance intermediary manager licenses issued pursuant to article 9B of chapter 431, HRS, shall be the same as the licensee's producer license issued pursuant to article 9A of chapter 431, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §§431:7-101, 431:9A-107, 431:9A-108, 431:9B-102)

§16-171-315 Reinsurance intermediary manager's bond or errors and omissions policy. A reinsurance intermediary manager shall ensure that the bond or errors and omissions policy required by section 431:9B-102(c), HRS, shall remain in force until the commissioner approves its discharge, or until cancelled by the issuer. Without prejudice to any liability accrued prior to cancellation, the issuer may cancel a bond or errors and omissions policy upon sixty days advance notice in writing filed with the commissioner. The issuer shall include this notice requirement in its contracts with the reinsurance intermediary-manager. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:9A-118) (Imp: HRS §431:9B-102)

§16-171-316 Term of vehicle protection product warrantors registrations. The term of vehicle protection product warrantors' registrations issued pursuant to chapter 481R, HRS, shall be for not more than one year and, unless renewed, shall automatically expire on December 31 of each year. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 481R-3) (Imp: HRS §§431:7-101, 481R-4)

§16-171-317 Term of service contract provider registrations. The term of service contract providers' registrations issued pursuant to chapter 481X, HRS, shall be for not more than one year and, unless renewed, shall automatically expire on July 15 of each year. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 481X-11) (Imp: HRS §§431:7-101, 481X-3)

SUBCHAPTER 4

CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

§16-171-401 Purpose. The purpose of this subchapter is to authorize the use of the 2001 Commissioners' Standard Ordinary (CSO) Mortality Table for the computation of the minimum reserve standard for nonforfeiture and valuation of life insurance policies and contracts. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-402 Definitions. As used in this section:

"2001 CSO mortality table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries Commissioners' Standard Ordinary ("CSO") Task Force from the valuation basic mortality table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002 (the 2001 CSO mortality table is included in the Proceedings of the NAIC (2ND quarter 2002)). Unless the context indicates otherwise, the "2001 CSO mortality table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"2001 CSO mortality table (F)" means that portion of the 2001 CSO mortality table that consists of the rates of mortality for female lives.

"2001 CSO mortality table (M)" means that portion of the 2001 CSO mortality table that consists of the rates of mortality for male lives from the 2001 CSO mortality table.

"Composite mortality tables" means that portion of the 2001 CSO mortality table that consists of rates of mortality that do not distinguish between smokers and nonsmokers.

"Smoker and nonsmoker mortality tables" means that portion of the 2001 CSO mortality table that consists of separate rates of mortality for smokers and nonsmokers. [Eff 1/1/05; comp 12/26/06 comp 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-403 2001 CSO Mortality Table. (a) At the election of the insurer and for any one or more of the insurer's specified plans of insurance and subject to the conditions stated in section 16-171-404, Hawaii Administrative Rules ("HAR"), the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, and in sections 431:5-307 and 431:10D-104, HRS, as applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in section 16-171-404, HAR, insurers shall use the 2001 CSO Mortality Table in determining minimum standards for policies issued on and after January 1, 2009, in sections 431:5-307 and 431:10D-104, HRS. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-404 Conditions. (a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

- (1) Composite mortality tables to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits;
- (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by sections 431:5-307 and 431:10D-104, HRS, and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
- (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers, the insurers shall use the composite mortality tables.

(c) For the purpose of determining minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the insurer for each plan of insurance, be used in its select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for an insurer, the actuarial opinion in the annual statement filed by the insurer with the commissioner shall be based on an asset adequacy analysis as specified in sections 431:5-307 and 431:10D-104, HRS. Upon application, the commissioner may exempt an insurer from this requirement only if it does business in this State and in no other state. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§ 431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

§16-171-405 Gender-Blended Tables. (a) For any ordinary life insurance policy delivered or issued for delivery in this State on and after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the insurer for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the subchapter.

(b) The insurer may choose from among the blended tables within the 2001 CSO Mortality Table by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

(c) It shall not, in and of itself, be a violation of article 13 of chapter 431, HRS, for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis. [Eff 1/1/05; comp 12/26/06; comp 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c)(2)(A), 431:10D-104(e)(8)(G)(vii))

SUBCHAPTER 5

PREFERRED MORTALITY TABLES FOR USE IN DETERMINING
MINIMUM RESERVE LIABILITIES

§16-171-501 Purpose. The purpose of this subchapter is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with sections 431:5-307 and 431:10D-104, Hawaii Revised Statutes. [Eff 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

§16-171-502 Definitions. As used in this chapter:

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless indicated otherwise, the 2001 CSO Mortality Table includes:

- (1) Both the ultimate form of that table and the select and ultimate form of that table;
- (2) Both the smoker and nonsmoker mortality tables and the composite mortality tables;
- (3) Both the age-nearest-birthday and age-last-birthday bases of the mortality tables;
- (4) The "2001 CSO Mortality Table (F)" that consists of the rates of mortality for female lives from the 2001 CSO Mortality Table;
- (5) The "2001 CSO Mortality Table (M)" that consists of the rates of mortality for male lives from the 2001 CSO Mortality Table;
- (6) The "Composite mortality tables" that consist of tables with rates of mortality that do not distinguish between smokers and nonsmokers; and
- (7) The "Smoker and nonsmoker mortality tables" that consist of mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred

Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the *NAIC Proceedings (3rd Quarter 2006)*. Unless the context indicates otherwise, the 2001 CSO Preferred Class Structure Mortality Table includes:

- (1) Both the ultimate form of that table and the select and ultimate form of that table;
- (2) Both the smoker and nonsmoker mortality tables found in the 2001 CSO Mortality Table;
- (3) Both the male and female mortality tables and the gender composite mortality tables found in the 2001 CSO Mortality Table; and
- (4) Both the age-nearest-birthday and age-last-birthday bases of the mortality table found in the 2001 CSO Mortality Table.

"CSO" means commissioners' standard ordinary.

"NAIC" means the National Association of Insurance Commissioners.

"Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information, demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers, and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner. [Eff 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

§16-171-503 2001 CSO Preferred Class Structure Table. (a) At the election of insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this subchapter, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the smoker and nonsmoker mortality tables, found in the 2001 CSO Mortality Table, as the minimum valuation for policies issued.

(b) No such election shall be made until the insurer demonstrates at least twenty per cent of the business to be valued on this table is in one or more of the preferred classes.

(c) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of subchapter 4, title 16, chapter 171, Hawaii Administrative Rules. [Eff 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

§16-171-504 Conditions. (a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:

- (1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and
- (2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:

- (1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class; and
- (2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(c) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Mortality Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by

the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner. [Eff 03/28/08] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:5-307(c), 431:10D-104(e))

SUBCHAPTER 6

MILITARY SALES PRACTICES

§16-171-601 Purpose and authority. (a) The purpose of this subchapter is to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this subchapter.

(c) This subchapter is adopted under the authority of Hawaii Revised Statutes section 431:2-201.8. [Eff 03/28/08] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-602 Definitions. As used in this chapter:

"Active duty" means full-time duty in the active military service of the United States Armed Forces, National Guard, and reserves while serving under published orders for active service or full-time training. The term does not include members of the National Guard and reserves who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

"Department of Defense," "DD," or "DoD" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees of that government agency.

"Door to door" means a solicitation or sales method whereby an insurance producer or insurer proceeds randomly or selectively from household to household without prior specific appointment.

"General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

"Insurer" means an insurance company required to be licensed under the laws of the State of Hawaii to provide life insurance products, including annuities.

"Insurance producer" means a person required to be licensed under the laws of the State of Hawaii to sell, solicit, or negotiate life insurance, including annuities.

"IRC" means the Internal Revenue Code.

"Known" or "knowingly", depending on its use herein, means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of, that the person solicited:

- (1) Is a service member; or
- (2) Is a service member with a pay grade of E-4 or below.

"Life insurance" means insurance coverage on human lives, including benefits of endowments and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and, unless otherwise specifically excluded, includes individually issued annuities.

"Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

"MyPay" is a Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

"Service member" means any active duty officer, commissioned and warrant, or enlisted member of the United States Armed Forces.

"SGLI" means a contract offered by Servicemembers' Group Life Insurance, as authorized by 38 U.S.C. Section 1965 *et seq.*

"Side fund" means an account or reserve that is part of or otherwise attached to a life insurance policy, excluding individually issued annuities by rider, endorsement or other means. The term "side fund" does not include:

- (1) Accumulated value or cash value or secondary guarantees provided by a universal life policy;
- (2) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- (3) A premium deposit fund which:
 - (A) Contains only premiums paid in advance which accumulate at interest;

- (B) Imposes no penalty for withdrawal;
- (C) Does not permit funding beyond future required premiums;
- (D) Is not marketed or intended as an investment; and
- (E) Does not carry a commission, either paid or calculated.

"Solicitation" means the sale or negotiation of any life insurance or annuity product by an insurer or insurance producer in this State.

"Specific appointment" means a prearranged appointment agreed upon by an insurer or producer and a service member at a definite place and time.

"United States Armed Forces" means all components of the United States' army, navy, air force, marine corps, and coast guard.

"VGLI" means a contract offered by Veterans' Group Life Insurance, as authorized by 38 U.S.C. Section 1965 *et seq.* (Eff 03/28/08] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-603 Scope and exemptions. (a) This subchapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

- (b) This subchapter shall not apply to solicitations or sales involving:
 - (1) Credit insurance;
 - (2) Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or insurer or where the contract or certificate does not include a side fund;
 - (3) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;
 - (4) Individual stand-alone health policies, including disability income policies;
 - (5) Except as provided herein, contract offered by SGLI or VGLI, as authorized by 38 U.S.C. Section 1965 *et seq.*;
 - (6) Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
 - (7) Contracts used to fund:

- (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (B) A plan described by sections 401(a), 401(k), 403(b), 408(k), 408 (p) of the IRC, as amended, if established or maintained by an employer;
 - (C) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (E) Settlements or assumptions or liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (F) Prearranged funeral contracts.
- (8) Nothing herein shall be construed to abrogate the ability of nonprofit organization or other organizations to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07, *Personal Commercial Solicitation on DoD Installations*, or successor directive.
- (9) For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned involves life insurance or an annuity and makes no statements that preclude a clear and unequivocal understanding that life insurance or any annuity is the only subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to relieve an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection. [Eff 03/28/08] (Auth: HRS §§431:2-201, 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-604 Practices declared false, misleading, deceptive, or unfair on a military installation. (a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-

person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive, or unfair:

- (1) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;
- (2) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary;
- (3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;
- (4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, transient personnel housing, or other areas where the installation commander has prohibited solicitation;
- (5) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;
- (6) Posting unauthorized bulletins, notices, or advertisements;
- (7) Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a form DD 2885; or
- (8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute a corrupt practice, improper influence, or inducement and are declared to be false, misleading, deceptive or unfair;

- (1) Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or
- (2) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.
(Eff 03/28/08] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-605 Practices declared false, misleading, deceptive, or unfair regardless of location. (a) The following acts or practices by an insurer or insurance producer constitute a corrupt practice, improper influence, or inducement and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for that purpose. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;
- (2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:
 - (A) Provides the service member with a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. §4301 *et seq.* and the regulations promulgated thereunder; and
 - (B) Permits the service member to make deposits and withdrawals unrelated to the payment of processing of insurance premiums;
- (3) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in paragraph (a)(2);
- (4) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

- (5) Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family member of those service members;
 - (6) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;
 - (7) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or
 - (8) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.
- (b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:
- (1) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."
- Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. These designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC),

Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science Financial Planning (MS);
or

- (2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, or the United States Armed Forces.

(c) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or
- (2) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(d) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Making any representation regarding the availability, suitability, amount, cost exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, deceptive, or unfair;
- (2) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, deceptive, or unfair; or
- (3) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurer or insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;
- (2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;
- (3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;
- (4) Failing to make, at the time of sale or offer to individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, at 1323-1324; or
- (5) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide to the applicant at the time the application is taken:
 - (A) An explanation of any free look period with instructions on how to cancel if a policy is issued; and
 - (B) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of Hawaii Revised Statutes chapter 431, article 10D, part IV, shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive, or unfair. They include, but are not limited to:

- (1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below, unless the

insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

- (2) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below, who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. For the purposes of this paragraph:
 - (A) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents; and
 - (B) "Other military survivor benefits" include, but are not limited to: the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and social security survivor benefits.
- (3) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:
 - (A) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
 - (B) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age one hundred (100), policy maturity, or final expiration; and
 - (C) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

- (4) Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance; or
- (5) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded. (Eff 03/28/08] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

§16-171-606 Severability. If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections, which can be given effect without the invalid provisions or application. To this end, all provisions of these sections are declared to be severable. [Eff 03/28/08] (Auth: HRS §§431:2-201; 431:2-201.8) (Imp: HRS §431:1-201.8)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-171
Hawaii Administrative Rules

January 16, 2008

SUMMARY

1. §16-171-201 is amended.
2. §16-171-501 through 504 are new
3. §16-171-601 through 606 are new.
4. Chapter 171 is compiled.

THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS IN BRAILLE, LARGE PRINT OR AUDIO TAPE. PLEASE SUBMIT YOUR REQUEST TO THE INSURANCE DIVISION AT (808)586-2790

Amended 03/08