

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 3

DISABILITY COMPENSATION DIVISION

CHAPTER 12

PREPAID HEALTH CARE

SUBCHAPTER 1

GENERAL

§12-12-1 Definitions. As used herein:

"Continuation of coverage in case of inability to earn wages" means that allocation of health care premium will be based on an employee's continuing salary, if this be the case, or the salary or wages that the employee received in the last fully completed month prior to the disability. Thus, the employer must continue the coverage by paying for the employer's share of the premium and the employee must contribute towards the premium to the same extent as prior to the disability.

"Covered employee" means an eligible employee who is provided health care coverage by an employer.

"Department" shall be as defined in section 393-3, HRS.

"Director" shall be as defined in section 393-3, HRS.

"Eligible employee" means an employee who has worked for an employer for twenty or more hours a week for four consecutive weeks, and earned 86.67 times the Hawaii minimum hourly wage.

"Employer" shall be as defined in section 393-3, HRS.

"Employment" shall be as defined in section 393-3, HRS, and shall include the period an employee is receiving benefits under chapters 386 or 392, HRS, for a period of not less than that prescribed in section 393-15, HRS. It shall also include services performed by an individual for wages or under any contract of hire irrespective of whether the common-law relationship of master and servant exists unless and until it is shown to the satisfaction of the director that:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of hire and in fact;
- (2) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and

- (3) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service.

"Four consecutive weeks" means any consecutive period of four weeks which an employee worked for an employer.

"Health care contract" means the entire approved plan of the health care contractor including its terms and conditions and benefit schedule.

"Premium" shall be as defined in section 393-3, HRS.

"Prepaid health care contractor" shall be as defined in section 393-3, HRS.

"Prepaid health care plan" shall be as defined in section 393-3, HRS. Prepaid health care plans which have the largest number of subscribers in the State are on file with the state department of labor and industrial relations, disability compensation division, and are available upon request.

"Regular employee" shall be as defined in section 393-3, HRS, but does not include dependents of an employee who are covered by a health care plan as an employee of the same employer.

"Regular wages" include an employee's disability income insurance provided for and paid entirely by the employer in excess of that required by any law.

"Seasonal employment" means employment by an employer defined in the second sentence of section 393-3(8), HRS, during its seasonal period or seasonal periods.

"Seasonal period or "seasonal periods" means the period or periods of seasonal activity of less than an aggregate of twenty-six calendar weeks in twelve consecutive calendar months in which the volume of employment by the employer in the pursuit, measured in terms of average weekly man hours per week, is at least fifty percent more than the average weekly man hours of employment by the employer in the twelve consecutive weeks in such twelve consecutive calendar months when the volume of employment by the employer is the lowest in such pursuit; provided that employment by an employer in seasonal pursuit engaged in the cultivating, harvesting, and processing of coffee and macadamia nuts and other crops or products constitutes seasonal employment during the employer's seasonal period or seasonal periods, provided further that employment during the seasonal period or seasonal periods by an employer engaged in the cultivating, harvesting, processing, canning, and warehousing of pineapples constitutes seasonal employment.

"Self-insurer" means an employer as defined in section 393-3, HRS, who undertakes to provide the prescribed coverage and benefits directly to the employees without the intervention of a plan provided by a health care contractor or insurer subject to the insurance laws of the State.

"Statute" means chapter 393, HRS, entitled "Prepaid Health Care

Act."

"Wages" shall be as defined in section 393-3, HRS.

"Week" means a period of seven consecutive days based on the established work week of each employer. [Eff: 5/7/81; am 9/16/85; am 1/13/92; am 8/19/96](Auth: HRS §393-32)(Imp: HRS §§393-1, 393-3, 393-4, 393-5, 393-7, 393-11, 393-15)

§12-12-2 Determination of seasonal pursuit and seasonal period.

(a) Employers believing themselves to be engaged in seasonal pursuits shall file a request for such determination with the director. The request shall contain data and information necessary to qualify the employer within the provisions as set forth in section 12-12-1 of this chapter and also as set forth in section 393-3(8), HRS, for the twelve months immediately preceding the date of the request for seasonal pursuit determination. The request shall also include similar data and information anticipated to be experienced in the current twelve month period. The request shall be signed by an authorized representative of the employer.

(b) The department shall review the request and information submitted and make determinations of seasonal pursuit and seasonal period or seasonal periods conforming to section 12-12-1. The decision of the department shall be certified in writing to the requesting employer and will remain in effect for the period specified in the decision.

(c) In order to establish the seasonal period or periods for each subsequent twelve month period following initial determination by the department, the employer shall resubmit data and information specified in subsections (a) and (b) not later than one calendar month after the expiration date of the department's decision. [Eff: 5/7/81](Auth: HRS §393-32)(Imp: HRS §393-3)

§12-12-3 Voluntary Coverage. An employer may voluntarily cover a person excluded under section 393-5, HRS, with a plan which will afford the person health care protection. Such voluntarily covered person shall not be entitled to the protection afforded by the statute or this chapter. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-2, 393-5)

§12-12-4 Monthly pay of regular employee. The monthly wages for the purposes of section 393-11, HRS, shall be 86.67 times the State's minimum wage rounded off to the next higher dollar. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-11)

§12-12-5 Employee responsibility. An employee exempt under the statute shall immediately file with the employer on a form provided by the department the reason for such exemption. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-15, 393-16, 393-17, 393-18, 393-21)

§12-12-6 Employee already disabled. Should an employer elect to change the health care plan or contractor while an employee is disabled, the employer shall provide a reasonable extension of benefits, which may be provided by the previous or succeeding health care contractor. [Eff: 5/7/81; am 6/19/86] (Auth: HRS §393-32) (Imp: HRS §§393-12, 393-15)

§12-12-7 Health care advisory council. The council shall have discretion in determining which plans qualify under section 393-7, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-7)

§12-12-8 Director's rights and duties. The director's rights and duties shall be that prescribed by chapters 371 and 393, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-31, 393-32)

§§12-12-9 to 12-12-10 (Reserved)

SUBCHAPTER 2

PLANS

§12-12-11 Coverage. An employer may provide an approved individual or a group plan. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-11, 393-12, 393-13, 393-14, 393-15)

§12-12-12 More than one plan. An employer may elect to provide more than one approved plan from the same or different health care contractor. The employer shall not be liable for more than the cost of the least expensive plan should there be more than one plan. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-12)

§12-12-13 Classes of employees. An employer may provide different plans for different classes of employees. The employer shall not, however, exceed the withholding requirements of section 393-13, HRS, should classes of employees be provided different plans. [Eff: 5/7/81] (Auth: HRS §393-32)(Imp: HRS §§393-12, 393-13)

§12-12-14 Out-of-state employer-sponsored plans. Any employer-sponsored plan shall be submitted to the department by the authorized health care contractor in accordance with section 12-12-16. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-20)

§12-12-15 Collective bargaining agreement. Any prepaid health care plan included in a collective bargaining agreement:

- (1) Is presumed to meet the requirements of the statute if the agreement is dated prior to June 3, 1978.

- (2) Shall meet the requirement of the statute if the agreement is dated on or after June 3, 1978.
- (3) Shall be filed by the employer with the department immediately upon approval of the parties whenever effected, modified, renegotiated, or extended. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-19)

§12-12-16 Submission of plans by health care contractors.

(a) After the approval of a health plan by the Hawaii State Insurance Commissioner or a signed statement that the plan does not require approval, the health care contractor shall submit eight copies of the plan to the department for review. Each plan shall have attached thereto the evidence of the insurance commissioner's approval or the statement that the plan does not require approval. Any plan submitted under section 393-7(b), HRS, which provides aggregate benefits that are more limited than those provided by plans qualifying under section 393-7(a), HRS, shall include certification that the employer has agreed to contribute at least one-half of the cost of the coverage of dependents under such plan.

(b) After written advice from the prepaid health care advisory council, the director shall notify the health care contractor of the proposed approval or disapproval of the plan. Any proposal to disapprove shall contain the reasons therefor.

(c) The health care contractor may apply for reconsideration in writing within fifteen days after receipt of the proposed disapproval. The request for reconsideration shall include a memorandum of the facts on the basis of which the contractor contends that the plan meets the requirements of section 393-7, HRS.

(d) The director shall notify the health care contractor of the final decision to approve or disapprove the plan. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-32)

§12-12-17 Employer's obligation. (a) Each employer shall inform an eligible employee of the entitlement afforded by this statute by providing the health care contractor's name, plan number, group number, effective date of coverage, and employee's cost.

(b) The employer shall give each covered employee thirty days' notice should the employer elect to change the employer's plan or health care contractor.

(c) Any employer who withholds premium payments shall provide a covered employee who is incapacitated due to illness or injury, the following information in writing:

- (1) Within two weeks of the disability date, the amount the employee is required to pay directly to the employer for forwarding to the health care contractor in order to continue coverage under section 393-15, HRS.
- (2) At least two weeks prior to the date an employer will have completed the employer's obligation under section 393-15,

HRS, the entire premium cost the employee is required to pay directly to the employer for forwarding to the health care contractor in order to continue coverage. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-11, 393-12, 393-13, 393-14, 393-15)

§12-12-18 supplemental coverage to required health care benefits. (a) When a health care contractor whose health care plan has been approved pursuant to section 393-7, HRS, subsequently provides supplemental benefits such as vision, drug, and dental coverage, these supplemental benefits shall then become a part of the employer's health care plan whether or not initiated by employer or employees. When current or future employees must subscribe to such health care plan without having the option of excluding the supplemental benefits and its applicable cost, the cost of the required health care and supplemental benefits shall become the basis for allocation of premium specified in section 393-13, HRS.

(b) If an employee can choose not to accept the supplemental benefits, the employer may require an employee who elects the coverage to pay for the cost of the supplemental benefits. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-12, 393-13, 393-15)

§§12-12-19 to 12-12-23 (Reserved)

SUBCHAPTER 3

HEALTH CARE CONTRACTOR REQUIREMENTS

§12-12-24 Self-insurer. Any self-insurer may qualify as a health care contractor upon furnishing satisfactory proof to the director of its solvency and financial ability to defray or reimburse in whole or in part the expenses of health care under an approved health care plan. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-12)

§12-12-25 Health care contractor. Every health care contractor required to be licensed by the Hawaii State Insurance Commissioner shall be so licensed before submission of plans to the department. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-3, 393-7, 393-12)

§12-12-26 The health care insurance contract. (a) Every health care contract of insurers subject to the insurance laws of the State, including any amendment, endorsement, or rider to a contract, which provides for benefits under section 393-7, HRS shall be approved by the Hawaii State Insurance Commissioner prior to submission to the director under section 12-12-16.

(b) Nothing in the statute or this chapter is intended to amend, modify or change any policy form approval requirements prescribed in the State insurance laws. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-12)

§12-12-27 The health care certificate. (a) Every covered employee shall be given written evidence of health care coverage by the employer, which has been provided by the health care contractor.

(b) The health care contractor shall permit continuation of coverage without any diminution of benefits or standards from the plan with which an employee was covered prior to disability during the period specified in section 393-15, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-12, 393-14, 393-15)

§12-12-28 Cancellation of contract. (a) No health care contractor shall cancel a contract providing in whole or in part for health care benefits required by the statute prior to the expiration date of the contract unless written notice of intention to cancel on a specified date and reason therefor has been filed with and served on the employer and the director at least ten days prior to the specified cancellation date.

(b) The ten days' advance notice requirement in subsection (a) need not be complied with when a new contractor is simultaneously substituted. In the event of substitution, the previous contractor shall immediately file with and serve on the employer and the director, notice that the contract was canceled, the specific date and the reason for cancellation.

(c) If a plan provides by its terms for an expiration date, acceptance of the plan by the director is notice thereof.

(d) The employer shall notify its covered employees of the cancellation of coverage for nonpayment of premium. The employees shall be given an option of individual coverage if premium payment is made within ten days directly to the contractor. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-12, 393-13)

§12-12-29 Refusal to insure. No health care contractor other than a self-insurer shall refuse to cover any employer-applicant except for the non-payment of premiums. The health care contractor shall notify the director of all refusals to insure. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-3, 393-7, 393-12, 393-13)

§12-12-30 Disqualification for benefits. Subject to the terms of the health care contract, a covered employee shall not be disqualified for benefits by a health care contractor except for the nonpayment of premium. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-11, 393-13)

§12-12-31 Agent. Each health care contractor shall provide the

department with the name of an employee or officer of the contractor who is in direct charge of health care matters to whom all correspondence should be addressed. The person should be one who can be reasonably expected to expedite matters relating to the statute. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-3, 393-32)

§12-12-32 Contractors of union plans. Except as to section 12-12-16, all health care contractors, including self-insurers, providing benefits in accordance with a collective bargaining agreement shall comply with all the requirements of the statute and this chapter. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-2, 393-11, 393-12, 393-14, 393-15)

§12-12-33 Contractors of approved plans. Prepaid health care contractors with plans approved pursuant to section 393-7, HRS, are required to submit to the department of labor and industrial relations every December 31 the number of subscribers enrolled under each of their plans. If the subscriber count of one of their plans exceeds the count of their plan with the largest number of subscribers, the department must be notified within thirty days of such change. [Eff: 8/19/96] (Auth: HRS §393-32) (Imp: HRS §393-7)

§§12-12-34 to 12-12-40 (Reserved)

SUBCHAPTER 4

BENEFITS AND CLAIMS PROCEDURE

§12-12-41 Withholding by employers. (a) An employer electing to withhold from covered employees may withhold the proportionate cost of the premium each pay period beginning in the month the employees' coverage becomes effective. In no event shall the employer withhold premiums less often than once monthly. An employer shall not withhold more than 1.5 percent of such employee's regular wages or one-half the cost of premium, whichever is less, during each calendar month.

(b) Withholdings by an employer shall be promptly paid to the health care contractor in accordance with the billing requirements of the contractor.

(c) Any employer fails to transmit payments to the health care contractor in accordance with the billing requirements of the contractor shall be penalized as provided under section 393-33, HRS.

(d) In the event an employer withholds but fails to obtain coverage from a health care contractor, the employer shall:

(1) Be liable for all health care expenses incurred by the

employee.

(2) Refund the withheld premium to all employees.

(3) Be subject to penalties prescribed by section 393-33, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-13, 393-15, 393-24)

§12-12-42 Deductions greater than authorized. (a) In the event an employer withholds more than authorized by section 393-13, HRS, the employer shall:

(1) Refund such excess withholdings to the employee.

(2) Be subject to penalties prescribed by section 393-33, HRS.

(b) If an employee is no longer employed by the employer and cannot be located, the employer shall deposit such sum in the premium supplementation fund. The employer shall provide the director with the employee's full name, social security account number, last known address, the amount due, and any other information requested by the director. The director shall endeavor to locate such employee to return such deductions. If the employee cannot be located for a period of two years from the date of deposit, the director shall cause such moneys to become a part of the premium supplementation fund. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-13, 393-41)

§12-12-43 Notice and proof of claim. (a) Any covered employee claiming benefits or someone acting in behalf of the employee shall furnish a written claim to the health care contractor pursuant to the health care contract.

(b) The claim shall include documents required by the health care contract. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-7)

§12-12-44 Denial of claim. (a) If an employee's claim is denied by a health care contractor in whole or in part because of nonpayment of premium, notice of denial in a form prescribed by the director shall be mailed promptly to the employee.

(b) If an employee desires a review of the denied claim, the employee shall file the prescribed notice of denial and a statement giving specific reasons for the request with the director. The request for review shall be filed within twenty days after the date of denial at the office of the department in the county in which the claimant resides or to any office of the department. The director shall forthwith notify the health care contractor of the claimant's request for review, enclosing a copy of the claimant's reasons therefor.

(c) The director, or an officer or employee designated by the director for that purpose, shall investigate the request and render a decision. The decision is final with right of appeal in accord with section 91-14, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-32)

§12-12-45 Controverted workers' compensation claims. In the

event of a controverted workers' compensation claim, the health care contractor shall pay or provide for the medical services in accordance with the health care contract and notify the department of such action. If workers' compensation liability is established, the health care contractor shall be reimbursed by the workers' compensation carrier such amounts authorized by chapter 386, HRS, and chapter 10 of title 12, administrative rules. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 392-32)

§12-12-46 Experience rating. If, after the end of a policy year, the employer receives an experience rating credit or a dividend from the health care contractor, the employee's share of the experience rating credit or dividend shall be refunded by the employer or applied to future premium payments of covered employees. "Employee's share" means the mathematical ratio of employer-employee contributions of the experience rating credit or dividend proportionately divided among all covered employees by months of service for the period of credit. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-13)

§§12-12-47 to 12-12-59 (Reserved)

SUBCHAPTER 5

REPORTS

§12-12-60 Health care contractors. (a) Health care contractors shall submit a monthly report, in a form designated by the department, showing the following information:

- (1) Name of newly enrolled or terminated employer;
- (2) State department of labor and industrial relations account number as assigned by the unemployment insurance division;
- (3) Plan number;
- (4) Group number;
- (5) Effective date of coverage; and
- (6) Effective date and reason for cancellation.

(b) On April 15 of each year, health care contractors shall file an annual report for each employer and for each plan covering the most recently completed calendar year. This report shall be on a form prescribed by the director and shall contain the following information:

- (1) Number of covered employees employed on the twelfth day of the month for each month of the year.
- (2) Number of covered employees providing coverage for their dependents for each month of the year; and
- (3) Amount returned to the employer due to experience rating

credit or dividend during the year.

(c) On April 15 of each year, the following consolidated information shall be furnished by health care contractors for all employers covered by such contractor:

- (1) Number of claims filed by covered employees;
- (2) Number of claims paid to covered employees; and
- (3) Amount of claims paid to covered employees.

(d) If coverage is provided through an association of employers or to employers through a collectively bargained health and welfare type trust fund or similar arrangement, and it is not feasible to obtain information for each employer in the association or trust fund, the health care contractor may file a consolidated report in a form prescribed by the director. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-32)

§12-12-61 Employers. (a) On April 15 of each year, all employers providing coverage through a health care contractor shall file an annual report for each plan covering the most recently completed calendar year. This report shall be on a form prescribed by the director and shall provide the following information:

- (1) Amount of total wages paid to covered employee;
- (2) Amount of employer contributions paid in the year, and
- (3) Amount of covered employee contributions paid in the year, if applicable.

(b) On April 15 of each year, employers who provide health care benefits directly to their employees shall file an annual report for each plan covering the most recently completed calendar year. This report shall be on a form prescribed by the director and shall provide the following information:

- (1) Number of covered employees employed on the twelfth day of each month;
- (2) Amount of total wages paid to covered employees;
- (3) Amount of employer contributions paid in the year;
- (4) Amount of covered employee contributions paid in the year, if applicable; and
- (5) Amount returned to the employer due to experience rating credit or dividends, if applicable. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-32)

§12-12-62 Principal and secondary employer. (a) Any principal employer who is informed by an employee to be the secondary employer shall immediately notify the department of such change on the form provided by the department.

(b) Any secondary employer who is subsequently informed by an employee to be the principal employer shall immediately notify the department of such change on the form provided by the department. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-6, 393-16)

§12-12-63 Other employer reports. (a) Status report. Every employer for whom services are performed in employment shall file a report on a form prescribed by the director to determine liability for coverage within ten days after the status report form is mailed by the department. This report shall provide information such as: name of health care contractor, plan number, group number, effective date of plan, number of employees who claim exemption and reason thereof, and employer-employee premium cost for individual and dependents coverage. The employer's health care plan shall accompany this report, if the plan has not been approved by the director.

(b) Employer shall give the department thirty days written notice prior to change in health care plan or health care contractor.

(c) Employee notification to employer.

(1) Any employer whose employee claims exemption from the statute shall file a statement signed by the employee on a form provided by the department. The form shall be filed within ten days of employment or change in status.

(2) On December 31 of each year, each employer shall refile a statement signed by all employees who claim exemption from the statute on a form prescribed by the department. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-17, 393-21)

§12-12-64 Posting of notice of coverage. Each employer shall post and maintain in a conspicuous place or places in and about the place of business type-written or printed notices stating that the employer has obtained health care coverage required by law, in the form as may be prescribed by the director. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §§393-7, 393-32)

§§12-12-65 to 12-12-69 (Reserved)

SUBCHAPTER 6

PREMIUM SUPPLEMENTATION

§12-12-70 Entitlement to premium supplementation. (a) "Less than eight employees" shall mean the total number of employees who are entitled to and covered as of the twelfth day of each calendar month. An employer who provides coverage to eight or more employees entitled to coverage in a month shall not qualify for premium supplementation for that month.

(b) An employer must be in business for profit to qualify for premium supplementation.

(c) Premium supplementation for the employer's taxable year shall be awarded for those months in that taxable year in which the employer satisfies the requirements of section 393-45, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-45)

§12-12-71 Claim for premium supplementation. (a) A claim for premium supplementation for an employer's taxable year shall be filed with the department within two years after the end of such year. Any claim filed after two years shall not be honored.

(b) The premium supplementation claim shall be filed on a form designated by the department. The claim shall be accompanied by the employer's federal and state tax returns for the years claimed and all books of accounts as may be requested by the department.

(c) Premium supplementation shall be paid rounded off to the nearest dollar. A claim for less than \$1 shall not be processed or paid. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-47)

§12-12-72 Reduction of premium supplementation. (a) The amount of premium supplementation due shall be reduced by the experience rating credit or dividend received by the employer from a health care contractor.

(b) If an experience rating credit or dividend is received after the premium supplementation is paid to the employer, the department shall reduce any premium supplementation awarded within the next two years by the employer's share of the amount of such experience rating credit or dividend. [Eff 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-45)

§12-12-73 Coverage by the fund. (a) Notwithstanding section 12-12-41(d), the premium supplementation fund shall provide benefits to an eligible employee whose employer has failed to provide coverage in the following manner:

(1) The eligible employee shall be deemed to have selected the most prevalent reimbursement plan if the services were obtained from a health care provider normally paid by such plan.

(2) The eligible employee shall be deemed to have selected the most prevalent fee for service plan if services were obtained from a fee for services health care provider.

(b) The premium supplementation fund shall reimburse the eligible employee for payment of fees based on subsection (a)(1) or (2) less the premium the employee would have paid for such coverage. A claim for reimbursement shall be filed on a form provided by the director within two years after such services are provided, and shall contain a certification by the eligible employee that the employer has refused a written request to provide the required benefits to the

eligible employee. An employer shall be deemed to have refused to provide such benefits where the employer fails to contact such eligible employee within thirty calendar days after such eligible employee makes a written request to the employer for such benefits at the employer's place of business.

(c) Any employee who is eligible for or received benefits under other laws shall not be entitled to benefits under this section.

(d) The health care contractor with the most prevailing plan selected in the category of subsection (a)(1) or (2) shall assist the department, upon request, in arriving at the proper reimbursement to the eligible employee. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-48)

§§12-12-74 to 12-12-75 (Reserved)

SUBCHAPTER 7

PENALTIES

§12-12-76 Penalties. Penalties under section 393-33, HRS, shall be assessed by the director, or a designated representative, after hearings held in accordance with chapter 91, HRS. [Eff: 5/7/81] (Auth: HRS §393-32) (Imp: HRS §393-33)