

August 14, 1997

The Honorable Kathryn S. Matayoshi
Director of Commerce and Consumer Affairs
State of Hawaii
Kamamalu Building, Fifth Floor
250 South King Street
Honolulu, Hawaii 96813

Attn.: Reynaldo D. Gaulty, Esq.
Insurance Commissioner

Dear Ms. Matayoshi:

Re: Section 4 of Act 383, Relating to Unmarried Couples

By letter dated July 14, 1997, Reynaldo D. Gaulty, Esq., the Insurance Commissioner, asked seven questions concerning the interpretation and effect of section 4 of Act 383, Session Laws of Hawaii 1997, which relates to unmarried couples. Act 383 is referred to herein as the reciprocal beneficiaries act or "RBA."

The purpose of the RBA is to establish the status of reciprocal beneficiaries and provide certain benefits to reciprocal beneficiaries. Conf. Comm. Rep. No. 2, Haw. S.J. ____ (1997); Haw. H.J. ____ (1997). Section 1 of the RBA added a new chapter titled, "Reciprocal Beneficiaries," to the Hawaii Revised Statutes (HRS). The Revisor of Statutes has designated this new chapter as chapter 572C. Section 572C-3 defines "reciprocal beneficiaries" to mean "two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship as defined in section 572C-4." Section 572C-4 specifies the requisites for a valid reciprocal beneficiary relationship as follows:

In order to enter into a valid reciprocal beneficiary relationship, it shall be necessary that:

- (1) Each of the parties be at least eighteen years old;
- (2) Neither of the parties be married nor a party to another reciprocal beneficiary relationship;
- (3) The parties be legally prohibited from marrying one another under chapter 572;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) Each of the parties sign a declaration of reciprocal beneficiary relationship as provided in section [572C]-5. ([top](#))

Section 4 of the RBA added a new section to article 10A (incorrectly referred to as "part" 10A) of chapter 431, HRS, which is the insurance code governing the regulation of insurance companies. The Revisor of Statutes has tentatively designated the new section as section 431:10A-601, which provides in pertinent part as follows:

- (a) Any other law to the contrary notwithstanding, reciprocal beneficiary family coverage, as defined in subsection (b), shall be made available to reciprocal beneficiaries, as defined in chapter [572C], but only to the extent that family coverage, as defined in section 431:10A-103, is currently available to individuals who are not reciprocal beneficiaries.

In this opinion, we address only questions numbered 4 and 5.¹ The questions asked are restated as follows: Whether the RBA requires insurers, mutual benefit societies (hereinafter referred to as "MBSs"), and health maintenance organizations (hereinafter referred to as "HMOs") to comply with the requirement of section 431:10A-601 set out in section 4 of the RBA. For the reasons stated below, we conclude that section 431:10A-601 applies only to insurers, and not MBSs or HMOs. MBSs are governed by chapter 432, HRS, while the laws regulating HMOs are found in chapter 432D, HRS. ([top](#))

Section 4 amends only the insurance code, chapter 431, HRS, by adding a new section to article 10A of chapter 431. The only amendment made to chapter 432 is to the definition of an MBS. The amendment to section 432:1-104, HRS, reads as follows:

(2) Mutual benefit society is any corporation, unincorporated association, society, or entity:

(A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:

(i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or reciprocal beneficiaries or children, or

(ii) Making provision for the payment of any other benefits to or for its members,

whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or ([top](#))

(B) Organized and carried on for any purpose, which:

(i) Regularly requires money to be paid to it by its members, . . . and

(ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members,

whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons

(New statutory material is underscored.) The only substantive amendments made were to insert express references to reciprocal beneficiaries. There was no amendment made directly to any section of chapter 432D, HRS, which governs HMOs. ([top](#))

We are guided by the following precept in interpreting section 431:10A-601, HRS, as set forth in section 4 of the RBA and the other affected provisions:

When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language contained in the statute itself. Where the language of the statute is plain and unambiguous, our only duty is to give effect to the statute's plain and obvious meaning. ([top](#))

Iddings v. Mee-Lee, 82 Haw. 1, 6-7, 919 P.2d 263, 268-69 (1996) (citations and footnote omitted); International Sav. & Loan Ass'n v. Wiig, 82 Haw. 197, 199, 921 P.2d 117, 118 (1996). A "departure from [a] literal construction is justified when such construction would produce an absurd and unjust result and the literal construction in the particular action is clearly inconsistent with the purposes and policies of the act." Hawaiian Ins. & Guar. Co. v. Financial Sec. Ins. Co., 72 Haw. 80, 85, 807 P.2d 1256, 1259 (1991) (quoting Pacific Ins. Co. v. Oregon Auto. Ins. Co., 53 Haw. 208, 211, 490 P.2d 899, 901 (1971)).

In construing this particular law, we are further constrained by the Legislature's express admonition in section 74 of the RBA that "the rights and benefits extended by this Act shall be narrowly interpreted and nothing in this Act shall be construed nor implied to create or extend rights or benefits not specifically provided." ([top](#))

As noted previously, section 4 of the RBA amended only chapter 431, which is the insurance code. The only amendment to chapter 432 was to the definition of an MBS. We must further examine chapter 432 to determine whether section 431:10A-601 can apply to MBSs. Section 432:1-101 provides as follows:

The provisions of this article shall apply to mutual benefit societies as defined herein. Except as expressly provided in this article, mutual benefit societies shall be exempt from the provisions of the insurance code. No law enacted after July 1, 1988, shall apply to mutual benefit societies unless such societies are expressly designated therein. ([top](#))

Clearly, section 432-1:101 expressly exempts MBSs from the provisions of the insurance code and also provides that no law enacted after July 1, 1988, shall apply to MBSs unless MBSs are expressly designated therein.

Based on this provision, the requirement of section 431:10A 601 as set forth in section 4 of the RBA cannot be interpreted to apply to MBSs. Therefore, the effect of the amendment to section 432:1-104 is to allow, but not require, an MBS to make provision for the payment of benefits to reciprocal beneficiaries. ([top](#))

For similar reasons, section 431:10A-601 does not apply to HMOs. Chapter 432D, HRS, governs HMOs, and like chapter 432, chapter 432D also expressly states that the insurance laws do not apply to HMOs unless otherwise provided in chapter 432D. Section 432D-19 provides in pertinent part as follows:

(a) Except as otherwise provided in this chapter, the insurance laws and hospital or medical service corporation laws shall not apply to the activities authorized and regulated under this chapter of any health maintenance organization granted a certificate of authority under this chapter. This chapter shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this State except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter. ([top](#))

Section 432D-23 specifically enumerates the benefits that HMOs are required to provide by referencing specific provisions of the insurance code as follows:

Required provisions and benefits. Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A 115.5, 431:10A-116, 431:10A-116.5, and 431:10A-116.6 and chapter 431M. ([top](#))

No reference is made to the new section added to article 10A of chapter 431, HRS, by section 4 of the RBA.¹² Thus, we must conclude that section 431:10A-601 does not apply to HMOs.

A departure from the plain meaning of these statutes is not warranted because the results are not absurd or clearly inconsistent with the purpose of the Act. *Hawaiian Ins. & Guar. Co. v. Financial Sec. Ins. Co.*, 72 Haw. at 85, 807 P.2d at 1259. ([top](#))

In conclusion, section 431:10A-601 as set forth in section 4 of the RBA applies only to insurance companies and not to mutual benefit societies or health maintenance organizations. We are aware that this interpretation will result in a relatively small number of individuals having access to reciprocal beneficiary family coverage. The total number of subscribers of health care coverage who obtain coverage through their employers is approximately 320,000, of which only about 1,800 have coverage through an insurance company. Nevertheless, this interpretation is not only required by the plain language of the relevant statutory sections, but is buttressed further by section 74 of the RBA, which states, "the rights and benefits extended by this Act shall be narrowly interpreted and nothing in this Act shall be construed nor implied to create or extend rights or benefits not specifically provided."

Very truly yours,

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Deputy Attorneys General

APPROVED:

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Attorney General

¹¹We are still reviewing the remaining questions. ([back to document](#)) ([top](#))

¹²Of the statutory sections enumerated in section 432D-23, only section 431:10A-115(a) was amended by the RBA. The section, as amended, provides in relevant part as follows:

(a) All policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-[601], on an expense incurred basis shall provide that the benefits applicable for children shall be payable for newborn infants from the moment of birth

(New statutory material is underscored.)

Pursuant to this amendment, when an HMO chooses to provide reciprocal beneficiary family coverage, it must provide newborn coverage for the newborn child of a reciprocal beneficiary. Note also that an HMO that legally chooses not to provide family coverage or reciprocal

beneficiary family coverage is not required to provide newborn coverage. ([back to document](#))
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