

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE HEALTH INSURANCE LAW
(2005 REVISION) TO MAKE FURTHER PROVISION IN RESPECT OF
THE IMPOSITION OF ADMINISTRATIVE FINES; TO IMPROVE THE
ADMINISTRATION OF THE LAW; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE HEALTH INSURANCE (AMENDMENT) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Health Insurance Law (2005 Revision) for the purpose of improving the administration of the Law.

Clause 1 of the Bill provides the short title and makes provision in respect of the commencement of the legislation.

Clause 2 amends section 2 of the principal Law to enable the Health Insurance Commission to grant approved health insurer status to bodies desirous of providing health insurance in the Cayman Islands. Among other things, the clause also updates various references in the legislation, corrects a clerical error in the definition of the term “compulsorily insured person”, inserts a definition of the term “dependant”, and deletes definitions that are no longer used in the legislation.

Clause 3 amends section 4 of the principal Law to increase the penalty that may be imposed upon conviction where a person who is not an approved insurer issues a health insurance contract.

Clause 4 of the Bill amends section 5 of the principal Law -

- (a) to provide that no underwriting is permitted under the standard health insurance contract;
- (b) to require an employer to effect a standard health insurance contract in respect of his employee’s dependants as defined in the legislation, not only the employee’s children and unemployed spouse;
- (c) to remove the Government’s obligation to effect a contract of health insurance in relation to group employees;
- (d) to require the Government to effect a contract of health insurance in respect of its employee’s dependants as defined in the legislation, not only the employee’s children and unemployed spouse; and
- (e) to increase the penalty that may be imposed upon conviction for the offence of failing to effect a standard health insurance contract.

Clause 5 of the Bill amends section 7 of the principal Law to correct a clerical error.

Clause 6 repeals and replaces section 8 of the principal Law as a consequence of provision being made for only one type of standard health insurance contract. The amendment is also consequential upon the use of the term “dependants” instead of “spouse and children”.

Clause 7 of the Bill amends section 9 of the principal Law to increase the penalty that may be imposed upon conviction where an employer makes unlawful deductions from his employee’s salary.

Clause 8 amends section 11 of the principal Law to increase the penalty that may be imposed upon the conviction of an employer for the offence of failing to provide to his employee various health insurance details (for example, the name and address of the approved insurer with whom the employee’s standard health insurance contract has been effected).

Clause 9 amends section 12 of the principal Law to provide that, in proceedings for recovery of damages relating to an employee’s dependants, the employer has a defence if he shows that he did not know that the employee had dependants. The amendment is consequential upon the use of the term “dependants” instead of “spouse and children”.

Clause 10 of the Bill repeals and replaces section 13 of the principal Law as a consequence of provision being made for only one type of standard health insurance contract. The amendment is also consequential upon the use of the term “dependants” instead of “spouse or his children”.

Clause 11 amends section 14 of the principal Law to require insurers to provide to the Health Insurance Commission data indicating how many single plans and how many family plans of health insurance coverage have been provided. The clause also makes it an offence for an approved insurer to fail to provide an audited annual report containing information specified by the Health Insurance Commission.

Clause 12 amends section 15 of the principal Law to increase the penalty that may be imposed upon conviction of an employer for the offence of failing to extend his employee’s health insurance coverage.

Clause 13 of the Bill inserts into the principal Law a new section 15A to make it an offence for an approved insurer to reduce the level of benefits of a standard health insurance contract except for non-disclosure of a material fact or misrepresentation.

Clause 14 amends section 16 of the principal Law to provide that the mental element of knowledge must be proved in order to constitute the offence of producing false information for the purpose of obtaining a benefit under a standard health insurance contract.

Clause 15 amends section 17 of the principal Law to increase the penalties that may be imposed upon commission of an offence by officers of corporate bodies.

Clause 16 of the Bill amends section 18 of the principal Law to increase the penalty that may be imposed upon conviction of a health care facility or a practitioner for failing to file medical fees.

Clauses 17 and 18 amend sections 21 and 23 of the principal Law respectively, to correct clerical errors.

Clause 19 of the Bill repeals and replaces section 24 of the principal Law to make further provision for the imposition by the Health Insurance Commission of administrative fines for the breach of specified provisions of the Law.

Clause 20 inserts into the principal Law a new section 24A enabling the payment of restitution to a person against whom an offence has been committed.

THE HEALTH INSURANCE (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Health Insurance Law (2005 Revision) - definitions
3. Amendment of section 4 - restriction on issue of health insurance
4. Amendment of section 5 - compulsory health insurance
5. Amendment of section 7 - payment of premium
6. Repeal and substitution of section 8 - premium of spouse and children
7. Amendment of section 9 - unlawful deductions by employer
8. Amendment of section 11 - duty of employer to provide information to employee
9. Amendment of section 12 - recovery of damages from employer in default
10. Repeal and substitution of section 13 - voluntary health insurance
11. Amendment of section 14 - reporting to the Commission
12. Amendment of section 15 - termination of contract
13. Insertion of section 15A - prohibition against reduction of level of benefits
14. Amendment of section 16 - false declarations, etc.
15. Amendment of section 17 - liability of officers of corporate bodies
16. Amendment of section 18 - filing of medical fees
17. Amendment of section 21 - approved insurer shall pay benefit directly to health provider
18. Amendment of section 23 - appeals
19. Repeal and substitution of section 24 - administrative fines
20. Insertion of section 24A - restitution

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Health Insurance (Amendment) Law, 2010. Short title and commencement
 - (2) The provisions of this Law shall come into force as follows -
 - (a) section 2(j) and (k) and section 6 shall come into force on such date as may be appointed by Order made by the Governor in Cabinet; and
 - (b) the other provisions of this Law shall come into force on the date on which this Law is published in the Gazette.
2. The Health Insurance Law (2005 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows - Amendment of section 2 of the Health Insurance Law (2005 Revision) - definitions
 - (a) in the definition of the words “approved insurer” by deleting the word “Authority” and substituting the word “Commission”;
 - (b) by deleting the definition of the word “Authority”;

- (c) in the definition of the word “Caymanian” by deleting the words “section 2 of the Immigration Law, 2003” and substituting the words “the Immigration Law (2009 Revision)”;
- (d) in paragraph (b) of the definition of the word “child” by deleting the words “over eighteen and under” and substituting the words “eighteen years of age or over but under”;
- (e) in the definition of the words “compulsorily insured person” by deleting the words “under section 4” and substituting the words “under section 5”;
- (f) by inserting, after the definition of the words “compulsorily insured person”, the following definitions -

“dependant”, in relation to an employee, means a child of the employee, the unemployed spouse of the employee, and any dependent offspring of the employee;

“dependent offspring”, in relation to an employee, means an individual -

- (a) who is of or over eighteen years of age, and not a full time student at a university or other educational institution; and is -
 - (i) an offspring of both parties to a marriage; or
 - (ii) an offspring who has been treated by both parties to a marriage as a child of the family and includes a step child, adopted child, or foster child; or
 - (iii) an offspring born out of wedlock; and
 - (b) who for financial, medical, or physical reasons is dependent on the employee for shelter or care;
 - (g) by deleting the definition of the words “group employee”;
 - (h) in the definition of the words “indigent person” by deleting the words “Director of Social Services” and substituting the words “Director of the Department of Children and Family Services”;
 - (i) in the definition of the words “legal resident” by deleting the words “Immigration Law, 2003” and substituting the words “Immigration Law (2009 Revision)”;
 - (j) in the definition of the words “prescribed health care benefits” by deleting the words “a standard health insurance contract” and substituting the words “the standard health insurance contract”;
- and

- (k) by deleting the definition of the words “supplemental medical benefits” and substituting the following definition -

“ “supplemental medical benefits” means benefits provided to compulsorily insured persons in excess of benefits under the standard health insurance contract, including in-patient and out-patient services, routine medical examinations and tests, emergency medical services, hospital services, and other medical services specifically defined by an approved insurer;”.

3. The principal Law is amended in section 4(2) by deleting the words “twenty thousand dollars” and “one thousand dollars” and substituting the words “one hundred thousand dollars” and “ten thousand dollars”, respectively.

Amendment of section 4
- restriction on issue of
health insurance

4. The principal Law is amended in section 5 as follows -

Amendment of section 5
- compulsory health
insurance

- (a) by repealing subsection (1) and substituting the following subsection -

“ (1) Every person resident in the Islands shall, unless he is -

- (a) covered by a contract of insurance effected by an employer under subsection (2);
- (b) covered by a contract of insurance effected by Government under subsection (3), or where Government does not effect such a contract, medical services are provided to him by Government in accordance with the Personnel Regulations, 2006; or
- (c) an uninsurable person,

effect a standard health insurance contract in respect of himself and his dependants.”;

- (b) in subsection (2) -

- (i) by repealing paragraph (b) and substituting the following paragraph -

“(b) his dependants;”; and

- (ii) by repealing paragraph (d) and substituting the following paragraph -

“(d) the dependants of each of his employees;”;

- (c) in subsection (3) -

- (i) by repealing paragraph (c); and

- (ii) in paragraph (i) by deleting the words “unemployed spouse and children” and substituting the word “dependants”;
- (d) in subsection (4) -
 - (i) by repealing paragraph (a) and substituting the following paragraph -

“(a) a seaman fifty-five years of age or older and his dependants;”;
 - (ii) by repealing paragraph (c) and substituting the following paragraph -

“(c) a veteran and his dependants;”;
- (e) in subsection (5) by inserting after the words “uninsurable person” the words “or an underinsured person”;
- (f) in subsection (8) by deleting the words “unemployed spouse and children” and substituting the word “dependants”;
- (g) in subsection (12) by deleting the words “the Immigration Law, 2003” and substituting the words “the Immigration Law (2009 Revision)”;
- (h) by inserting after subsection (15), the following subsection -

“ (15A) No underwriting is permitted under the standard health insurance contract.”; and
- (i) in subsection (16) by deleting the words “five thousand dollars” and “ten thousand dollars” and substituting the words “thirty thousand dollars” and “forty thousand dollars”, respectively.

Amendment of section 7
- payment of premium

5. The principal Law is amended in section 7(1) by deleting the words “under section 3(2)” and substituting the words “under section 5(2)”.

Repeal and substitution
of section 8 - premium of
spouse and children

6. The principal Law is amended by repealing section 8 and substituting the following section -

“Premium of dependants

8. An employer shall be liable to pay the total cost of the premiums under the standard health insurance contract effected in respect of the dependants of an employee under section 5(2), but shall be entitled to deduct from the salary, wage or other remuneration of the employee, in addition to any amount deducted under section 7, the total cost of the premiums so paid in respect of the dependants of that employee.”.

7. The principal Law is amended in section 9 by deleting the words “five thousand dollars” and “ten thousand dollars” and substituting the words “thirty thousand dollars” and “forty thousand dollars”, respectively. Amendment of section 9
- unlawful deductions by employer
8. The principal Law is amended in section 11(4) by deleting the words “five thousand dollars” and “one hundred dollars” and substituting the words “fifteen thousand dollars” and “one thousand dollars”, respectively. Amendment of section 11 - duty of employer to provide information to employee
9. The principal Law is amended in section 12 by repealing subsection (3) and substituting the following subsection - Amendment of section 12 - recovery of damages from employer in default
- “ (3) In any proceedings under this section relating to the failure or neglect of an employer to comply with this Law in respect of the dependants of an employee, it shall be a defence for the employer to prove that he did not know, and could not reasonably be expected to have known, that the employee in question had dependants or that such dependants were persons in respect of whom he was required to effect a contract of insurance.”.
10. The principal Law is amended by repealing section 13 and substituting the following section - Repeal and substitution of section 13 - voluntary health insurance
- “Voluntary health insurance
13. Notwithstanding section 5, nothing in this Law shall be construed as preventing any person from concluding with any approved insurer, in addition to a standard health insurance contract, any other contract of health insurance providing for himself, his employees or his employee’s dependants supplemental health care benefits or supplemental medical benefits that are in addition to those contained in a standard health insurance contract, and such additional contract may provide that benefits to an employee or the employee’s dependants shall be covered under the additional contract for any stated period of time while he is employed, or after the employee has retired.”.
11. The principal Law is amended in section 14 as follows - Amendment of section 14 - reporting to the Commission
- (a) in subsection (1) by inserting after paragraph (a) the following paragraphs -
- “(aa) the number of contracts of health insurance under each of which only one person is provided with cover;
- (ab) the number of contracts of health insurance under each of which more than one person is provided with cover;”;

- (b) in subsection (3) by deleting the word “Minister” and substituting the words “Minister for the time being responsible for health”; and
- (c) by inserting after subsection (3) the following subsection -
 “ (4) An approved insurer who fails to comply with subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars, and in the case of a continuing offence to a fine of two thousand dollars for each day or part of a day during which the offence continues.”.

Amendment of section 15 - termination of contract

12. The principal Law is amended in section 15(4) by deleting the words “five thousand dollars” and substituting the words “thirty thousand dollars”.

Insertion of section 15A - prohibition against reduction of level of benefits

13. The principal Law is amended by inserting after section 15 the following section -

“Prohibition against reduction of level of benefits

15A. (1) An approved insurer shall not reduce the level of supplemental health care benefits or supplemental medical benefits provided under a contract of health insurance, except where the contract was obtained -

- (a) by non-disclosure of a material fact; or
- (b) by representation of a fact that was false in some material particular.

(2) An approved insurer who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars.”.

Amendment of section 16 - false declarations, etc.

14. The principal Law is amended in section 16 -

- (a) by deleting the words “this Law” and substituting the words “this Law, knowingly”; and
- (b) by deleting the word “knowingly” where it appears in paragraphs (a) and (b).

Amendment of section 17 - liability of officers of corporate bodies

15. The principal Law is amended in section 17(1) by deleting the words “two thousand dollars” and “five thousand dollars” and substituting the words “five thousand dollars” and “fifteen thousand dollars”, respectively.

Amendment of section 18 - filing of medical fees

16. The principal Law is amended in section 18(2) by deleting the words “five thousand dollars” and substituting the words “fifteen thousand dollars”.

17. The principal Law is amended in section 21(3) by deleting the words “in accordance with section 18” and substituting the words “in accordance with section 19”.

Amendment of section 21 - approved insurer shall pay benefit directly to health provider

18. The principal Law is amended in section 23(2) by deleting the word “Authority” and substituting the word “Commission”.

Amendment of section 23 - appeals

19. The principal Law is amended by repealing section 24 and substituting the following section -

Repeal and substitution of section 24 - administrative fines

“Administrative fines

24. The Superintendent may -

- (a) subject to such conditions as he thinks fit, stay or compound any proceeding for an offence under section 5, 11, 14, 15 or 15A (irrespective of when the offence was committed); and
- (b) subject to a right of appeal to a court of summary jurisdiction, impose a fine of one thousand dollars, and in the case of a continuing offence to a fine of one hundred dollars for each day or part of a day during which the offence continues;

and the fines collected by the Superintendent under this section shall be paid into the revenue of the Islands.”.

20. The principal Law is amended by inserting after section 24 the following section -

Insertion of section 24A - restitution

“Restitution

24A. (1) Where a person is convicted of an offence under this Law, the court before which he is convicted may order that person to pay restitution to the person against whom the offence has been committed.

(2) Restitution shall compensate, where applicable, for any of the following -

- (a) costs of medical and psychological treatment;
- (b) costs of physical and occupational therapy and rehabilitation; and
- (c) any other losses, suffered by the person against whom the offence has been

committed, which the court considers applicable.”.

Passed by the Legislative Assembly the day of , 2010.

Speaker.

Clerk of the Legislative Assembly.