THE SENATE
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

S.B. NO. 387 S.D. 1

A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding a new article to be appropriately designated
3 and to read as follows:

4 **"ARTICLE**

5 **HEALTH BENEFIT PLAN NETWORK ACCESS AND ADEQUACY**

6 **§431: -A Definitions.** As used in this article:

7 "Active course of treatment" means:

8 (1) An ongoing course of treatment for a life-threatening
9 condition;

10 (2) An ongoing course of treatment for a serious acute
11 condition;

12 (3) The second or third trimester of pregnancy; or

13 (4) An ongoing course of treatment for a health condition
14 for which a treating physician or health care provider
15 attests that discontinuing care by that physician or
16 health care provider would worsen the condition or
17 interfere with anticipated outcomes.

1 The term "active course of treatment" includes treatment of
2 a covered person on a regular basis by a provider being removed
3 from or leaving the network.
4 "Affordable Care Act" refers to the Patient Protection and
5 Affordable Care Act (42 U.S.C. 18001, et seq.), as amended, and
6 its related regulations.
7 "Authorized representative" means:
8 (1) A person to whom a covered person has given express
9 written consent to represent the covered person;
10 (2) A person authorized by law to provide substituted
11 consent for a covered person; or
12 (3) The covered person's treating health care professional
13 only when the covered person or persons authorized
14 pursuant to paragraphs (1) and (2) of this definition
15 are unable to provide consent.
16 "Commissioner" means the insurance commissioner of the
17 State.
18 "Covered benefit" means those health care services to which
19 a covered person is entitled under the terms of a health benefit
20 plan.

1 "Covered person" means a policyholder, subscriber,
2 enrollee, or other individual participating in a health benefit
3 plan, offered or administered by a person or entity, including
4 but not limited to an insurer governed by this chapter, a mutual
5 benefit society governed by article 1 of chapter 432, and as a
6 health maintenance organization governed by chapter 432D.
7 "Essential community provider" means a provider that:
8 (1) Serves predominantly low-income, medically underserved
9 individuals, including a health care provider that is
10 a covered entity as defined in section 340B(a)(4) of
11 the Public Health Service Act; or
12 (2) Is described in section 1927(c)(1)(D)(i)(IV) of the
13 Social Security Act, as set forth by section 221 of
14 Public Law 111-8.
15 "Facility" means an institution providing health care
16 services or a health care setting, including hospitals and other
17 licensed inpatient centers, ambulatory surgical or treatment
18 centers, skilled nursing centers, residential treatment centers,
19 urgent care centers, diagnostic facilities, laboratories, and
20 imaging centers, and rehabilitation and other therapeutic health

1 settings licensed or certified by the department of health under
2 chapter 321.
3 "Health benefit plan" means a policy, contract,
4 certificate, or agreement entered into, offered by, or issued by
5 a health carrier to provide, deliver, arrange for, pay for, or
6 reimburse any of the costs of health care services pursuant to
7 chapter 87A, 431, 432, or 432D.
8 "Health care professional" means a physician or other
9 health care practitioner licensed, accredited, or certified to
10 perform specified health care services consistent with the
11 practitioner's scope of practice under state law.
12 "Health care provider" or "provider" means a health care
13 professional, pharmacy, or facility.
14 "Health care services" means services for the diagnosis,
15 prevention, treatment, cure, or relief of a physical, mental, or
16 behavioral health condition, illness, injury, or disease,
17 including mental health and substance use disorders.
18 "Health carrier" or "carrier" means an entity subject to
19 the insurance laws and regulations of this State, or subject to
20 the jurisdiction of the commissioner, that contracts or offers
21 to contract, or enters into an agreement to provide, deliver,

1 arrange for, pay for, or reimburse any of the costs of health
2 care services, including a health insurance company, a health
3 maintenance organization, a hospital and health service
4 corporation, or any other entity providing a plan of health
5 insurance, health benefits, or health care services.
6 "Health carrier" or "carrier" includes an accident and
7 health or sickness insurance plan that issues health benefit
8 plans under part I of article 10A of this chapter, a mutual
9 benefit society under article 1 of chapter 432, and a health
10 maintenance organization under chapter 432D.
11 "Integrated delivery system" means a health plan that
12 provides a majority of its members' covered health care services
13 through physicians and non-physician practitioners employed by
14 the health benefit plan or through a single contracted medical
15 group.
16 "Intermediary" means a person authorized to negotiate and
17 execute provider contracts with health carriers on behalf of
18 health care providers or on behalf of a network, if applicable.
19 "Limited scope dental plan" means a plan that provides
20 coverage primarily for treatment of the mouth, including any
21 organ or structure within the mouth, under a separate policy,

certificate, or contract of insurance or is otherwise not an integral part of a health benefit plan.

"Limited scope vision plan" means a plan that provides coverage primarily for treatment of the eye through a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a health benefit plan.

"Network" means the group or groups of participating providers providing services under a network plan.

"Network plan" means a health benefit plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use, health care providers managed, owned, under contract with, or employed by the health carrier.

"Participating provider" means a provider who, under a contract with the health carrier or with the health carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

"Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust,

1 an unincorporated organization, any similar entity, or any
2 combination of the foregoing.
3 "Primary care" means health care services for a range of
4 common conditions provided by a physician or non-physician
5 primary care professional.
6 "Primary care professional" means a participating health
7 care professional designated by the health carrier to supervise,
8 coordinate, or provide initial care or continuing care to a
9 covered person, and who may be required by the health carrier to
10 initiate a referral for specialty care and maintain supervision
11 of health care services rendered to the covered person.
12 "Serious acute condition" means a disease or condition for
13 which the covered person is currently requiring complex ongoing
14 care, such as chemotherapy, post-operative visits, or radiation
15 therapy.
16 "Specialist" means a physician or non-physician health care
17 professional who focuses on a specific area of health care
18 services or on a group of patients and who has successfully
19 completed required training and is recognized by the state in
20 which the physician or non-physician health care professional
21 practices to provide specialty care.

1 "Specialist" includes a subspecialist who has additional
2 training and recognition above and beyond the subspecialist's
3 specialty training.
4 "Specialty care" means advanced medically necessary care
5 and treatment of specific health conditions or health conditions
6 that may manifest themselves in particular ages or
7 subpopulations that are provided by a specialist, preferably in
8 coordination with a primary care professional or other health
9 care professional.
10 "Telehealth" means health care services provided through
11 telecommunications technology by a health care professional who
12 is at a location other than where the covered person is located.
13 "Tier" means specific groups of providers and facilities
14 identified by a network and to which different provider
15 reimbursement, covered person cost-sharing, provider access
16 requirements, or any combination thereof, apply for the same
17 services.
18 **§431: -B Applicability and scope.** (a) Except as
19 otherwise provided in this section, this article applies to all
20 health carriers that offer fully insured network plans.

1 (b) The following shall not apply to health carriers that
2 offer network plans that consist solely of limited scope dental
3 plans or limited scope vision plans:
4 (1) Section 431: -C(a)(2);
5 (2) Section 431: -C(f)(7)(E), (f)(8)(B), and (f)(11);
6 (3) Paragraphs (1) and (3) of the definition of "active
7 course of treatment" under section 431: -A;
8 (4) Section 431: -D(1)(6)(C);
9 (5) Section 431: -E(a)(3)(B) and (C); and
10 (6) Section 431: -E(a)(4)(A)(i) and (ii) and (a)(4)(B).
11 (c) This article shall not apply to limited benefit health
12 insurance, as provided in section 431:10A-102.5, except as to
13 limited scope dental plans or limited scope vision plans as
14 specified in subsection (b).
15 (d) Notwithstanding any other provision in this article to
16 the contrary, health benefit plans contracted with the
17 department of human services med-QUEST division to provide
18 services for medicaid beneficiaries shall continue to be subject
19 to the network provider adequacy standards and oversight of the
20 federal medicaid program; provided that the department of human
21 services and the commissioner may collaborate to align such

1 standards wherever possible. Nothing in this article is
2 intended to change, delegate, or diminish the sole
3 responsibility to monitor and regulate the medicaid managed care
4 plans from the single state medicaid agency.

5 **§431: -C Network adequacy.** (a) Network adequacy
6 requirements shall be as follows:

7 (1) A health carrier providing a network plan shall
8 maintain a network that is sufficient in numbers and
9 appropriate types of providers, including those that
10 serve predominantly low-income, medically underserved
11 individuals, to assure that all covered services to
12 covered persons, including children and adults, will
13 be accessible without unreasonable travel or delay;
14 and

15 (2) Covered persons shall have access to emergency
16 services twenty-four hours per day, seven days per
17 week.

18 (b) The commissioner shall determine sufficiency in
19 accordance with the requirements of this section by considering
20 any reasonable criteria, which may include but shall not be
21 limited to:

1 (1) Provider-covered person ratios by specialty;
2 (2) Primary care professional covered person ratios;
3 (3) Geographic accessibility of providers;
4 (4) Geographic variation and population dispersion;
5 (5) Waiting times for an appointment with participating
6 providers;
7 (6) Hours of operation;
8 (7) The ability of the network to meet the needs of
9 covered persons, which may include low-income persons,
10 children and adults with serious, chronic, or complex
11 health conditions or physical or mental disabilities,
12 or persons with limited English proficiency;
13 (8) Other health care service delivery system options,
14 such as telehealth, mobile clinics, centers of
15 excellence, integrated delivery systems, and other
16 ways of delivering care; and
17 (9) The volume of technological and specialty care
18 services available to serve the needs of covered
19 persons requiring technologically advanced or
20 specialty care services.

1 (c) A health carrier shall have the following process
2 requirements:
3 (1) A health carrier shall have a process to ensure that a
4 covered person obtains a covered benefit at an in-
5 network level of benefits, including an in-network
6 level of cost-sharing, from a non-participating
7 provider, or shall make other arrangements acceptable
8 to the commissioner when:
9 (A) The health carrier has a sufficient network but
10 does not have a type of participating provider
11 available to provide the covered benefit to the
12 covered person or does not have a participating
13 provider available to provide the covered benefit
14 to the covered person without unreasonable travel
15 or delay; or
16 (B) The health carrier has an insufficient number or
17 type of participating provider available to
18 provide the covered benefit to the covered person
19 without unreasonable travel or delay;
20 (2) The health carrier shall specify and inform covered
21 persons of the process a covered person may use to

1 request access to obtain a covered benefit from a non-
2 participating provider as provided in paragraph (1)
3 when:
4 (A) The covered person is diagnosed with a condition
5 or disease that requires specialized health care
6 services or medical services; and
7 (B) The health carrier:
8 (i) Does not have a participating provider of
9 the required specialty with the professional
10 training and expertise to treat or provide
11 health care services for the condition or
12 disease; or
13 (ii) Cannot provide reasonable access to a
14 participating provider with the required
15 specialty and who possesses the professional
16 training and expertise to treat or provide
17 health care services for the condition or
18 disease without unreasonable travel or
19 delay;
20 (3) The health carrier shall treat the health care
21 services the covered person receives from a non-

participating provider pursuant to paragraph (2) as if the services were provided by a participating provider, including counting the covered person's cost-sharing for those services toward the maximum out-of-pocket limit applicable to services obtained from participating providers under the health benefit plan;

(4) The process described in paragraphs (1) and (2) shall ensure that requests to obtain a covered benefit from a non-participating provider are addressed in a timely fashion appropriate to the covered person's condition;

(5) The health carrier shall establish and maintain a system that documents all requests to obtain a covered benefit from a non-participating provider pursuant to this subsection and shall provide this information to the commissioner upon request;

(6) The process established pursuant to this subsection is not intended to be used by health carriers as a substitute for establishing and maintaining a sufficient provider network in accordance with this article nor is it intended to be used by covered

1 persons to circumvent the use of covered benefits
2 available through a health carrier's network delivery
3 system options; and
4 (7) This section does not prevent a covered person from
5 exercising the rights and remedies available under
6 applicable state or federal law relating to internal
7 and external claims grievance and appeals processes.
8 (d) The health carrier shall be subject to the following
9 adequate arrangement requirements:
10 (1) A health carrier shall establish and maintain adequate
11 arrangements to ensure covered persons have reasonable
12 access to participating providers located near their
13 home or business address. In determining whether the
14 health carrier has complied with this paragraph, the
15 commissioner shall give due consideration to the
16 relative availability of health care providers with
17 the requisite expertise and training in the service
18 area under consideration; and
19 (2) A health carrier shall monitor, on an ongoing basis,
20 the ability, clinical capacity, and legal authority of

1 its participating providers to furnish all contracted
2 covered benefits to covered persons.
3 (e) A health carrier shall meet the following access plan
4 requirements:
5 (1) Beginning on the effective date of this Act, a health
6 carrier shall file with the commissioner for approval,
7 prior to or at the time it files a newly offered
8 network, in a manner and form defined by rule of the
9 commissioner, an access plan that meets the
10 requirements of this article;
11 (2) The health carrier may request the commissioner to
12 deem sections of the access plan as proprietary,
13 competitive, or trade secret information that shall
14 not be made public. Information is proprietary,
15 competitive, or a trade secret if disclosure of the
16 information would cause the health carrier's
17 competitors to obtain valuable business information.
18 The health carrier shall make the access plans, absent
19 proprietary, competitive, or trade secret information,
20 available online, at the health carrier's business
21 premises, and to any person upon request; and

1 (3) The health carrier shall prepare an access plan prior
2 to offering a new network plan and shall notify the
3 commissioner of any material change to any existing
4 network plan within fifteen business days after the
5 change occurs. The carrier shall include in the
6 notice to the commissioner a reasonable timeframe
7 within which the carrier will submit to the
8 commissioner for approval or file with the
9 commissioner, as appropriate, an update to an existing
10 access plan.
11 (f) In addition to the requirements of subsection (e), the
12 access plan shall describe or contain at least the following:
13 (1) The health carrier's network, including how the use of
14 telehealth or other technology may be used to meet
15 network access standards, if applicable;
16 (2) The health carrier's procedures for making and
17 authorizing referrals within and outside its network,
18 if applicable;
19 (3) The health carrier's process for monitoring and
20 assuring on an ongoing basis the sufficiency of the

1 network to meet the health care needs of populations
2 that enroll in network plans;
3 (4) The factors the health carrier uses to build its
4 provider network, including a description of the
5 network and the criteria used to select providers;
6 (5) The health carrier's efforts to address the needs of
7 covered persons, including but not limited to children
8 and adults, including those with limited English
9 proficiency or illiteracy, diverse cultural or ethnic
10 backgrounds, physical or mental disabilities, and
11 serious, chronic, or complex medical conditions. This
12 paragraph shall include the carrier's efforts, when
13 appropriate, to include various types of essential
14 community providers in the carrier's network. A
15 health carrier that is subject to the Affordable Care
16 Act alternative standard shall demonstrate to the
17 commissioner that the health carrier meets that
18 standard;
19 (6) The health carrier's methods for assessing the health
20 care needs of covered persons and the covered persons'
21 satisfaction with services;

1 (7) The health carrier's method of informing covered
2 persons of the plan's covered services and features,
3 including:
4 (A) The plan's grievance and appeals procedures;
5 (B) The plan's process for choosing and changing
6 providers;
7 (C) The plan's process for updating its provider
8 directories for each of its network plans;
9 (D) A statement of health care services offered,
10 including those services offered through the
11 preventive care benefit, if applicable; and
12 (E) The plan's procedures for covering and approving
13 emergency, urgent, and specialty care, if
14 applicable;
15 (8) The health carrier's system for ensuring the
16 coordination and continuity of care:
17 (A) For covered persons referred to specialty
18 physicians; and
19 (B) For covered persons using ancillary services,
20 including social services and other community
21 resources, if applicable;

1 (9) The health carrier's process for enabling covered
2 persons to change primary care professionals, if
3 applicable;
4 (10) The health carrier's proposed plan for providing
5 continuity of care if a contract termination occurs
6 between the health carrier and any of its
7 participating providers or in the event of the health
8 carrier's insolvency or other inability to continue
9 operations. The proposed plan for providing
10 continuity of care shall explain how covered persons
11 will be notified of the contract termination, or the
12 health carrier's insolvency or other cessation of
13 operations, and transitioned to other providers in a
14 timely manner; and
15 (11) Any other information required by the commissioner to
16 determine compliance with this article.
17 **§431: -D Requirements for health carriers and**
18 **participating providers.** (a) A health carrier shall establish
19 a mechanism by which the participating provider shall be
20 notified on an ongoing basis of the specific covered health care

1 services for which the provider will be responsible, including
2 any limitations or conditions on services.
3 (b) Every contract between a health carrier and a
4 participating provider shall contain the following hold harmless
5 statement, specifying protection for covered persons, or a
6 substantially similar statement:
7 "Provider agrees that in no event, including but not
8 limited to nonpayment by the health carrier or
9 intermediary, insolvency of the health carrier or
10 intermediary, or breach of this agreement, shall the
11 provider bill, charge, collect a deposit from, seek
12 compensation, remuneration, or reimbursement from, or have
13 any recourse against a covered person or a person (other
14 than the health carrier or intermediary, as applicable)
15 acting on behalf of the covered person for services
16 provided pursuant to this agreement. This agreement does
17 not prohibit the provider from collecting coinsurance,
18 deductibles, or copayments, as specifically provided in the
19 evidence of coverage, or fees for uncovered services
20 delivered on a fee-for-service basis to covered persons;
21 provided that a provider shall not bill or collect from a

1 covered person or a person acting on behalf of a covered
2 person any charges for non-covered services or services
3 that do not meet the criteria in section 432E-1.4, Hawaii
4 Revised Statutes, unless an agreement of financial
5 responsibility specific to the service is signed by the
6 covered person or a person acting on behalf of the covered
7 person and is obtained prior to the time services are
8 rendered. This agreement does not prohibit a provider,
9 except for a health care professional, who is employed
10 full-time on the staff of a health carrier and who has
11 agreed to provide services exclusively to that health
12 carrier's covered persons and no others, and a covered
13 person from agreeing to continue services solely at the
14 expense of the covered person; provided that the provider
15 has clearly informed the covered person that the health
16 carrier may not cover or continue to cover a specific
17 service or services. Except as provided herein, this
18 agreement does not prohibit the provider from pursuing any
19 available legal remedy."
20 (c) Every contract between a health carrier and a
21 participating provider shall provide that in the event of a

health carrier or intermediary insolvency or other cessation of operations, the provider's obligation to deliver covered services to covered persons without balance billing shall continue until the earlier of:

(1) The termination of the covered person's coverage under the network plan, including any extension of coverage provided under the contract terms or applicable state or federal law for covered persons who are in an active course of treatment or totally disabled; or

(2) The date the contract between the carrier and the provider, including any required extension for covered persons in an active course of treatment, would have terminated if the carrier or intermediary had remained in operation.

(d) The contract provisions that satisfy the requirements of subsections (b) and (c) shall be construed in favor of the covered person, shall survive the termination of the contract regardless of the reason for termination, including the insolvency of the health carrier, and shall supersede any oral or written contrary agreement between a provider and a covered person or the representative of a covered person if the contrary

agreement is inconsistent with the hold harmless and continuation-of-covered services requirements under subsections (b) and (c).

(e) In no event shall a participating provider collect or attempt to collect from a covered person any money owed to the provider by the health carrier.

(f) Selection standards shall be developed pursuant to the following:

(1) Health carrier selection standards for selecting and tiering, as applicable, participating providers shall be developed for providers and each health care professional specialty;

(2) The standards shall be used in determining the selection of participating providers by the health carrier and the intermediaries with which the health carrier contracts. The standards shall meet requirements relating to health care professional credentialing verification developed by the commissioner through rules adopted pursuant to chapter 91;

1 (3) Selection criteria shall not be established in a
2 manner:
3 (A) That would allow a health carrier to discriminate
4 against high risk populations by excluding
5 providers because the providers are located in
6 geographic areas that contain populations or
7 providers presenting a risk of higher than
8 average claims, losses, or health care services
9 utilization;
10 (B) That would exclude providers because the
11 providers treat or specialize in treating
12 populations presenting a risk of higher than
13 average claims, losses, or health care services
14 utilization; or
15 (C) That would discriminate with respect to
16 participation under the health benefit plan
17 against any provider who is acting within the
18 scope of the provider's license or certification
19 under applicable state law or regulations;
20 provided that this subparagraph may not be
21 construed to require a health carrier to contract

1 with any provider who is willing to abide by the
2 terms and conditions for participation
3 established by the carrier;
4 (4) Notwithstanding paragraph (3), a carrier shall not be
5 prohibited from declining to select a provider who
6 fails to meet the other legitimate selection criteria
7 of the carrier developed in compliance with this
8 article; and
9 (5) This article does not require a health carrier, its
10 intermediaries, or the provider networks with which
11 the carrier and its intermediaries contract, to employ
12 specific providers acting within the scope of the
13 providers' license or certification under applicable
14 state law that may meet the selection criteria of the
15 carrier, or to contract with or retain more providers
16 acting within the scope of the providers' license or
17 certification under applicable state law than are
18 necessary to maintain a sufficient provider network.
19 (g) A health carrier shall make its standards for
20 selecting participating providers available for review and
21 approval by the commissioner. A description in plain language

1 of the selection standards of the health carrier shall be made
2 available to the public.
3 (h) A health carrier shall notify participating providers
4 of the providers' responsibilities with respect to the health
5 carrier's applicable administrative policies and programs,
6 including but not limited to:
7 (1) Payment terms;
8 (2) Utilization review;
9 (3) Quality assessment and improvement programs;
10 (4) Credentialing; grievance and appeals procedures;
11 (5) Data reporting requirements; reporting requirements
12 for timely notice of changes in practice, such as
13 discontinuance of accepting new patients;
14 (6) Confidentiality requirements; and
15 (7) Any applicable federal or state programs.
16 (i) A health carrier shall not offer an inducement to a
17 provider that would encourage or otherwise motivate the provider
18 not to provide medically necessary services to a covered person.
19 (j) A health carrier shall not prohibit a participating
20 provider from discussing any specific or all treatment options
21 with covered persons irrespective of the health carrier's

1 position on the treatment options, or from advocating on behalf
2 of covered persons within the utilization review or grievance or
3 appeals processes established by the carrier or a person
4 contracting with the carrier or in accordance with any rights or
5 remedies available under applicable state or federal law.
6 (k) Every contract between a health carrier and a
7 participating provider shall require the provider to make health
8 records available to appropriate state and federal authorities
9 involved in assessing the quality of care or investigating the
10 grievances or complaints of covered persons and to comply with
11 the applicable state and federal laws related to the
12 confidentiality of medical and health records and the covered
13 person's right to see, obtain copies of, or amend the person's
14 medical and health records.
15 (l) The departure of a provider from a network shall be
16 subject to the following requirements:
17 (1) A health carrier and participating provider shall
18 provide at least sixty days' written notice to each
19 other before the provider is removed or leaves the
20 network without cause;

1 (2) The health carrier shall make a good faith effort to
2 provide written notice of a provider's removal or
3 leaving the network within thirty days of receipt or
4 issuance of a notice provided in accordance with
5 paragraph (1) to all covered persons who are patients
6 seen on a regular basis by the provider who is being
7 removed or leaving the network, irrespective of
8 whether the removal or leaving the network is for
9 cause or without cause;
10 (3) When the provider being removed or leaving the network
11 is a primary care professional, all covered persons
12 who are patients of that primary care professional
13 shall also be notified. When the provider either
14 gives or receives the notice in accordance with
15 paragraph (1), the provider shall supply the health
16 carrier with a list of those patients of the provider
17 that are covered by a plan of the health carrier;
18 (4) When a covered person's provider leaves or is removed
19 from the network, a health carrier shall establish
20 reasonable procedures to transition the covered
21 person, who is in an active course of treatment, to a

participating provider in a manner that provides for continuity of care;

(5) The health carrier shall provide the notice required under paragraph (1) and shall make available to the covered person a list of available participating providers in the same geographic area who are of the same provider type and information about how the covered person may request continuity of care as provided under paragraph (6);

(6) The continuity of care procedures shall provide that:

(A) Any request for continuity of care shall be made to the health carrier by the covered person or the covered person's authorized representative;

(B) Requests for continuity of care shall be reviewed by the health carrier's medical director after consultation with the treating provider for patients who are under the care of a provider who has not been removed or left the network for cause and who meet the criteria under the definition of:

(i) Active course of treatment;

1 (ii) Life-threatening health condition; or
2 (iii) Serious acute condition.
3 Any decisions made with respect to a request for
4 continuity of care shall be subject to the health
5 benefit plan's internal and external grievance
6 and appeal processes in accordance with
7 applicable state or federal law or regulations;
8 (C) The continuity of care period for covered persons
9 who are in their second or third trimester of
10 pregnancy shall extend through the postpartum
11 period; and
12 (D) The continuity of care period for covered persons
13 who are undergoing an active course of treatment
14 shall extend through the earliest of:
15 (i) The termination of the course of treatment
16 by the covered person or the treating
17 provider;
18 (ii) Ninety days, unless the medical director
19 determines that a longer period is
20 necessary;

1 (iii) The date that care is successfully
2 transitioned to a participating provider;
3 (iv) The date that benefit limitations under the
4 plan are met or exceeded; or
5 (v) The date that care is not medically
6 necessary; and
7 (7) In addition to paragraph (6)(D), a continuity of care
8 request may only be granted when:
9 (A) The provider agrees in writing to accept the same
10 payment from and abide by the same terms and
11 conditions with respect to the health carrier for
12 that patient as provided in the original provider
13 contract; and
14 (B) The provider agrees in writing not to seek any
15 payment from the covered person for any amount
16 for which the covered person would not have been
17 responsible if the physician or provider were
18 still a participating provider.
19 (m) The rights and responsibilities under a contract
20 between a health carrier and a participating provider shall not

1 be assigned or delegated by either party without the prior
2 written consent of the other party.
3 (n) A health carrier shall be responsible for ensuring
4 that a participating provider furnishes covered benefits to all
5 covered persons without regard to the covered person's
6 enrollment in the plan as a private purchaser of the plan or as
7 a participant in publicly financed programs of health care
8 services. This subsection shall not apply to circumstances when
9 the provider should not render services due to limitations
10 arising from lack of training, experience, skill, or licensing
11 restrictions.
12 (o) A health carrier shall notify the participating
13 providers of their obligations, if any, to collect applicable
14 coinsurance, copayments, or deductibles from covered persons
15 pursuant to the evidence of coverage, or of the providers'
16 obligations, if any, to notify covered persons of their personal
17 financial obligations for non-covered services.
18 (p) A health carrier shall not penalize a provider because
19 the provider, in good faith, reports to state or federal
20 authorities any act or practice by the health carrier that
21 jeopardizes patient health or welfare.

1 (q) A health carrier shall establish procedures for
2 resolution of administrative, payment, or other disputes between
3 providers and the health carrier.
4 (r) A contract between a health carrier and a provider
5 shall not contain provisions that conflict with the provisions
6 contained in the network plan or this article.
7 (s) A contract between a health carrier and a provider
8 shall be subject to the following requirements:
9 (1) At the time the contract is signed, the health carrier
10 and, if appropriate, the intermediary shall timely
11 notify the participating provider of all provisions
12 and other documents incorporated by reference in the
13 contract;
14 (2) While the contract is in force, the carrier shall
15 timely notify the participating provider of any
16 changes to those provisions or documents that would
17 result in material changes in the contract;
18 (3) The health carrier shall timely inform the provider of
19 the provider's network participation status on any
20 health benefit plan in which the carrier has included
21 the provider as a participating provider; and

1 (4) For purposes of this subsection, the contract shall
2 define what is considered timely notice and what is
3 considered a material change.
4 **§431: -E Provider directories.** (a) A health carrier
5 shall post electronically a current and accurate provider
6 directory for each of the carrier's network plans with the
7 information and search functions described in paragraph (4) and:
8 (1) The health carrier shall ensure that the general
9 public is able to view all current providers for a
10 plan through an identifiable link or tab and without
11 creating or accessing an account or entering a policy
12 or contract number;
13 (2) The health carrier shall update each network plan
14 provider directory at least monthly and shall
15 periodically audit a reasonable sample size of its
16 provider directories for accuracy and retain
17 documentation of such an audit to be made available to
18 the commissioner upon request;
19 (3) For each network plan, the health carrier shall make
20 available the following information in a searchable
21 format:

1 (A) For health care professionals:
2 (i) Name;
3 (ii) Gender;
4 (iii) Participating office locations;
5 (iv) Specialty, if applicable;
6 (v) Medical group affiliations, if applicable;
7 (vi) Facility affiliations, if applicable;
8 (vii) Participating facility affiliations, if
9 applicable;
10 (viii) Languages spoken other than English, if
11 applicable; and
12 (ix) Whether accepting new patients;
13 (B) For hospitals:
14 (i) Hospital name;
15 (ii) Hospital type, such as acute,
16 rehabilitation, children's, or cancer;
17 (iii) Participating hospital location; and
18 (iv) Hospital accreditation status; and
19 (C) For facilities, other than hospitals, by type:
20 (i) Facility name;
21 (ii) Facility type;

1 (iii) Type of services performed; and
2 (iv) Participating facility locations; and
3 (4) In addition to the information in paragraph (3), a
4 health carrier shall make available the following
5 information for each network plan:
6 (A) For health care professionals:
7 (i) Contact information;
8 (ii) Board certifications; and
9 (iii) Languages spoken other than English by
10 clinical staff, if applicable; and
11 (B) For hospitals and facilities other than
12 hospitals: telephone number.
13 (b) Upon the request of a covered person or prospective
14 covered person, a health carrier shall provide a print copy, or
15 a print copy of the requested directory information, of a
16 current provider directory as follows:
17 (1) The following provider directory information for the
18 applicable network plan shall be included:
19 (A) For health care professionals:
20 (i) Contact information;
21 (ii) Participating office locations;

1 (iii) Specialty, if applicable;
2 (iv) Languages spoken other than English, if
3 applicable; and
4 (v) Whether accepting new patients;
5 (B) For hospitals:
6 (i) Hospital name;
7 (ii) Hospital type, such as acute,
8 rehabilitation, children's, or cancer; and
9 (iii) Participating hospital location and
10 telephone number;
11 (C) For facilities, other than hospitals, by type:
12 (i) Facility name;
13 (ii) Facility type;
14 (iii) Types of services performed; and
15 (iv) Participating facility locations and
16 telephone number; and
17 (2) The health carrier shall include a disclosure in the
18 provider directory that the information in paragraph
19 (1) included in the directory is accurate as of the
20 date of printing and that covered persons or
21 prospective covered persons should consult the

1 carrier's electronic provider directory on its website
2 or call customer service to obtain current directory
3 information.
4 (c) For electronic and print provider directories, a
5 health carrier shall indicate the following information:
6 (1) For each network plan:
7 (A) A description of the criteria the carrier has
8 used to build the carrier's provider network;
9 (B) If applicable, a description of the criteria the
10 carrier has used to tier providers;
11 (C) If applicable, the method by which the carrier
12 designates the different provider tiers or levels
13 in the network and identifies, for each specific
14 provider, hospital, or other type of facility in
15 the network, the tier in which each is placed,
16 such as by name, symbols, or grouping, so that a
17 covered person or prospective covered person may
18 identify the provider tier; and
19 (D) If applicable, that authorization or referral may
20 be required to access some providers;

1 (2) The provider directory applicable to a network plan,
2 such as inclusion of the specific name of the network
3 plan as marketed and issued in this State; and
4 (3) A customer service electronic mail address and
5 telephone number or electronic link that covered
6 persons or the general public may use to notify the
7 health carrier of inaccurate provider directory
8 information.
9 (d) For the information required by subsections (a)(3),
10 (a)(4), and (b)(1) in a provider directory pertaining to a
11 health care professional, hospital, or facility other than a
12 hospital, the health carrier shall make available through
13 electronic and print provider directories the source of the
14 information and any limitations, if applicable.
15 (e) The electronic and print provider directories shall
16 accommodate the communication needs of individuals with
17 disabilities and include a link to or information regarding
18 available assistance for persons with limited English
19 proficiency.

1 **§431: -F Intermediaries.** (a) Intermediaries and
2 participating providers with whom they contract shall comply
3 with all the applicable requirements of section 431: -D.
4 (b) A health carrier's statutory responsibility to monitor
5 the offering of covered benefits to covered persons shall not be
6 delegated or assigned to the intermediary.
7 (c) A health carrier shall have the right to approve or
8 disapprove participation status of a subcontracted provider in
9 the carrier's own network or a contracted network for the
10 purpose of delivering covered benefits to the carrier's covered
11 persons.
12 (d) A health carrier shall maintain copies of all
13 intermediary health care subcontracts at its principal place of
14 business in the State or ensure that the carrier has access to
15 all intermediary subcontracts, including the right to make
16 copies to facilitate regulatory review, upon twenty days' prior
17 written notice from the health carrier.
18 (e) If applicable, an intermediary shall transmit
19 utilization documentation and claims paid documentation to the
20 health carrier. The carrier shall monitor the timeliness and

1 appropriateness of payments made to providers and health care
2 services received by covered persons.
3 (f) If applicable, an intermediary shall maintain the
4 books, records, financial information, and documentation of
5 services provided to covered persons at its principal place of
6 business in the State and preserve them for the time period
7 required by law in a manner that facilitates regulatory review.
8 (g) An intermediary shall allow the commissioner access to
9 the intermediary's books, records, financial information, and
10 any documentation of services provided to covered persons, as
11 necessary to determine compliance with this article.
12 (h) If an intermediary is insolvent, a health carrier may
13 require the assignment to the health carrier of the provisions
14 of a provider's contract addressing the provider's obligation to
15 furnish covered services. If a health carrier requires
16 assignment, the health carrier shall remain obligated to pay the
17 provider for furnishing covered services under the same terms
18 and conditions as the intermediary prior to the insolvency.
19 (i) Notwithstanding any other provision of this section to
20 the contrary, to the extent the health carrier delegates its
21 responsibilities to the intermediary, the carrier shall retain

1 full responsibility for the intermediary's compliance with this
2 article.

3 **§431: -G Enforcement.** (a) If the commissioner
4 determines that:

5 (1) A health carrier has not contracted with a sufficient
6 number of participating providers to ensure that
7 covered persons have accessible health care services
8 in a geographic area;

9 (2) A health carrier's network access plan does not ensure
10 reasonable access to covered benefits;

11 (3) A health carrier has entered into a contract that does
12 not comply with this article; or

13 (4) A health carrier has not complied with this article,

14 the commissioner shall require a modification to the access
15 plan, institute a corrective action plan that shall be followed
16 by the health carrier, or use any of the commissioner's other
17 enforcement powers to obtain the health carrier's compliance
18 with this article.

19 (b) The commissioner shall not arbitrate, mediate, or
20 settle disputes regarding a decision not to include a provider
21 in a network plan or provider network or regarding any other

1 dispute between a health carrier, its intermediaries, or one or
2 more providers arising under a provider contract or its
3 termination.

4 **§431: -H Regulations.** The commissioner may adopt rules
5 pursuant to chapter 91 to carry out this article.

6 **§431: -I Penalties.** A violation of this article shall
7 result in penalties as provided in this chapter.

8 **§431: -J Severability.** If any provision of this article
9 or the application of any provision to a person or circumstance
10 shall be held invalid, the remainder of this article and the
11 application of the provision to a person or circumstance, other
12 than those to which it is held invalid, shall not be affected."

13 SECTION 2. Chapter 432F, Hawaii Revised Statutes, is
14 repealed.

15 SECTION 3. In codifying the new sections added by section
16 1 of this Act, the revisor of statutes shall substitute
17 appropriate section numbers for the letters used in designating
18 the new sections in this Act.

19 SECTION 4. This Act shall take effect upon its approval
20 and shall apply to plan filings made in 2018 for health benefit

1 plans with a plan year that commences on or after January 1,
2 2019; provided that:
3 (1) All provider and intermediary contracts in effect on
4 the effective date of this Act shall comply with this
5 Act no later than eighteen months after the effective
6 date of this Act; provided that the insurance
7 commissioner may extend the period of compliance for
8 an additional period not to exceed six months if the
9 health carrier demonstrates good cause for an
10 extension;
11 (2) A new provider or intermediary contract that is issued
12 or put in force on or after the effective date of this
13 Act shall comply with this Act upon its effective
14 date; and
15 (3) A provider contract or intermediary contract that is
16 not described in paragraph (1) or (2) shall comply
17 with this Act no later than eighteen months after the
18 effective date of this Act.

S.B. NO. 387 S.D. 1

Report Title:
Health Insurance; Network Access and Adequacy

Description:
Requires a health carrier with a network plan to maintain a network that is sufficient in numbers with appropriate types of providers to ensure that covered persons have access to covered services. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.