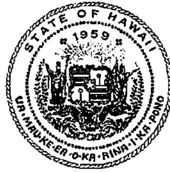


EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 11, 2017 **GOV. MSG. NO. 1305**

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 11, 2017, the following bill was signed into law:

SB387 SD1 HD1 CD1 RELATING TO HEALTH INSURANCE
ACT 191 (17)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor
on JUL 11 2017
THE SENATE
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

ACT 191
S.B. NO. 387 S.D. 1 H.D. 1 C.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.

The term "active course of treatment" includes treatment of a covered person on a regular basis by a provider being removed from or leaving the network.

"Affordable Care Act" refers to the Patient Protection and Affordable Care Act (42 U.S.C. 18001, et seq.), as amended, and its related regulations.

"Authorized representative" means:

(1) A person to whom a covered person has given express written consent to represent the covered person;

(2) A person authorized by law to provide substituted consent for a covered person; or

(3) The covered person's treating health care professional only when the covered person or persons authorized pursuant to paragraphs (1) and (2) of this definition are unable to provide consent.

"Commissioner" means the insurance commissioner of the State.

"Covered benefit" means those health care services to which a covered person is entitled under the terms of a health benefit 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 insurer that issues health benefit plans
8 under part I of article 10A of this chapter, a mutual benefit
9 society under article 1 of chapter 432, and a health maintenance
10 organization under chapter 432D.

11 "Integrated delivery system" means a health carrier that
12 provides a majority of its members' covered health care services
13 through physicians and non-physician practitioners employed by
14 the health carrier or through a single contracted medical group.

15 "Intermediary" means a person authorized to negotiate and
16 execute provider contracts with health carriers on behalf of
17 health care providers or on behalf of a network, if applicable.

18 "Limited scope dental plan" means a plan that provides
19 coverage primarily for treatment of the mouth, including any
20 organ or structure within the mouth, under a separate policy,

1 certificate, or contract of insurance or is otherwise not an
2 integral part of a health benefit plan.
3 "Limited scope vision plan" means a plan that provides
4 coverage primarily for treatment of the eye through a separate
5 policy, certificate, or contract of insurance or is otherwise
6 not an integral part of a health benefit plan.
7 "Network" means the group or groups of participating
8 providers providing services under a network plan.
9 "Network plan" means a health benefit plan that either
10 requires a covered person to use, or creates incentives,
11 including financial incentives, for a covered person to use,
12 health care providers managed, owned, under contract with, or
13 employed by the health carrier.
14 "Participating provider" means a provider who, under a
15 contract with the health carrier or with the health carrier's
16 contractor or subcontractor, has agreed to provide health care
17 services to covered persons with an expectation of receiving
18 payment, other than coinsurance, copayments, or deductibles,
19 directly or indirectly from the health carrier.
20 "Person" means an individual, a corporation, a partnership,
21 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) and (f)(8)(B);
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)(D);
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 benefits will
12 be accessible without unreasonable travel or delay;
13 and
14 (2) Covered persons shall have access to emergency
15 services twenty-four hours per day, seven days per
16 week.
17 (b) The commissioner shall determine sufficiency in
18 accordance with the requirements of this section by considering
19 any reasonable criteria, which may include but shall not be
20 limited to:
21 (1) Provider-to-covered person ratios by specialty;

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

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

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

1 provider, including counting the covered person's
2 cost-sharing for those services toward the maximum
3 out-of-pocket limit applicable to services obtained
4 from participating providers under the health benefit
5 plan;
6 (4) The process described in paragraphs (1) and (2) shall
7 ensure that requests to obtain a covered benefit from
8 a non-participating provider are addressed in a timely
9 fashion appropriate to the covered person's condition;
10 (5) The health carrier shall establish and maintain a
11 system that documents all requests to obtain a covered
12 benefit from a non-participating provider pursuant to
13 this subsection and shall provide this information to
14 the commissioner upon request;
15 (6) The process established pursuant to this subsection is
16 not intended to be used by health carriers as a
17 substitute for establishing and maintaining a
18 sufficient provider network in accordance with this
19 article nor is it intended to be used by covered
20 persons to circumvent the use of covered benefits

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

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

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

1 (4) The factors the health carrier uses to build its
2 provider network, including a description of the
3 network and the criteria used to select providers;
4 (5) The health carrier's efforts to address the needs of
5 covered persons, including children and adults, those
6 with limited English proficiency, illiteracy, diverse
7 cultural or ethnic backgrounds, physical or mental
8 disabilities, and serious, chronic, or complex medical
9 conditions. Information required under this paragraph
10 shall include the carrier's efforts, when appropriate,
11 to include various types of essential community
12 providers in the carrier's network. A health carrier
13 that is subject to the Affordable Care Act alternative
14 standard shall demonstrate to the commissioner that
15 the health carrier meets that standard;
16 (6) The health carrier's methods for assessing the health
17 care needs of covered persons and the covered persons'
18 satisfaction with services;
19 (7) The health carrier's method of informing covered
20 persons of the plan's covered services and features,
21 including:

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

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

1 statement, specifying protection for covered persons, or a
2 substantially similar statement:
3 "Provider agrees that in no event, including but not
4 limited to nonpayment by the health carrier or
5 intermediary, insolvency of the health carrier or
6 intermediary, or breach of this agreement, shall the
7 provider bill, charge, collect a deposit from, seek
8 compensation, remuneration, or reimbursement from, or have
9 any recourse against a covered person or a person other
10 than the health carrier or intermediary, as applicable,
11 acting on behalf of the covered person for services
12 provided pursuant to this agreement. This agreement does
13 not prohibit the provider from collecting coinsurance,
14 deductibles, or copayments, as specifically provided in the
15 evidence of coverage, or fees for uncovered services
16 delivered on a fee-for-service basis to covered persons;
17 provided that a provider shall not bill or collect from a
18 covered person or a person acting on behalf of a covered
19 person any charges for non-covered services or services
20 that do not meet the criteria in section 432E-1.4, Hawaii
21 Revised Statutes, unless an agreement of financial

1 responsibility specific to the service is signed by the
2 covered person or a person acting on behalf of the covered
3 person and is obtained prior to the time services are
4 rendered. This agreement does not prohibit a provider,
5 except for a health care professional who is employed full-
6 time on the staff of a health carrier and has agreed to
7 provide services exclusively to that health carrier's
8 covered persons and no others, and a covered person from
9 agreeing to continue services solely at the expense of the
10 covered person; provided that the provider has clearly
11 informed the covered person that the health carrier may not
12 cover or continue to cover a specific service or services.
13 Except as provided herein, this agreement does not prohibit
14 the provider from pursuing any available legal remedy."
15 (c) Every contract between a health carrier and a
16 participating provider shall provide that in the event of a
17 health carrier or intermediary insolvency or other cessation of
18 operations, the provider's obligation to deliver covered
19 services to covered persons without balance billing shall
20 continue until the earlier of:

1 (1) The termination of the covered person's coverage under
2 the network plan, including any extension of coverage
3 provided under the contract terms or applicable state
4 or federal law for covered persons who are in an
5 active course of treatment or totally disabled; or
6 (2) The date the contract between the carrier and the
7 provider, including any required extension for covered
8 persons in an active course of treatment, would have
9 terminated if the carrier or intermediary had remained
10 in operation.
11 (d) Contract provisions required by subsections (b) and
12 (c) shall be construed in favor of the covered person, shall
13 survive the termination of the contract regardless of the reason
14 for termination, including the insolvency of the health carrier,
15 and shall supersede any oral or written contrary agreement
16 between a provider and a covered person or the representative of
17 a covered person if the contrary agreement is inconsistent with
18 the hold harmless and continuation-of-covered services
19 requirements under subsections (b) and (c).

1 (e) In no event shall a participating provider collect or
2 attempt to collect from a covered person any money owed to the
3 provider by the health carrier.
4 (f) Selection standards shall be developed pursuant to the
5 following:
6 (1) Health carrier selection standards for selecting and
7 tiering, as applicable, participating providers shall
8 be developed for providers and each health care
9 professional specialty;
10 (2) The standards shall be used in determining the
11 selection of participating providers by the health
12 carrier and the intermediaries with which the health
13 carrier contracts. The standards shall meet
14 requirements relating to health care professional
15 credentialing verification developed by the
16 commissioner through rules adopted pursuant to chapter
17 91;
18 (3) Selection criteria shall not be established in a
19 manner:
20 (A) That would allow a health carrier to discriminate
21 against high risk populations by excluding

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

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

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

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

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

1 (5) The health carrier shall provide the notice required
2 under paragraph (1) and shall make available to all
3 covered persons a list of available participating
4 providers in the same geographic area who are of the
5 same provider type and information about how the
6 covered persons may request continuity of care as
7 provided under paragraph (6);
8 (6) The continuity of care procedures shall provide that:
9 (A) Any request for continuity of care shall be made
10 to the health carrier by the covered person or
11 the covered person's authorized representative;
12 (B) Requests for continuity of care shall be reviewed
13 by the health carrier's medical director after
14 consultation with the treating provider for
15 patients who are under the care of a provider who
16 has not been removed or left the network for
17 cause and who meet the criteria specified under
18 the definition of:
19 (i) Active course of treatment;
20 (ii) Life-threatening health condition; or
21 (iii) Serious acute condition;

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

1 (iv) The date that benefit limitations under the
2 plan are met or exceeded; or
3 (v) The date that care is not medically
4 necessary; and
5 (7) A continuity of care request shall only be granted
6 when:
7 (A) The provider agrees in writing to accept the same
8 payment from and abide by the same terms and
9 conditions with respect to the health carrier for
10 that patient as provided in the original provider
11 contract; and
12 (B) The provider agrees in writing not to seek any
13 payment from the covered person for any amount
14 for which the covered person would not have been
15 responsible if the physician or provider were
16 still a participating provider.
17 (m) The rights and responsibilities under a contract
18 between a health carrier and a participating provider shall not
19 be assigned or delegated by either party without the prior
20 written consent of the other party.

1 (n) A health carrier shall be responsible for ensuring
2 that a participating provider furnishes covered benefits to all
3 covered persons without regard to the covered person's
4 enrollment in the plan as a private purchaser of the plan or as
5 a participant in publicly financed programs of health care
6 services. This subsection shall not apply to circumstances when
7 the provider should not render services due to limitations
8 arising from lack of training, experience, skill, or licensing
9 restrictions.
10 (o) A health carrier shall notify participating providers
11 of their obligations, if any, to collect applicable coinsurance,
12 copayments, or deductibles from covered persons pursuant to the
13 evidence of coverage, or of the providers' obligations, if any,
14 to notify covered persons of their personal financial
15 obligations for non-covered services.
16 (p) A health carrier shall not penalize a provider because
17 the provider, in good faith, reports to state or federal
18 authorities any act or practice by the health carrier that
19 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 network plan
6 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 paragraphs (3) and
8 (4) and:
9 (1) The health carrier shall ensure that the general
10 public is able to view all current providers for a
11 plan through an identifiable link or tab and without
12 creating or accessing an account or entering a policy
13 or contract number;
14 (2) The health carrier shall update each network plan
15 provider directory at least monthly and shall
16 periodically audit a reasonable sample size of its
17 provider directories for accuracy and retain
18 documentation of such an audit to be made available to
19 the commissioner upon request;

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

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

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

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

1 (D) If applicable, that authorization or referral may
2 be required to access some providers;
3 (2) The provider directory applicable to a network plan,
4 such as inclusion of the specific name of the network
5 plan as marketed and issued in this State; and
6 (3) A customer service electronic mail address and
7 telephone number or electronic link that covered
8 persons or the general public may use to notify the
9 health carrier of inaccurate provider directory
10 information.
11 (d) For the information required by subsections (a)(3),
12 (a)(4), and (b)(1) in a provider directory pertaining to a
13 health care professional, hospital, or facility other than a
14 hospital, the health carrier shall make available through
15 electronic and print provider directories the source of the
16 information and any limitations, if applicable.
17 (e) The electronic and print provider directories shall
18 accommodate the communication needs of individuals with
19 disabilities and include a link to or information regarding
20 available assistance for persons with limited English
21 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 then 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 on July 1, 2017, and
20 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) Section 2 shall take effect on January 1, 2019;
4 (2) All provider and intermediary contracts in effect on
5 the effective date of this Act shall comply with this
6 Act no later than eighteen months after the effective
7 date of this Act; provided that the insurance
8 commissioner may extend the period of compliance for
9 an additional period not to exceed six months if the
10 health carrier demonstrates good cause for an
11 extension;
12 (3) A new provider or intermediary contract that is issued
13 or put in force on or after the effective date of this
14 Act shall comply with this Act upon its effective
15 date; and
16 (4) A provider contract or intermediary contract that is
17 not described in paragraph (2) or (3) shall comply
18 with this Act no later than eighteen months after the
19 effective date of this Act.

APPROVED this 11 day of JUL , 2017

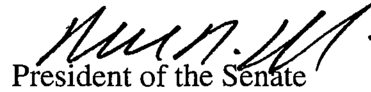
GOVERNOR OF THE STATE OF HAWAII

S.B. No. 387, S.D. 1, H.D. 1 , C.D. 1

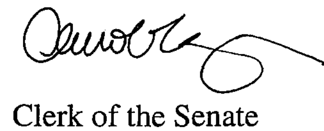
THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.



President of the Senate



Clerk of the Senate

SB No. 387, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.

Joseph M. Souki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives