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# A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

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

1           SECTION 1. The legislature finds that prior approval for  
2 medical services, also known as precertification or  
3 preauthorization, refers to health insurer requirements that  
4 certain physician-ordered treatments or services must be  
5 approved in advance by the insurer or by a medical review  
6 service contracted by the insurer before the insurer will  
7 provide final reimbursement or payment.

8           The legislature further finds that while preauthorization  
9 may be a useful and necessary tool, insurers should make  
10 patients and health care providers aware, in advance, of the  
11 medical policies insurers use when making preauthorization  
12 decisions. Currently, there is no requirement that insurers  
13 disclose the medical policies used for preauthorization  
14 decisions before those decisions are made. This lack of  
15 disclosure can lead to confusion and frustration for health care  
16 providers and their patients. Further, the lack of clarity  
17 around preauthorization decisions may cause unnecessary and



1 sometimes harmful delays in the administration of proper patient  
2 care. Moreover, requiring insurers to provide advance notice of  
3 their preauthorization standards and criteria will help ensure  
4 that preauthorization decisions are appropriately evidence-  
5 based.

6 Accordingly, the purpose of this Act is to:

- 7 (1) Require all health insurers in the State to disclose  
8 on, or have accessible through, their public websites  
9 all medical policies that the health insurers use when  
10 making preauthorization decisions related to medical  
11 treatment or service;
- 12 (2) Prohibit insurers from requiring preauthorization that  
13 causes undue delay in a patient's receipt of medical  
14 treatment or services; and
- 15 (3) Clarify insurer and licensed health care provider  
16 liability for patient injuries caused by  
17 preauthorization delays.

18 The requirements of this Act shall also apply to all health  
19 benefits plans under chapter 87A, Hawaii Revised Statutes.



1 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding two new sections to article 10A to be  
3 appropriately designated and to read as follows:

4 **"§431:10A- Preauthorization; undue delay; liability."**

5 (a) Notwithstanding any provision of the law to the contrary,  
6 no insurer shall require preauthorization of medical services or  
7 treatments so as to cause an undue delay in a patient's receipt  
8 of medical treatment or services.

9 (b) For the purposes of this section, "undue delay" means  
10 an unreasonable delay in medical treatment or services that may  
11 cause the exacerbation or worsening of a health condition due  
12 to:

13 (1) Insufficient time to obtain a first-time  
14 preauthorization from an insurer or unwarranted  
15 rejection by an insurer of a first-time  
16 preauthorization;

17 (2) Administrative difficulties or delays in receiving  
18 preauthorization from insurers; and

19 (3) Difficulties arising from noncommunication by insurers  
20 on the tests and procedures that require  
21 preauthorization;



1 provided that response times for preauthorization requests that  
2 exceed the response times permitted for preauthorization  
3 requests by medicaid, medicare, or other federal plans or  
4 programs for the same medical treatment or service shall be  
5 deemed an "undue delay".

6 (c) Notwithstanding any provision of the law to the  
7 contrary, a licensed health care provider shall not be civilly  
8 liable for injury to a patient that was caused by the insurer's  
9 undue delay in preauthorizing medical treatment or services.

10 (d) A patient shall have an individual right to enforce  
11 the provision of this section.

12 **§431:10A- Disclosure of medical policies.** Any insurer  
13 that requires preauthorization of a medical treatment or service  
14 shall disclose on, or have accessible through, its public web  
15 site any medical policies that the insurer uses for  
16 preauthorization decisions. The disclosure or link to access  
17 the medical policies on the insurer's public website shall be  
18 prominently displayed and readily accessible for consumers. The  
19 medical policies shall include a listing of medical services  
20 that may be subject to preauthorization review, the  
21 preauthorization application procedure, the preauthorization



1 determination criteria, and the procedure to appeal a denial  
2 decision."

3 SECTION 3. Chapter 432, Hawaii Revised Statutes, is  
4 amended by adding a new section to article 1 to be appropriately  
5 designated and to read as follows:

6 **"§432:1- Disclosure of medical policies.** Any mutual  
7 benefit society that requires preauthorization of a medical  
8 treatment or service shall disclose on, or have accessible  
9 through, its public web site any medical policies that the  
10 mutual benefit society uses for preauthorization decisions. The  
11 disclosure or link to access the medical policies on the mutual  
12 benefit society's public website shall be prominently displayed  
13 and readily accessible for consumers. The medical policies  
14 shall include a listing of medical services that may be subject  
15 to preauthorization review, the preauthorization application  
16 procedure, the preauthorization determination criteria, and the  
17 procedure to appeal a denial decision."

18 SECTION 4. Chapter 432, Hawaii Revised Statutes, is  
19 amended by adding a new section to be appropriately designated  
20 and to read as follows:



1           "§432D-        Disclosure of medical policies.    Any health  
2 maintenance organization that requires preauthorization of a  
3 medical treatment or service shall disclose on, or have  
4 accessible through, its public web site any medical policies  
5 that the health maintenance organization uses for  
6 preauthorization decisions.    The disclosure or link to access  
7 the medical policies on the health maintenance organization's  
8 public website shall be prominently displayed and readily  
9 accessible for consumers.    The medical policies shall include a  
10 listing of medical services that may be subject to  
11 preauthorization review, the preauthorization application  
12 procedure, the preauthorization determination criteria, and the  
13 procedure to appeal a denial decision."

14            SECTION 5.    Section 432D-23, Hawaii Revised Statutes, is  
15 amended to read as follows:

16            **"§432D-23    Required provisions and benefits.**

17 Notwithstanding any provision of law to the contrary, each  
18 policy, contract, plan, or agreement issued in the State after  
19 January 1, 1995, by health maintenance organizations pursuant to  
20 this chapter, shall include benefits provided in sections  
21 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-



1 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
2 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, 431:10A-132,  
3 431:10A-133, 431:10A-134, 431:10A-140, [~~and 431:10A-134,~~]  
4 431:10A- , 431:10A- , and chapter 431M."

5 SECTION 6. Notwithstanding any other law to the contrary,  
6 the preauthorization prohibition and disclosure requirements  
7 established under sections 2, 3, and 4 of this Act shall apply  
8 to all health benefits plans under chapter 87A, Hawaii Revised  
9 Statutes, issued, renewed, modified, altered, or amended on or  
10 after the effective date of this Act.

11 SECTION 7. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 9. This Act shall take effect on July 1, 2018;  
17 provided that sections 2, 3, 4, and 5 of this Act shall take  
18 effect on January 1, 2019.



**Report Title:**

Preauthorization; Disclosure; Health Insurance; Medical Policies

**Description:**

Requires all health insurers, including health benefits plans under chapter 87A, HRS, to disclose on, or have accessible through, their public web sites any medical policies used for making preauthorization decisions. Prohibits preauthorization requirements if they cause undue delays in the receipt of medical treatment. (SB287 HD2 PROPOSED)

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