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## A BILL FOR AN ACT

RELATING TO LIABILITY.

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

1           SECTION 1. Prior approval for medical services, also known  
2 as precertification or preauthorization, refers to health  
3 insurer requirements that certain physician-ordered treatments  
4 or services must be approved in advance by the insurer or by a  
5 medical review service contracted by the insurer before the  
6 insurer will provide final reimbursement or payment. Health  
7 insurers claim that preauthorization requirements encourage the  
8 safety of plan participants, promote appropriate utilization of  
9 services, and ensure ongoing efficiency in the setting of health  
10 care costs. However, as currently applied by some health  
11 insurers in the State, preauthorization requirements also create  
12 gaps in necessary and often critical health care coverage,  
13 especially in the areas of advanced imaging studies such as  
14 magnetic resonance imagery and computed tomography testing.

15           The legislature finds that it is the best interest of the  
16 State to ensure that preauthorization requirements do not



1 negatively impact the health of Hawaii residents. The purpose  
2 of this Act is to:

- 3 (1) Prohibit insurers from requiring preauthorization that  
4 causes undue delay in a patient's receipt of medical  
5 treatment or services; and
- 6 (2) Clarify liability for patient injuries caused by  
7 preauthorization delays.

8 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
9 amended by adding a new section to article 10A to be  
10 appropriately designated and to read as follows:

11 "§431:10A- Preauthorization; undue delay; liability. (a)  
12 Notwithstanding any provision of the law to the contrary, no  
13 insurer shall require preauthorization of medical services or  
14 treatments so as to cause an undue delay in a patient's receipt  
15 of medical treatment or services.

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

- 20 (1) The unwarranted rejection by an insurer of a first-  
21 time preauthorization;



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

3       (3) Difficulties arising from the non-communication by  
4       insurers on the tests and procedures that require  
5       preauthorization.

6       (c) Notwithstanding any provision of the law to the  
7       contrary, a licensed health care provider shall be immune from  
8       civil liability for injury to a patient that was caused by undue  
9       delay in preauthorization of medical treatment or services.

10       (d) An insurer that violates subsection (a) shall be  
11       civilly liable for any injury that occurs to a patient because  
12       of undue delay in the receipt of medical treatment or services."

13       SECTION 3. Chapter 432, Hawaii Revised Statutes, is  
14       amended by adding a new section to be appropriately designated  
15       and to read as follows:

16       "§432-     Preauthorization; undue delay; liability. (a)  
17       Notwithstanding any provision of the law to the contrary, no  
18       insurer shall require preauthorization of medical services or  
19       treatments so as to cause an undue delay in a patient's receipt  
20       of medical treatment or services.



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

5        (1) The unwarranted rejection by an insurer of a first-  
6 time preauthorization;

7        (2) Administrative difficulties or delays in receiving  
8 preauthorization from insurers; and

9        (3) Difficulties arising from the non-communication by  
10 insurers on the tests and procedures that require  
11 preauthorization.

12        (c) Notwithstanding any provision of the law to the  
13 contrary, a licensed health care provider shall be immune from  
14 civil liability for injury to a patient that was caused by undue  
15 delay in preauthorization of medical treatment or services.

16        (d) An insurer that violates subsection (a) shall be  
17 civilly liable for any injury that occurs to a patient because  
18 of undue delay in the receipt of medical treatment or services."

19        SECTION 4. Section 432D-23, Hawaii Revised Statutes, is  
20 amended to read as follows:



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1           "§432D-23 Required provisions and benefits.  
 2 Notwithstanding any provision of law to the contrary, each  
 3 policy, contract, plan, or agreement issued in the State after  
 4 January 1, 1995, by health maintenance organizations pursuant to  
 5 this chapter, shall include benefits provided in sections  
 6 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-  
 7 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
 8 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, 431:10A-132,  
 9 431:10A-133, and 431:10A-140, 431- , and chapter 431M."

10           SECTION 5. New statutory material is underscored.

11           SECTION 6. This Act does not affect rights and duties that  
 12 matured, penalties that were incurred, and proceedings that were  
 13 begun before its effective date.

14           SECTION 7 This Act shall take effect upon its approval.

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INTRODUCED BY:

*Ronny M. Sanhub*  
*John M. Moore*  
*Donna Ann*  
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*Cindy Evans*



# H.B. NO. 2740

**Report Title:**

Liability; Preauthorization; Health Insurance

**Description:**

Prohibits health insurance preauthorization requirements that cause undue delay in receipt of medical treatment or services. Specifies that insurers, but not health care providers, are liable for civil damages caused by undue delays for preauthorization.

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

