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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 in the best interest of  
16 the 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 insurer and licensed health care provider
- 7 liability for patient injuries caused by
- 8 preauthorization delays.

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

12 "§431:10A- Preauthorization; undue delay; liability.

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

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



- 1        (1) The insufficient time to obtain or unwarranted  
2        rejection by an insurer of a first-time  
3        preauthorization;
- 4        (2) Administrative difficulties or delays in receiving  
5        preauthorization from insurers; and
- 6        (3) Difficulties arising from noncommunication by insurers  
7        on the tests and procedures that require  
8        preauthorization.
- 9        (c) Notwithstanding any provision of the law to the  
10       contrary, a licensed health care provider shall be defended and  
11       indemnified by an insurer for civil liability for injury to a  
12       patient that was caused by the insurer's undue delay in  
13       preauthorization of medical treatment or services.
- 14       (d) An insurer that violates subsection (a) shall be  
15       civilly liable for any injury that occurs to a patient because  
16       of undue delay in the receipt of medical treatment or services.
- 17       (e) A licensed health care provider shall provide  
18       treatment or services without waiting for preauthorization  
19       whenever an unreasonable delay in medical treatment or services  
20       may cause the exacerbation or worsening of a health condition.  
21       An insurer that disputes that it was reasonable to proceed



1 without preauthorization has the burden of proof to show that a  
2 licensed health care provider did not have a reasonable belief  
3 that it was necessary to provide treatment or services without  
4 waiting for preauthorization."

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

8 "§432- Preauthorization; undue delay; liability. (a)  
9 Notwithstanding any provision of the law to the contrary, no  
10 insurer shall require preauthorization of medical services or  
11 treatments so as to cause an undue delay in a patient's receipt  
12 of medical treatment or services.

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

17 (1) The insufficient time to obtain or unwarranted  
18 rejection by an insurer of a first-time  
19 preauthorization;

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



1       (3) Difficulties arising from noncommunication by insurers  
2       on the tests and procedures that require  
3       preauthorization.

4       (c) Notwithstanding any provision of the law to the  
5       contrary, a licensed health care provider shall be defended and  
6       indemnified by an insurer for civil liability for injury to a  
7       patient that was caused by the insurer's undue delay in  
8       preauthorization of medical treatment or services.

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

12      (e) A licensed health care provider shall provide  
13      treatment or services without waiting for preauthorization  
14      whenever an unreasonable delay in medical treatment or services  
15      may cause the exacerbation or worsening of a health condition.

16      An insurer that disputes that it was reasonable to proceed  
17      without preauthorization has the burden of proof to show that a  
18      licensed health care provider did not have a reasonable belief  
19      that it was necessary to provide treatment or services without  
20      waiting for preauthorization."



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

3 "§432D-23 Required provisions and benefits.  
4 Notwithstanding any provision of law to the contrary, each  
5 policy, contract, plan, or agreement issued in the State after  
6 January 1, 1995, by health maintenance organizations pursuant to  
7 this chapter, shall include benefits provided in sections  
8 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-  
9 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
10 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, 431:10A-132,  
11 431:10A-133, and 431:10A-140, 431:10- , and chapter 431M."

12 SECTION 5. New statutory material is underscored.

13 SECTION 6. 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 7. This Act shall take effect on July 1, 2070.



**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. (HB2740 HD1)

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

