

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO ATTORNEYS' FEES.

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

1           SECTION 1. In judicial actions that result in a monetary  
2 judgment, the prevailing party is entitled to collect attorneys'  
3 fees from the losing party. Although external review of a  
4 managed care plan's decisions is an administrative process, it  
5 is similar to a judicial action in that it is an adversarial  
6 evidentiary proceeding that involves a substantial expenditure  
7 of time and resources as well as representation by professional  
8 counsel for all parties involved. The external review process  
9 diverges from a judicial action in the allocation of  
10 responsibility for paying attorneys' fees. When an enrollee  
11 requests an external review of a managed health care plan's  
12 decision, the current statute allows the reviewing authority to  
13 require the managed health care plan to pay any attorneys' fees  
14 incurred by an enrollee, regardless of whether or not the  
15 enrollee is the prevailing party. This has enabled some  
16 instances of attorneys bringing non-meritorious cases through  
17 the external review process purely as a means of winning money  
18 from managed health plans. While many cases subject to external



1 review do indeed have merit, frivolous cases are cumbersome and  
2 time consuming, and negatively impact the managed health care  
3 plan's ability to carry out its function of efficiently  
4 providing health care to all of its enrollees. In the cases of  
5 a QUEST managed health care plan including AlohaCare, Evercare,  
6 HMSA, Kaiser and 'Ohana Health Plan, awards of attorneys' fees  
7 are absorbed by state taxpayers, regardless of the merits of the  
8 underlying claim.

9 The purpose of this Act is to amend the statute governing  
10 the award of attorneys' fees in the case of external review of  
11 the decisions of managed health care plans to conform to the law  
12 governing awards of attorneys' fees in every other instance in  
13 order to reduce the number of frivolous external review cases as  
14 well as to ensure equitable treatment for managed health care  
15 plans.

16 SECTION 2. Section 432E-6, Hawaii Revised Statutes, is  
17 amended by amending subsection (e) to read as follows:

18 "(e) ~~[An enrollee may be allowed, at the commissioner's~~  
19 ~~discretion, an award of a reasonable sum for attorney's fees and~~  
20 ~~reasonable costs incurred in connection with the external review~~  
21 ~~under this section, unless the commissioner in an administrative~~  
22 ~~proceeding determines that the appeal was unreasonable,~~



1 ~~fraudulent, excessive, or frivolous.]~~ In all actions for  
2 external review of a managed care plan's decisions, there shall  
3 be assessed as attorneys' fees, to be paid by the non-prevailing  
4 party and to be included in the order of the commissioner issued  
5 pursuant to subsection (c), a fee that the commissioner  
6 determines to be reasonable; provided that the attorney  
7 representing the prevailing party shall submit to the  
8 commissioner an affidavit stating the amount of time the  
9 attorney spent on the action and the amount of time the attorney  
10 is likely to spend to obtain final execution of the order, or,  
11 if the attorney's fee is not based on an hourly rate, the amount  
12 of the agreed upon fee.

13 The commissioner shall assess reasonable attorneys' fees  
14 pursuant to the requirements of this subsection; provided that  
15 attorneys' fees shall not exceed the amount of the award for the  
16 subject claim and:

17 (1) Where a note or other contract in writing provides for  
18 a fee of twenty-five per cent or more of the amount of  
19 the award, or provides for reasonable attorneys' fees,  
20 the award of attorneys' fees shall be no more than  
21 twenty-five per cent of the award;



1       (2) Where a note or other contract in writing provides for  
2       a fee of less than twenty-five per cent of the amount  
3       of the award, not more than the specified rate shall  
4       be allowed; and

5       (3) Any other law to the contrary notwithstanding, no  
6       attorneys' fees shall be awarded to the enrollee:

7       (A) If prior to or at the time the enrollee requested  
8       external review pursuant to this section, the  
9       enrollee did not sign an instrument in writing  
10       that provided for the payment of an attorney's  
11       fee; or

12       (B) If prior to or at the time the enrollee requested  
13       external review pursuant to this section, the  
14       enrollee did sign an instrument in writing that  
15       provided for the payment of attorneys' fees and  
16       the instrument in writing contains within its  
17       principal amount any attorney's fees from a prior  
18       external review.

19       The fees provided by this section shall be assessed on the  
20       amount of the commissioner's order exclusive of costs and all  
21       attorneys' fees obtained by the prevailing party, and upon the



1 amount at issue in the underlying claim if the managed care plan  
2 is the prevailing party."

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Resaly H. Park

*Resaly H. Park*



**Report Title:**

Managed Care Plans; External Review Process; Attorneys' Fees

**Description:**

Provides for the award of attorneys' fees to the prevailing party in the administrative process for external review of a managed care plan's decision.

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

