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## A BILL FOR AN ACT

RELATING TO PROSPECTIVE REVIEW.

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

1           SECTION 1. The legislature finds that, in health care  
2 decisions and services, the physician-patient relationship is of  
3 paramount importance and shall not be subject to third-party  
4 intrusion. Prior authorization, or prospective review,  
5 requirements for coverage of health care services can prioritize  
6 attempted cost savings over optimal patient care. The  
7 legislature finds that prospective review requirements should  
8 not be permitted to hinder effective patient care or to intrude  
9 on health care practice or services provided by a licensed  
10 professional health care provider. Further, any prospective  
11 review program shall include the use of transparent, written  
12 clinical review criteria and review by appropriate physicians to  
13 ensure a fair process for patients.

14           The purpose of this Act is to require all health carriers  
15 and utilization review organizations to provide a fair,  
16 transparent, and consistent prospective review process to ensure  
17 optimal patient care.



1 SECTION 2. Chapter 432E, Hawaii Revised Statutes, is  
2 amended by adding five new sections to be appropriately  
3 designated and to read as follows:

4 "§432E- Special provisions for prospective review; non-  
5 emergency services. (a) Notwithstanding any other provision of  
6 this chapter to the contrary, if a health carrier or utilization  
7 review organization requires prospective review of a health care  
8 service other than an emergency service, the carrier or  
9 organization shall certify the service or make a final adverse  
10 determination and notify the enrollee and the enrollee's health  
11 care provider within:

12 (1) Two business days for non-urgent services; and  
13 (2) One business day for urgent services,  
14 of obtaining all necessary information required under section  
15 432E-34(i).

16 (b) If a health carrier or utilization review organization  
17 fails to comply with this section in any prospective review for  
18 non-emergency services, the non-emergency services that are the  
19 subject of the prospective review shall be deemed to be  
20 certified.



1        432E- Special provisions for prospective review; pre-  
2 hospital transportation; emergency services. (a) A health  
3 carrier or utilization review organization shall not require  
4 prospective review for certification of pre-hospital  
5 transportation or for the provision of emergency services.

6        (b) A health carrier or utilization review organization  
7 shall allow an enrollee or the enrollee's health care provider a  
8 minimum of twenty-four hours following an emergency admission or  
9 the provision of emergency service to notify the carrier or  
10 organization of the admission or provision of emergency service.  
11 If the admission or provision of emergency services occurs on a  
12 holiday or weekend, the carrier or organization shall allow an  
13 enrollee or provider until the next business day to provide  
14 notification.

15        (c) A health carrier or utilization review organization  
16 shall certify emergency services necessary to screen and  
17 stabilize an enrollee. If the enrollee's health care provider  
18 attests in writing to the carrier or organization within  
19 seventy-two hours of an enrollee's admission or the provision of  
20 emergency service to the enrollee that the enrollee's condition  
21 required emergency services, the attestation shall create a



1 presumption that the admission or emergency service was  
2 medically necessary. A presumption pursuant to this section  
3 shall be rebuttable only if the carrier or organization  
4 establishes, by clear and convincing evidence, that the  
5 admission or service was not medically necessary.

6 (d) A determination of medical necessity or  
7 appropriateness of an emergency admission or emergency service  
8 shall not be based on the provision of services by a provider or  
9 facility that is not a participating provider. Restrictions on  
10 coverage of emergency admissions or emergency services by any  
11 provider shall not be more restrictive than those that apply to  
12 participating providers.

13 (e) For emergency admissions or services that require  
14 immediate post-evaluation or post-stabilization services, a  
15 health carrier or utilization review organization shall certify  
16 the service or issue a final adverse determination within sixty  
17 minutes of receiving a request for prospective review.

18 (f) If a health carrier or utilization review organization  
19 fails to comply with this section in any prospective review for  
20 emergency services, the emergency services that are the subject  
21 of the prospective review shall be deemed to be certified.



1        §432E-        Special provisions for prospective review; form  
2 of notice.    (a) Notice of an adverse determination or  
3 determination of specific exclusion based on a prospective  
4 review shall be provided to the health care provider that  
5 initiated the prospective review by fax, by mail, by electronic  
6 transmission, or verbally, at the election of the health care  
7 provider.

8        (b) Notice required under this section shall include:

- 9        (1) The name, title, address, telephone number, board  
10        certification status or eligibility, and applicable  
11        professional license number issued by each state of  
12        licensure of the health care provider responsible for  
13        making the determination;
- 14        (2) The clinical review criteria, if any, and any internal  
15        rule, guideline, or protocol on which the health  
16        carrier or utilization review organization relied to  
17        make the determination and an explanation of how those  
18        provisions apply to the specific medical circumstances  
19        at issue;
- 20        (3) Information for the enrollee and the enrollee's health  
21        care provider that describes the procedure for



1           requesting a copy of any report developed by personnel  
2           in making the determination; and

3       (4) Information that explains the enrollee or health care  
4       provider's right to appeal the determination,  
5       including:

6           (A) Instructions concerning how to perfect an appeal  
7           and for submission of written materials  
8           supporting the appeal; and

9           (B) Contact information through which the enrollee  
10          and health care provider may report complaints  
11          concerning the health carrier or utilization  
12          review organization to the commissioner, the  
13          Hawaii medical board, or other appropriate state  
14          regulatory agency.

15       (c) When certification of any health care service is  
16       restricted or denied due to a step therapy or fail first  
17       protocol in favor of an alternate health care service preferred  
18       by the health carrier or utilization review organization, the  
19       notice required by this section shall include:

20           (1) An explanation of the applicable protocol; and



1        (2) Instructions, including a phone number and other  
2                    contact information, for a clear and convenient  
3                    process to expeditiously request an override of or  
4                    exception to that protocol.

5        §432E- Special provisions for prospective review;  
6        retrospective denial; waiver prohibited. (a) No health carrier  
7        or utilization review organization shall revoke, limit,  
8        condition, or otherwise restrict a certification pursuant to a  
9        prospective review for a period of forty-five working days from  
10       the date of authorization. Any contractual or other provision  
11       attempting to disclaim payment for services that have been  
12       certified pursuant to a prospective review shall be void.

13       (b) No provision of this chapter pertaining to prospective  
14       review of any admission or health care service shall be waived  
15       by contract or otherwise. Any contract or agreement that  
16       purports to waive any provision subject to this section shall be  
17       void.

18       §432E- Special provisions for prospective review;  
19       disclosure requirements. (a) Every health carrier or  
20       utilization review organization that requires prospective review  
21       of any health care services shall make readily available on its



1 website to enrollees, health care providers, and the general  
2 public:

3       (1) All current prospective review requirements and  
4       restrictions, including required clinical review  
5       criteria; and

6       (2) Statistics regarding prospective review certifications  
7       and adverse determinations, organized according to:

8           (A) Physician specialty;

9           (B) Medication, diagnostic test, or procedure  
10          requested;

11          (C) Indication offered; and

12          (D) Reason for certification or denial.

13       Disclosures made pursuant to this section may be in a form  
14 as provided by the commissioner and shall be described in detail  
15 and in easily understandable language.

16       (b) Prior to implementing any proposed new or amended  
17 prospective review requirement or restriction, a health carrier  
18 or utilization review organization shall:

19       (1) Provide all health care providers contracted with the  
20       carrier or organization with written notice of the new





1           or amended requirement or restriction no less than  
 2           sixty days before its implementation; and  
 3           (2) Update the website information required under  
 4           subsection (a) to reflect the new or amended  
 5           requirement or restriction."

6           SECTION 3. Section 432E-1, Hawaii Revised Statutes, is  
 7 amended as follows:

8           1. By adding a new definition to read:  
 9           "Urgent services" means health care services provided to  
 10          an enrollee when, in the experience of a physician with  
 11          knowledge of the enrollee's medical condition:

12          (1) The enrollee's life, health, or ability to regain  
 13          maximum function will be seriously jeopardized; or  
 14          (2) The enrollee could be subjected to severe pain that  
 15          cannot be adequately managed,  
 16          without the health care services at issue."

17          2. By amending the definition of "prospective review" to  
 18 read:

19          "Prospective review" means a utilization review conducted  
 20          prior to an admission or a course of treatment[-] and includes  
 21          any health carrier or utilization review organization's



1 requirement that an enrollee or health care provider notify the  
2 carrier or organization prior to providing a health care  
3 service."

4 SECTION 4. Section 432E-1.4, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) A health intervention is medically necessary if it is  
7 recommended by the treating physician or treating licensed  
8 health care provider, is approved by the health plan's medical  
9 director or physician designee, and is:

- 10 (1) For the purpose of treating a medical condition;
- 11 (2) The most appropriate delivery or level of service,  
12 considering potential benefits and harms to the  
13 patient;
- 14 (3) Known to be effective in improving health outcomes;  
15 provided that:
- 16 (A) Effectiveness is determined first by scientific  
17 evidence;
- 18 (B) If no scientific evidence exists, then by  
19 professional standards of care; and



1 (C) If no professional standards of care exist or if  
2 they exist but are outdated or contradictory,  
3 then by expert opinion; [~~and~~]

4 (4) Cost-effective for the medical condition being treated  
5 compared to alternative health interventions,  
6 including no intervention. For purposes of this  
7 paragraph, cost-effective shall not necessarily mean  
8 the lowest price [-]; and

9 (5) Not primarily for the economic benefit of a health  
10 carrier or purchaser or for the convenience of a  
11 patient, treating provider, or other health care  
12 provider."

13 SECTION 5. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon approval.

16

INTRODUCED BY: *[Signature]*

*Basil Kobayashi* *[Signature]*  
*Lynn DeLorto* *Cindy Evans*  
*[Signature]* *[Signature]*

JAN 25 2017



**Report Title:**

Prospective Review; Health Insurance Coverage

**Description:**

Specifies procedural, disclosure, notice, and other requirements for prospective reviews required by health carriers or utilization review organizations prior to certification of coverage for health care services.

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

