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TO THE HOUSE COMMITTEE ON
JUDICIARY

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Thursday, February 15, 2018
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 885, H.D. 1, RELATING TO DELAY IN PRIOR
APPROVAL FOR MEDICAL SERVICES.**

TO THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 885, H.D.1, Relating to Delay in Prior Approval for Medical Services. My name is Gordon Ito, and I am the Insurance Commissioner for the Department’s Insurance Division. The Department takes no position on this bill and offers the following comments.

The purpose of this bill is to prohibit health insurers from requiring preauthorization that causes undue delay in a patient’s receipt of medical treatment or services. The bill also purports of grant civil immunity to a licensed health care provider for injury to a patient casued by undue delay in preauthorization, and impose civil liability on an insurer for any patient injury caused by undue delay in the receipt of medical treatment or services.

This bill would add new sections (preauthorization; undue delay; liability) to Hawaii Revised Statutes (“HRS”) chapter 431 to apply to health insurers and HRS

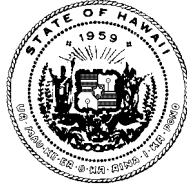
chapter 432 to apply to mutual benefit societies, as well as amend section HRS 432D-23 to apply to health maintenance organizations.

Medical determinations are complex and not conducive to blanket regulation by HRS title 24. These medical decisions seek to balance patient safety, effectiveness, and medical appropriateness and are outside the purview of HRS title 24. The Patient Protection and Affordable Care Act also recognizes that services, except in the case of emergency and patient access to obstetrical and gynecological care, may require preauthorization.

The granting of immunity to health care providers for injuries and the imposition of liability on insurers regarding medical decisions are likewise outside the purview of HRS title 24.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 14, 2018

TO: The Honorable Representative Scott Nishimoto, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 885 HD1 – RELATING TO DELAY IN PRIOR APPROVAL FOR MEDICAL SERVICES**

Hearing: Wednesday, February 15, 2018, 2:00 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) offers comments with concerns.

PURPOSE: The purpose of the bill is to prohibit insurers from requiring preauthorization that cause undue delay in a patient's receipt of medical treatment or services; and clarify insurer and licensed health care provider liability for patient injuries caused by preauthorization delays.

Per federal Medicaid regulations, the Medicaid program has requirements that services provided are medically necessary. Thus Medicaid has requirements for utilization management such as prior authorizations. We need to ensure that services are provided at the right time, right setting etc., to ensure optimal care with the best health outcomes. Nearly 100 percent of Medicaid recipients are enrolled in a QUEST Integrated (QI) managed care plan. As part of the QI contracts, and in accordance with federally required language, there are specific provisions that outline timeframes in which a health plan must respond to a prior authorizations, to utilization management programs, as well as to access standards for

emergent, urgent, and other care. MQD monitors and provides oversight of the QI plans' adherence to these requirements.

The proposed liability changes may lead to unintended adverse impact on both patient safety and on costs. For example, one concerning consequence may be on the rising opioid epidemic. Prior authorizations and other utilization management tools for the prescribing of opioids are one of the methods for ensuring that prescribers follow new guidelines for the prescribing of opioids. We also note that the American health care system is the most costly health care system in the world with only adequate health outcomes. There are also estimates that about 20 percent of all care is unnecessary. While it is essential that we analyze all the cost drivers for our health care delivery system, this bill will likely lead to increased costs, as fewer prior authorizations would be put in place.

Thank you for the opportunity to provide comments on this measure.



HAWAII RADIOLOGICAL SOCIETY

LETTER OF SUPPORT

February 14, 2018

To the Honorable Scott Y Nishimoto, the Honorable Joy A San Buenaventura and members of the HHS Committee:

WITH REGARD TO **HB 885** which would prohibit health insurance preauthorization requirements that cause undue delay in receipt of medical treatment or services,

the Hawaii Radiological Society (HRS) supports this measure.

The prior authorization that is required by insurers for medical services causes lengthy delays in essential critical diagnostic studies, particularly when advanced imaging is requested such as MRI or CT scan. These prior authorization processes frequently obstruct the patient's access to necessary imaging in a timely fashion, effectively stalling the work up and preventing the prompt delivery of appropriate medical therapy.

HRS further supports quality initiatives of Hawaii physician groups as effective alternative solutions to improve efficiency, promote appropriate utilization of services, and maintain the highest standards of care for Hawaii's patient ohana.

Please contact us with any recommendations, concerns or questions.
Mahalo for your thoughtful consideration of these issues.

With Aloha,

Elizabeth Ann Ignacio MD
President, Hawaii Radiological Society
808.250.7058



HB885hd1, Relating to Delay in Prior Approval for Medical Services

JUD Committee Hearing

Thursday, Feb. 15, 2018 – 2:00 pm

Room 325

Position: Support

Chair Mizuno and Members of the HHS Committee:

I am Gregg Pacilio, PT and Board President of the Hawaii Chapter of the American Physical Therapy Association (HAPTA), a non-profit professional organization serving more than 340 member Physical Therapists and Physical Therapist Assistants. Our members are employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are movement specialists and are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA **supports** the purpose of this measure that would prohibit insurers from requiring preauthorization that causes undue delay in a patient's receipt of medical treatment or services and clarifies insurer and licensed health care provider liability for patient injuries that are caused by preauthorization delays.

It is our experience that prior authorizations are an administrative burden for providers and appears to be arbitrary. For example, some insurance companies require physical therapy to be approved prior to start of care when objective measurements and functional outcomes are not being considered at all. Insurance companies also require physical therapists to pre-authorize procedure codes, which make the therapist "guess" what they are going to do and if you don't "guess" correct and request enough procedural codes, you may not get them paid on the back end. Further, insurance companies can take up to two weeks to render a decision on authorization request. During this time, the patient is waiting to be seen.

In addition to delaying care for patients, preauthorization requirements limit access to care because some providers have stopped taking insurances that require extensive pre-authorization paperwork.

Your support of HB885hd1 is appreciated. Thank you for the opportunity to testify. Please feel free to contact Patti Taira-Tokuuke, HAPTA's Reimbursement Issue Lead at (808) 895-1259 for further information.



An Independent Licensee of the Blue Cross and Blue Shield Association

February 15, 2018

The Honorable Scott Y. Nishimoto, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Re: HB 885, HD1 – Relating to the Delay in Prior Approval for Medical Services

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Committee Members:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 885, HD1, which prohibits health insurance preauthorization requirements that cause undue delay in receipt of medical treatment or services and specifies that insurers, but not health care providers, are liable for civil damages caused by undue delays for preauthorization. HMSA opposes this Bill and offers the following comments.

HMSA and providers share the same goal – protecting the health and safety of people who trust us with their care. We work together to reach that goal but sometimes disagree on how to get there. While we work every day to balance the needs of our members, physicians, employer groups, and government partners, our first priority is always the need and safety of our members.

We are seriously concerned that HB 885, HD1 would encourage plans to minimize preauthorization requirements, resulting in potentially dangerous health consequences for members and increase costs to Hawaii's healthcare system. A preauthorization requirement is designed to (1) improve a patient's health and well-being by preventing overuse of medical services that could unintentionally cause harm, and (2) prevent wasteful services that people do not truly need.

Preauthorizations are required for a range of medical procedures, medications, and durable medical equipment. Most notably with public concern over rising drug costs, preauthorizations can help identify an appropriate generic medication in lieu of a more expensive brand named drug. Virtually every health plan, including Medicare and Medicaid, require preauthorizations for numerous services.

The Centers for Medicare & Medicaid Services (CMS), the National Committee for quality Assurance (NCQA), and the Health Services Advisory Group (HSAG), which oversees Medicaid in Hawaii, all have prior authorization guidelines and definitions on urgent versus non-urgent requests, specific turnaround times, and approval and denial processes. HMSA follows these guidelines and definitions.

HB 885, HD1 unfairly gives the provider immunity from civil liability for "injury to a patient that was caused by undue delay in preauthorizing medical treatment or services", and it holds the health plans solely liable. This provision does not account for situations under which the physician may have contributed to the delay during the preauthorization process. To hold the plan solely liable for any injury is unjust.

HB 885, HD1 would create an environment of uncertainty and confusion where plans ultimately may resist requiring preauthorizations just to avoid the negative legal consequences contemplated in this Bill. Furthermore, this measure generates more uncertainty with respect to its impact on preauthorizations required under Medicare and Medicaid.

We respectfully ask that the Committee defer HB 885, HD1. Thank you for the opportunity to testify.

Sincerely,

Pono Chong
Vice-President, Government Relations

HB-885-HD-1

Submitted on: 2/14/2018 1:13:13 PM

Testimony for JUD on 2/15/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Akaka, MD	Individual	Support	Yes

Comments:

Jeffrey Akaka, MD

HB885HD1 : Relating To Delay in Prior Approval for Medical Services

February 15, 2018

2:00pm

Position: Support

Dear Chair Nishimoto and Members of the House Judiciary Committee,

Please vote in favor of HB885 HD1.

Medicine is an extraordinarily tough job. Seconds delayed by second guessers can kill, converting this tough job into impossibility.

So doctors shrug and quit.

Please help the patients of Hawaii keep their doctors.

Please make right what is not.

Please hold responsible those who fire denial bullets that divert the studies needed to prevent prolonged pain or premature death.

Please vote Yes on HB885HD1.

Thank you.

Jeffrey Akaka, MD

February 14, 2018

The Honorable Scott Y. Nishimoto, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Re: HB 885 – Relating to the Delay in Prior Approval for Medical Services

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Committee Members:

University Health Alliance (UHA) appreciates the opportunity to testify on HB 885. The Bill prohibits health insurance preauthorization requirements that cause undue delay in receipt of medical treatment or services, and specifies that health plans, but not health care providers, are liable for civil damages caused by undue delays for preauthorization. UHA opposes HB 885.

The reasons for UHA's opposition are as follows:

1. Like all managed care plans in Hawaii, UHA has national accreditation status. UHA is accredited through URAC, which promotes continuous improvement in the quality and efficiency of healthcare management. URAC has specific guidelines and metrics for prior authorizations including approval/denial processes and specific turnaround times. For example, UHA follows the urgent preauthorization process under URAC that requires UHA to respond within 72 hours to the request.
2. HB 885 would encourage less preauthorization. This would result in higher health care costs without a corresponding improvement in health outcomes. Members might receive services that are not necessary and could cause harm, which is what preauthorization prevents.
3. Section 1 of the Bill indicates an issue with preauthorization for advanced imaging studies. This bill is excessive in its expansiveness in that it applies to all preauthorizations. UHA is unaware of any issues with its preauthorization process.
4. Similarly excessive is holding a health plan solely responsible for the defense and indemnification of a health care provider for undue delay of preauthorization. The Bill does not take into account how the provider may have contributed to any delay.

We respectfully request the Committee defer HB 885.

Thank you for the opportunity to present this testimony.



Sincerely,
Terri O'Connell
Vice-President, Legal



February 15, 2018

COMMITTEE ON JUDICIARY

Representative Scott Y. Nishimoto, Chair

Representative Joy A. San Buenaventura, Vice Chair

House Bill 885 HD1 – Relating to Delay in Prior Approval for Medical Services

Chair, Vice Chair and Members of the Committees:

The Hawai'i Association of Health Plans (HAHP) respectfully submits testimony in opposition to HB 885 HD1. HAHP has significant concerns with HB 885 in terms of its impact on the quality and cost of health care in Hawai'i as follows:

1. Many of Hawaii's health plans have State and Federal programs that require the health plan to have medical management processes including preauthorization. In addition, such government programs as well as accrediting agencies (such as NCQA and URAC) provide external oversight and monitoring to ensure effective and responsive preauthorization processes by the health plans.
2. HB 855 inappropriately removes the provider from any liability as it relates to preauthorization. This does not take into consideration situations where the provider may have contributed to any delay in a patient receiving medically necessary and appropriate treatment.
3. HB 855 is not necessary as in situations where a health plan has in fact been shown to "cause undue delay in receipt of medical treatment or services" there are existing legal courses of action and remedies for any party adversely impacted.

In summary, HAHP does not support HB 885 HD1. While health plans recognize that some providers can be frustrated with preauthorization requirements, we believe there are alternative avenues to address this issue, primarily through provider and health plans communicating and collaborating with each other. In addition, health plans are already held accountable to standards on preauthorization processes by governmental agencies and accrediting entities such as NCQA, URAC and HSAG.

Sincerely,

HAHP Public Policy Committee

Cc: HAHP Board Members

HB-885-HD-1

Submitted on: 2/14/2018 1:53:51 PM

Testimony for JUD on 2/15/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawaii	Support	No

Comments:



HAWAII MEDICAL ASSOCIATION

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www.hawaiimedicalassociation.org

TO:

COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair

Rep. Joy A. San Buenaventura, Vice Chair

DATE: Thursday, February 15, 2018

TIME: 2 p.m.

PLACE: Conference Room 325

FROM:

Hawaii Medical Association

Dr. Christopher Flanders, DO, Executive Director

Lauren Zirbel, Government and Community Relations

Re: HB 885

Position: SUPPORT

Hawaii Medical Association strongly supports this legislation.

If a doctor orders a necessary test, and that test is delayed or denied by an insurance plan, and that patient suffers as a result of this delay or deny, the physician should not be held liable for the patients injury as it pertains to the delay in treatment.

This bill is a common sense measure and should be enacted as soon as possible to ensure patient safety and encourage health plans approve appropriate care.

This bill has the following admirable goals:

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

It is only fair that a licensed health care provider should be immune from civil liability for injury to a patient that was caused by undue delay in preauthorization of medical treatment services. The insurer should be civilly liable for any injury that occurs to a patient because of undue delay in medical treatment.

Thank you for the opportunity to provide testimony in strong support of this measure and thank you for hearing this important bill. This bill will help to make Hawaii a more viable place to practice medicine.

HMA OFFICERS

President – William Wong, Jr., MD President-Elect – Jerry Van Meter, MD Secretary – Thomas Kosasa, MD
Immediate Past President – Bernard Robinson, MD Treasurer – Elizabeth A. Ignacio, MD
Executive Director – Christopher Flanders, DO

LATE

HB-885-HD-1

Submitted on: 2/15/2018 5:03:47 PM

Testimony for JUD on 2/15/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bernard Sr Robinson	Individual	Support	Yes

Comments: