

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

February 5, 2018

TO: The Honorable Representative John M. Mizuno, Chair  
House Committee on Health and Human Services

FROM: Pankaj Bhanot, Director

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

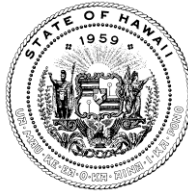
Hearing: Wednesday, February 7, 2018, 10:30 a.m.  
Conference Room 329, State Capitol

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

**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.

Currently, Medicaid has timeliness of prior authorization requirements in place that are at least as strict as federal requirements. 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 authorization request. The DHS Med-QUEST division monitors and provides oversight of the QI plans' adherence to these requirements. Therefore, we respectfully request that the measure specify that Medicaid is excluded from this bill.

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



DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON  
HEALTH AND HUMAN SERVICES

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Wednesday, February 7, 2018  
10:30 a.m.

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

TO THE HONORABLE JOHN M. MIZUNO, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 885, 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 to grant civil immunity to a licensed health care provider for injury to a patient caused 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.



An Independent Licensee of the Blue Cross and Blue Shield Association

February 7, 2018

The Honorable John M. Mizuno, Chair  
The Honorable Bertrand Kobayashi, Vice Chair  
House Committee on Health and Human Services

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

Dear Chair Mizuno, Vice Chair Kobayashi, and Committee Members:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 885, 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 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 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 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. Thank you for the opportunity to testify.

Sincerely,

Pono Chong  
Vice-President, Government Relations



## HAWAII MEDICAL ASSOCIATION

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www.hawaiimedicalassociation.org

TO:  
COMMITTEE ON HEALTH & HUMAN SERVICES  
Rep. John M. Mizuno, Chair  
Rep. Bertrand Kobayashi, Vice Chair

DATE: Wed., February 7, 2018  
TIME: 10:30am  
PLACE: Conference Room 329

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:

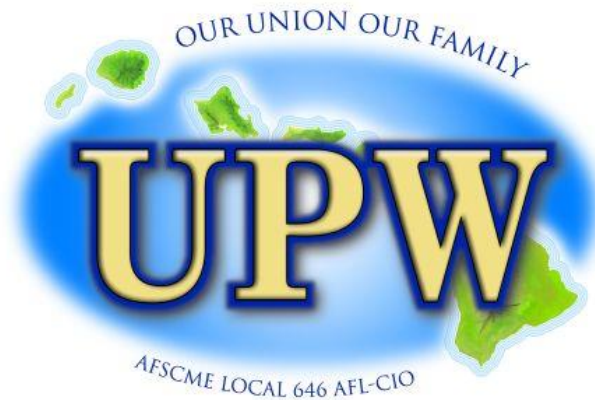
- 1.) Prohibit insurers from requiring preauthorization that causes undue delay in a patient's receipt of medical treatment or services; and
- 2.) Clarify liability for patient injuries caused by preauthorization delays.

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

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THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Ninth Legislature  
Regular Session of 2018

COMMITTEE ON HEALTH AND HUMAN SERVICES

The Honorable John M. Mizuno, Chair  
The Honorable Bertrand Kobayashi, Vice Chair

DATE OF HEARING: Wednesday, February 7, 2018  
TIME OF HEARING: 10:30 a.m.  
PLACE OF HEARING: State Capitol  
415 South Beretania Street  
Conference Room 329

**TESTIMONY ON HOUSE BILL 885 RELATING TO PRIOR APPROVAL FOR MEDICAL SERVICES**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers (UPW),  
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB885 prohibits health insurance preauthorization requirements that cause undue delay in receipt of medical treatment or services. This bill also specifies that insurers, not health care providers, are held liable for civil damages caused by undue delays for preauthorization. The UPW agrees that this bill is in the best interest of the State and medical patients to "ensure that preauthorization requests do not negatively impact the health of Hawaii residents". The UPW **supports** this measure.

Thank you for the opportunity to submit this testimony.



HAWAII RADIOLOGICAL SOCIETY

LETTER OF SUPPORT

February 6, 2018

To the Honorable John M. Mizuno, the Honorable Bertrand Kobayashi 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

**HB-885**

Submitted on: 2/5/2018 12:58:44 PM

Testimony for HHS on 2/7/2018 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joy Marshall		Support	No

Comments:

I know that some years ago haad I not recieved timely care I would not have survived beeast cancer. I am a proud survivor



TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
COMMENTING ON HOUSE BILL 885 RELATING TO DELAY  
IN PRIOR APPROVAL FOR MEDICAL SERVICES

February 7, 2018

Via e mail

Honorable Representative John M. Mizuno, Chair  
Committee on Health and Human Services  
State House of Representatives  
Hawaii State Capitol, Conference Room 329  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Mizuno and Committee Members:

Thank you for the opportunity to comment on HB 885, Relating to Delay in Prior Approval for Medical Services.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the policyholders that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States.

HB 885 seeks to amend Article 10A of Hawaii’s Insurance Code, relating to Accident Health and Sickness insurance by adding a new Section to that Article that would prohibit *all insurers* issuing accident and health or sickness insurance policies, plans, contracts or agreements from requiring its preauthorization of medical services or treatments “so as to cause an undue delay” in the insured’s receiving medical treatment or services. For violation, the insurer is made liable for the insured’s injury caused by the undue delay in receiving medical treatment.

By its terms, however, *Article 10A of the Code (by reference to HRS §431:1-205) defines “accident and health or sickness insurance” to include disability insurance.*

ACLI submits that these provisions are intended to apply only to health insurers – not insurers issuing disability insurance – as Section 1 of the bill states:

Prior approval for medical services . . . refers to health insurer requirements that certain physician-ordered treatments or services must be approved in advance by the insurer . . . before the insurer will provide final reimbursement or payment.

Disability insurance provides cash payments designed to help individuals meet ongoing living expenses in the event they are unable to work due to illness or injury. Unlike health insurance,

disability income insurance does not provide coverage for the insured's health care or medical treatment; further, the cash payments are made directly to the insured – not to the insured's health care providers or suppliers. Finally, the disability insurance policy typically does not dictate how the cash payments received by the insured are to be used by the insured.

Consistent with the bill's stated purpose as set forth in Section 1 of the bill ACLI suggests that the new section proposed to be added to §431: 10A (beginning at line 11, page 2 of the bill) be amended to dispel any confusion that disability insurers are subject to the bill's provisions as set forth below:

"§431:10A-\_\_\_\_ Preauthorization; undue delay; liability. (a)

~~Notwithstanding any provision of the law to the contrary, n~~ No insurer *referenced in this Section that provides health care coverage* shall require preauthorization of medical services or treatments so as to cause an undue delay in a patient's receipt of medical treatment or services.

Section 3 of HB 885 also seeks to amend HRS Chapter 432, governing Fraternal Benefit Societies, by adding a new section. As in Section 2 of the Bill, this new section would prohibit *all insurers* from requiring its preauthorization of medical services or treatments "so as to cause an undue delay" in the insured's receiving medical treatment or services. For violation, the insurer is made liable for the insured's injury caused by the undue delay in receiving medical treatment.

Several Fraternal Benefit Societies are ACLI member companies.

Chapter 432 authorizes Fraternal Benefit Societies to provide contractual benefits described in §432: 2-401, HRS, including disability benefits, and such other benefits as authorized for life insurers.

Like Section 2 of HB 885 the proposed provisions in Section 3 of the Bill are intended to apply only to health insurers – not Fraternal Benefit Societies issuing disability insurance.

In order to dispel any confusion that a Fraternal Benefit Society issuing a disability insurance policy is subject to the bill's provisions, ACLI suggests that the new section proposed to be added to Chapter 432 (beginning at line 16, page 4 of the bill) be amended as set forth below:

"§432-\_\_\_\_ Preauthorization; undue delay; liability. (a) ~~Notwithstanding~~

~~any provision of the law to the contrary, n~~ No insurer *referenced in this Section that provides health care coverage* shall require preauthorization of medical services or treatments so as to cause an undue delay in a patient's receipt of medical treatment or services.

Again, thank you for the opportunity to comment on HB 885, Relating to Delay in Prior Approval for Medical Services.

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