



## Annual External Review Report

In Accordance with Hawaii Revised Statutes §432E-13

Prepared by the

INSURANCE DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

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**Foreword**

Hawaii Revised Statutes (“HRS”) section 432E-13 requires the Insurance Commissioner to submit to the Legislature a report that contains the number of external review hearing cases reviewed, the type of cases reviewed, a summary of the nature of the cases reviewed, and the disposition of the cases reviewed. Furthermore, the identities of the plan and the enrollee shall be protected from disclosure in the report.

The external review process is an important component to the Patients’ Bill of Rights and Responsibilities Act, HRS chapter 432E. As such, the Insurance Division has provided a general overview of the external review statistics for fiscal year 2009-2010.

GORDON I. ITO  
Insurance Commissioner

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## External Review Report for Fiscal Year 2009-2010

This annual report is filed pursuant to Hawaii Revised Statutes (“HRS”) section 432E-13, which requires the Insurance Commissioner to submit an annual report concerning external review cases to the Legislature.

The Insurance Division administers the external review process under the Patients’ Bill of Rights and Responsibilities Act, HRS chapter 432E (“Act”). The Act provides patients with a mechanism for appealing adverse coverage decisions made by their health plans. After exhausting the health plans’ internal appeals process, patients may file a petition for external review with the Insurance Commissioner. If the Commissioner finds that there is good cause for a petition, a hearing is scheduled on the petition. The Insurance Commissioner may conduct the hearing for cases where the amount in controversy is less than \$500. Cases in excess of \$500 are heard by a three-member panel, consisting of the Commissioner or his representative, a representative of a health plan not involved in the case, and a practicing physician. The Act also provides for expedited hearings in cases involving serious jeopardy to life or health.

For fiscal year ‘09-’10, twenty-two (22) external review requests were filed. The nature of the cases reviewed involved fifteen (15) cases regarding policy coverage; four (4) cases regarding claim appeals; one (1) case regarding the plan’s provider network; and two (2) cases regarding miscellaneous issues.

Of the twenty-two requests; three (3) cases were dismissed; the health plan’s denial was overturned in two (2) cases; two (2) cases were withdrawn; a settlement between the parties was reached in one (1) case; and fourteen (14) cases are under review.

In November 2004, the Hawaii Supreme Court ruled in *Hawaii Management Alliance Association v. Insurance Commissioner*, 106 Haw. 21 (2004), that the external review process is pre-empted by the federal Employee Retirement Income Security Act (“ERISA”) as to health plans that fall under ERISA. The vast majority of health plans fall under ERISA because they are provided by private employers. As a result, the number of external review cases has been substantially lower since 2005.

On May 7, 2008 the Administrator for the Hawaii Employer-Union Health Benefits Trust Fund requested the Attorney General for a written opinion as to the applicability of Patients’ Bill of Rights to the EUTF. On August 14, 2008 the Department of the Attorney General opined that the Legislature did not explicitly apply HRS Chapter 432E to the State, in general, or to the EUTF. As such, the Department of the Attorney General found that HRS Chapter 432E does not apply to the EUTF. The opinion of the Department of the Attorney General is attached to this report.