LEWIS & ELLIS
Actuaries and Consultants

6600 Chase Oaks Blvd, Suite 150
Plano, TX 75023-2383

972-850-0850
lewisellis.com

Fiscal Impact Report – BR278/HB423

Prior Authorization Exemption Programs

PREPARED FOR THE KENTUCKY DEPARTMENT OF INSURANCE

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Introduction

Lewis & Ellis, LLC (L&E) was engaged by the Kentucky Department of Insurance (KY DOI) to perform a fiscal impact analysis of BR278/HB423, which would mandate the following:

1. Every insurer shall offer a program under which a participating provider may qualify for an exemption from the requirement to obtain prior authorization for any covered health care service that requires prior authorization, where the definition of 'health care service' does not include prescription drugs.
2. An insurer or its private review agent shall not require a covered person, authorized person, or participating provider to obtain a prior authorization for a particular health care service under a health benefit plan if, at the time the health care service was provided, the provider has a prior authorization exemption for that particular health care service under a prior authorization exemption program.
3. The prior authorization exemption program shall:
    a. Provide that a participating provider, for an evaluation period established by the insurer or private review agent, receive a prior authorization exemption for a particular health care service if, during the previous evaluation period, the provider met program terms and conditions established by the insurer or private review agent;
    b. Not condition a prior authorization exemption upon the provider exceeding a ninety-three percent (93%) approval rate for prior authorization requests submitted by the provider for that health care service during an evaluation period;
    c. Require the insurer or its private review agent to evaluate, on an annual basis, whether a participating provider qualifies to receive a prior authorization exemption for each covered health care service for which the insurer requires prior authorization;
    d. Require each annual evaluation to be conducted on:
        i. For participating provider contracts that have a performance period of one (1) year, the contract's renewal date; or
        ii. For participating provider contracts that have a performance period of greater than one (1) year, the annual anniversary date of the contract renewal; and
    e. Require an insurer or its private review agent to notify each participating provider that qualifies for a prior authorization exemption within thirty (30) days after conducting the annual evaluation.

Kentucky Revised Statute (KRS) 6.948[a] mandates that the sponsor of any bill proposing a health benefit mandate must request a health mandate fiscal impact statement from the Kentucky Department of Insurance (DOI). This statement must be completed within 30 days of the request and should include the following:

1. An assessment of the impact of the mandated health benefit on administrative expenses, premiums, and the overall cost of healthcare including any potential future cost savings.

[a] As amended by 2024 House Bill 635.

2. Supporting documentation, including studies, written opinions, calculations, and citations that validate the findings and conclusions.
3. An estimate of any potential cost savings in the future, along with an explanation of why the bill would or would not lead to such savings, and
4. A certification confirming the accuracy of the information provided.

Additionally, KRS 6.948 mandates that the sponsor of any bill proposing a health benefit mandate must also request a federal cost defrayal impact statement from the Kentucky DOI. This statement must be completed within 30 days of the request. The federal defrayal cost impact statement shall:

1. Indicate whether a bill or amendment that contains a mandated health benefit may result in the state being required to make payments to defray costs.
2. If applicable, indicate which provision(s) of the bill or amendment may trigger the requirement to make payments to defray the costs.
3. If applicable, include an estimate of the payment amount that the state may be required to make if the bill or amendment is enacted into law.

L&E is tasked with performing the health mandate fiscal impact and federal cost defrayal impact analyses for the Kentucky insurance market, excluding the Kentucky Employee Health Plan (KEHP) and the Kentucky Medicaid programs. The fiscal impact analyses for these programs are performed by other entities. For this analysis, L&E reviewed literature, gathered statistics from public sources[b], and used data from the KY DOI's 2023 Insurer Annual Data report.

Administrative Expense Impact Analysis

The proposed bill is estimated to have **an immaterial (within +/- 0.05%) impact on administrative expenses**, based upon our analysis of the proposed mandate and our experience with similar health insurance benefits. It is our assumption that the insurer administrative burden of ongoing prior authorizations would shift to prior authorization exemption program design and annual evaluations, thus not significantly impacting the administrative costs relative to current levels.

Premium Impact Analysis

To estimate BR278/HB423's premium impact, L&E evaluated data from KY DOI's 2023 Insurer Annual Data report and publicly available sources. L&E used the collected information and data to estimate a low-end and high-end range for the aggregate premium impact.

PERCENTAGE OF HEALTH PLANS THAT ALREADY HAVE A QUALIFYING PROGRAM

A 2022 survey[1] found that almost 60 percent of health plans using prior authorization exemption program, also known as "gold-carding" programs. Which was increased from approximately 30 percent in 2019. Notably, United Healthcare launched a national gold card program in October 2024[2]. Based on a review of publicly available research, L&E selected the following assumptions for the percentage of health plans that already have a program as required by BR278/HB423.

[b]Including reports for other states who have considered or passed similar legislation.

	Low	High
Percentage of Health Plans that Already Have a Qualifying Program	70%	60%

L&E notes that a higher percentage of insurers having a qualifying program pre-mandate results in a lower premium impact. Therefore, the higher percentage is listed for the low end.

PERCENTAGE OF CLAIMS COSTS REQUIRING PRIOR AUTHORIZATION

The proposed mandate would only impact services that currently require prior authorization. There is very limited publicly available research regarding the percentage of claims costs in the commercial insurance market requiring prior authorization. Based on the limited research[3] available and actuarial judgment, L&E selected the following assumptions for the percentage of claims costs requiring prior authorization.

	Low	High
Percentage of Claims Costs Requiring Prior Authorization	15%	30%

PERCENTAGE OF PROVIDERS QUALIFYING FOR PRIOR AUTHORIZATION EXEMPTION

There is not publicly available data regarding the typical percentage of providers in a prior authorization exemption program that qualify for exemption. Due to the great uncertainty regarding this assumptions, L&E selected a wide range for this assumption, as shown in the following table.

	Low	High
Percentage of Providers Qualifying for Prior Authorization Exemption	5%	95%

PERCENTAGE OF PRE-MANDATE DENIED CLAIMS THAT WOULD BE EXEMPT POST-MANDATE

Under a prior authorization exemption program, some claims will be automatically approved that would have been denied under a prior authorization review. There is limited publicly available data regarding the rate of prior authorization denials. Based on the limited research[4] available and actuarial judgment, L&E selected the following assumptions for the percentage of pre-mandated denied claims that would be exempt post-mandate.

	Low	High
Percentage of Pre-Mandate Denied Claims that Would be Exempt Post-Mandate	5%	10%

RESULTING PREMIUM IMPACT ESTIMATE

The following table illustrates the resulting estimated premium impact range.

Premium Impact Calculation		
Assumption	**Low**	**High**
Percentage of Health Plans that Already Have a Qualifying Program (a)	70%	60%
Percentage of Claims Costs Requiring Prior Authorization (b)	15%	30%
Remove Prescription Drug Claim Costs[c] (c)	65%	65%
Percentage of Providers Qualifying for Prior Authorization Exemption (d)	5%	95%
Percentage of Pre-Mandate Denied Claims that Would be Exempt Post-Mandate (e)	5%	10%
Mandate Claim Cost % Impact (f)=[1-(a)]*(b)*(c)*(d)*(e)	0.0%	0.7%
Projected 2025 Total Claims Costs PMPM (g)	$636.55	$636.55
Mandate Claim Cost Impact PMPM (h)=(f)*(g)	$0.05	$4.74

Premium Impact Calculation		
Assumption	**Low**	**High**
Projected 2025 KY Average Loss Ratio (i)[d]	89.5%	89.5%
Projected 2025 KY Average Premium PMPM (j)=(h)/(i)	$711.60	$711.60
Mandate Premium Impact PMPM (k)=(h)/(i)	**$0.05**	**$5.29**
Mandate Premium % Impact (l)=(k)/(j)	**0.0%**	**0.7%**
Projected 2025 KY Insured Members[e] (m)	351,797	351,797
Mandate Premium Total Annual Impact (n) = (k)*(m)*12	**$221K**	**$22.4M**

Total Cost of Health Care Impact Analysis

L&E defines 'Total Cost of Health Care' as being equal to the sum of the Allowed Cost (i.e., the amount paid by the insurer plus the amount paid by the insured) and the insurer Non-Benefit Expenses. Additionally, as required by KRS 6.948, L&E considered the impact of potential future cost savings.

POTENTIAL FOR FUTURE COST SAVINGS

L&E acknowledges that improved healthcare access by limiting denials can lead to prompt diagnosis and treatment, potentially reducing the need for higher-cost interventions in the future

[c] The proposed mandate excludes prescription drugs. The selected percentage is based on the 2023 Insurer Annual Data report provided by the KY DOI.

[d] Based on 2023 Insurer Annual Data report provided by the KY DOI. Excludes KEHP and Medicaid.

[e] Excluding the Kentucky Employee Health Plan (KEHP) and the Kentucky Medicaid programs.

for some cases. However, L&E found no research consensus that prior authorization exemption programs produce future net cost savings. Based on L&E experience, actuarial judgment, and other cost impact research discussed in prior sections of this report, L&E estimates the impact of potential future savings as a result of the BR278/HB423 to be immaterial (within +/- 0.05%).

RESULTING TOTAL COST OF HEALTH CARE IMPACT ESTIMATE

The table below illustrates the calculation of the estimated total cost of health care impact range, which is equal to the claim cost impact range.

Total Cost of Health Care (TCoHC) Calculation		
Assumption	**Low**	**High**
Mandate Allowed Cost % Impact (o)=(f)[f]	0.0%	0.7%
Projected 2025 KY Allowed Cost PMPM (p)	$788.20	$788.20
Mandate TCoHC Impact PMPM (q)=(f)*(p)	$0.06	$5.86
Projected 2025 KY TCoHC PMPM (r)	$863.25	$863.25
Mandate TCoHC % Impact (s)=(q)/(r)	**0.0%**	**0.7%**
Projected 2025 KY Insured Members (s)	351,797	351,797
Mandate TCoHC Total Annual Impact (x) = (u)*(s)*12	**$244K**	**$24.8M**

Cost Defrayal Impact Analysis

Based on L&E's research and actuarial judgment, L&E determined that this bill does not contain a mandated health benefit that would result in the state being required to make payments to defray costs under 42 U.S.C sec 18031(d)(3) and 45 C.F.R. sec 155.170, as amended. This is based on the understanding that there is no health benefit proposed to be mandated, only prior authorization requirements.

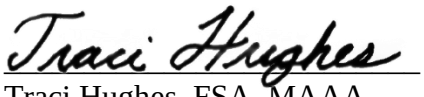
L&E has disclosed its defrayal determination based on its earnest interpretation of federal guidance available as of the date of this report. However, determination of defrayal is ultimately under the regulatory purview of Centers for Medicare and Medicaid Services (CMS).

[f]The increase in approved claims equally impacts the claim cost paid by the insurer and the cost-sharing paid by the insured, the sum of which is allowed costs.

Certification of Accuracy

L&E believes the estimates are accurate based on the information disclosed in the report. To the extent that there are material inaccuracies, misrepresentations, or lack of adequate disclosure in the data, the results may be accordingly affected. Several of the assumptions made in this analysis are subject to uncertainty and it is expected that actual results could differ from the calculated estimates.

Robert Dorman, ASA, MAAA
Vice President & Consulting Actuary
Lewis & Ellis, LLC



Traci Hughes, FSA, MAAA
Vice President & Principal
Lewis & Ellis, LLC

2/18/2025
(Signature of Commissioner/Date)

ASOP 41 Disclosures

The Actuarial Standards Board (ASB), vested by the U.S.-based actuarial organizations[g], promulgates actuarial standards of practice (ASOPs) for use by actuaries when providing professional services in the United States.

Each of these organizations requires its members, through its Code of Professional Conduct[h], to observe the ASOPs of the ASB when practicing in the United States. ASOP 41 provides guidance to actuaries with respect to actuarial communications and requires certain disclosures which are contained in the following.

Identification of the Responsible Actuary

The responsible actuaries are:

- Bobby Dorman, ASA, MAAA, Vice President & Consulting Actuary
- Traci Hughes, FSA, MAAA, Vice President & Principal

These actuaries are available to provide supplementary information and explanation.

Identification of Actuarial Documents

The date of this document is February 18, 2025. The date (a.k.a. "latest information date") through which data or other information has been considered in performing this analysis is February 18, 2025.

Disclosures in Actuarial Reports

- The contents of this report are intended for the use of the Kentucky Department of Insurance. The authors of this report are aware that it may be distributed to third parties. Any third party with access to this report acknowledges, as a condition of receipt, that they cannot bring suit, claim, or action against L&E, under any theory of law, related in any way to this material.
- Lewis & Ellis, LLC is financially and organizationally independent from the health insurers and providers involved in this analysis. There is nothing that would impair or seem to impair the objectivity of the work.
- The purpose of this report is to assist the Kentucky Department of Insurance in assessing the financial impact and federal cost defrayal impact of proposed legislation that includes a proposed health benefit mandate.
- The responsible actuaries identified above are qualified as specified in the Qualification Standards of the American Academy of Actuaries.
- L&E has reviewed the data provided by the insurers and Kentucky Department of Insurance for reasonableness, but the data has not been audited. L&E nor the responsible actuaries assume responsibility for these items that may have a material impact on the analysis. To the extent that there are material inaccuracies in, misrepresentations in, or lack of adequate disclosure by the data, the results may be accordingly affected.

[g] The American Academy of Actuaries (Academy), the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries.

[h] These organizations adopted identical *Codes of Professional Conduct* effective January 1, 2001.

- Several of the assumptions made in this analysis are subject to uncertainty and it is not unexpected that actual results could differ from the calculated estimates.
- L&E is not aware of any subsequent events that may have a material effect on the findings.
- There are no other documents or files that accompany this report.

Actuarial Findings

The actuarial findings of the report can be found in the body of this report.

Bibliography

[1] AHIP. (2022). 2022 AHIP Gold Carding Survey Results. https://ahiporg-production.s3.amazonaws.com/documents/202207-AHIP_1P_Gold_Carding_Survey_Results.pdf?utm_

[2] UnitedHealthcare. (2024, August 24). *National Gold Card program protocol*. https://www.uhcprovider.com/en/resource-library/news/2024/national-gold-card-program-protocol.html?cid=em-providernews-2024nnb2-Aug24

[3] Parker, L. (2021, July 26). *Health 202: Texas is cutting red tape for doctors and patients*. The Washington Post. https://www.washingtonpost.com/politics/2021/07/26/health-202-texas-is-cutting-red-tape-doctors-patients/

[4] Washington State Office of the Insurance Commissioner. (2023). *2023 health plan prior authorization report*. https://www.insurance.wa.gov/sites/default/files/documents/2023-health-plan-prior-auth-report.pdf