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Good morning Sen. Anwar, and Rep. McCarthy Vahey and members of the Public Health Committee. I would like to comment on two bills on today's agenda:

SB180, AN ACT CONCERNING ADVERSE DETERMINATION AND UTILIZATION REVIEWS and SB182, AN ACT PROHIBITING CERTAIN HEALTH CARRIERS FROM REQUIRING STEP THERAPY FOR PRESCRIPTION DRUGS USED TO TREAT A MENTAL OR BEHAVIORAL HEALTH CONDITION OR A CHRONIC, DISABLING OR LIFE-THREATENING CONDITION.

SB 180 would (1) require health carriers to bear the burden of proof in appeals of health insurance denials; (2) redefine "clinical peer" to ensure that the peer is a specialist in the same field as the treating physician; and (3) require health carriers to provide certain clinical peers with authority to reverse health insurance coverage denials.

This legislation would provide a number of innovative protections for patients. First, it would create a presumption that treatment that is ordered by a physician is medically

necessary treatment. This would allow physicians to practice medicine and limit the ability of the health insurers to interfere with patient treatment by making medical decisions which they are not qualified to make.

Generally in law, the burden of proof in any case is placed on the party who has the relevant information and knowledge[1]. Sb 180 would bring appeals of adverse determinations in line with most areas of the law. Here, the insurer is the only party with knowledge as to why a claim was denied. In appeals of adverse determinations, neither the patient nor the provider know why the payer declined to cover a service.

Despite this reality, under the current framework the burden of proof in these appeals is on the patient and the provider. In fact prior to PA 12-102 the patient and provider didn't even have the right to access the record that the insurer used to make the decision.

There are other situations in healthcare where the burden of proof favors the patient. In the federal legislation on veteran's health care there is a presumption regarding burn pits being the cause of certain health conditions https://ctmirror.org/2022/08/02/burn-pits-bill-passes-senate-expanding-benefits-ct-veterans/ . The ACA has language that if a coal miner gets black lung there is a presumption that it was caused by mining coal. https://khn.org/news/aca-repeal-threatens-a-black-lung-provision-popular-in-coal-country/

[1] (e.g. if you are hit by a barrel when walking under Joe's Barrel Co the court can flip the burden of proof such that the company would have to show that the barrel wasn't JBCs barrel.)

In addition, an insurer is not licensed to practice medicine and its judgment as to what is medically necessary for a patient should hold far less weight than that of the treating physician. The insurer could still, of course, deny claims under this framework; it would simply have to prove that the treatment was not medically necessary. In addition, if an insurer has concerns about the treatment practices of an in-network provider, that concern should be addressed with the provider; the patient should not be used as a pawn in these disputes.

SB 180 would also create a more stringent definition of "clinical peer" in the appeal process for adverse determinations[2] (including in the peer to peer conference that the health carrier is required to offer to the treating physician upon the initial adverse determination). Requiring that the clinical peers used to evaluate adverse determination reviews be certified specialists in the same subspecialty would result in more accurate and appropriate determinations. In addition, this legislation would require that the peer that is provided for the peer to peer conference have the authority to overturn the adverse determination. This would benefit all parties involved and make our healthcare system more effective. It defeats the purpose of the law that requires insurers to offer a peer to peer conversation when the insurer denies a claim that the insurer's peer cannot actually overturn the denial

[2] The gun bill in 2013 created a tighter definition of clinical peer for mental health claims; this bill attempts to do that for all claims

SB 182 would offer relief for patients and providers who have been forced to use suboptimal prescription medication by health insurance companies' use of step therapy (fail first) policies

My office has been contacted in recent years by patients with disabling diseases and the physicians who treat these patients. It is a source of tremendous frustrations for both the patients and their physicians when these patients are unable to access appropriate medication due to insurers' fail first (step therapy) requirements. This is particularly problematic with degenerative chronic diseases for which patients can suffer irreversible disability during the time they are denied the proper treatment.

While there may be legitimate uses of step therapy, too often it is implemented in a manner that interferes with patient care and leads to insurers preventing physicians from providing the best care for patients. In 2014 Public Act 14-118 AN ACT CONCERNING REQUIREMENTS FOR INSURERS' USE OF STEP THERAPY created certain patient protections regarding insurance carriers' use of step therapy. However, patients and providers continued to have situations in which the carriers' step therapy policies prevent the patients from receiving the treatment that their health care providers have decided is the most appropriate. In some cases this has delayed effective treatment which can leave patients with diminished health outcomes. In 2017 PA 17-228, AN ACT CONCERNING STEP THERAPY FOR PRESCRIPTION DRUGS PRESCRIBED TO TREAT STAGE IV METASTATIC CANCER, recognized these continued patient struggles and further regulated the use of step therapy in certain cancers. However, the use of step therapy continues to be particularly problematic for disabling diseases and

degenerative chronic diseases, behavioral health and cancer patients. Last year Sec. 225 and 226 of PA 23-204 reduced how long an insurer can require an insured to use step therapy for prescription drugs from 60 to 30 days and prohibited step therapy from January 1, 2024, to January 1, 2027, for drugs used to treat schizophrenia, major depressive disorder, or bipolar disorder. SB 182 would ensure that the physician is able to provide the best treatment for patients who have disabling conditions as well as cancer and behavioral health conditions. It would improve the lives of many of our citizens.

I would urge you to add a section that restores the CUTPA violation on facility fees that was inadvertently removed by PA 23-171 as well as a section that would prohibit facility fees for infusion services performed in hospital owned outpatient centers.

Thank you for hearing these important bills