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To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 688 (Health Insurance - Utilization Review for Coverage of Prescription Drugs and Devices - Expedited Appeals): Information

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) understands from the sponsor's staff that the intent of this bill is to curtail the unjustifiably negative effects of utilization review by carriers who increasingly deny claims for prescription drugs and devices prescribed by providers. Utilization review is the process whereby carriers effectively make medical judgments about a provider's prescription, and substitute their judgment about what should be prescribed.

The HEAU supports the good intentions of this bill. We have some concerns about the proposed utilization review "appeal" processes that are proposed, which appear intended to be distinct from, but parallel to, the current requirements in Md. Code Ann., Ins. § 15-10A, 10B and 10D. For example, current Maryland law has two similar processes for patients to dispute carrier determinations, one (§ 15-10A) for carriers' denials that proposed or delivered health care services are not or were not *medically necessary* ("adverse decisions") and another (§15-10D) for carriers' determinations that result in the *contractual exclusion* of a health care service ("coverage decisions"). Challenges to "adverse decisions"- decisions based on utilization review- are "grievance decisions" and challenges to "coverage decisions" are "appeals."

This bill uses the term "appeal" to describe a challenge to a utilization review decision, which will create confusion and could inadvertently limit consumer rights. (e.g., page 2, lines 26 and 31; page 3, lines 2, 8, 19, etc.) It is also unclear how the "appeal"

process outlined in this bill can be "independent" and "distinct" from the processes outlined in 15-10-A and 15-10-D. We believe the processes are too interrelated to be distinct. (Page 3, lines 19-22).

We are also concerned about page 2, lines 31-34, which provides for an expedited appeal for an emergency case to be handled by the "entity subject to this section." Under current law, if the denial of coverage is an emergency and eligible for an expedited review, the consumer can bypass the carrier and seek the Commissioner's assistance and the Commissioner is required to render an opinion within 24 hours, not 48 hours as contemplated by this bill. *See* § 15-10A-03. We frequently assist consumers with emergency cases and believe the introduction of this provision could inadvertently undermine consumers' current emergency rights.

We respectfully ask the committee to seek the input of the Maryland Insurance Administration, the state agency charged with enforcing the current utilization review process, including private review agent criteria, about how to strengthen consumer protections regarding utilization review of carriers without inadvertently reducing or hindering consumer rights under existing law.

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