HB1314 Prior Authorization Fees LOSA Crossover (1

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Position: FWA

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
HEALTH EDUCATION AND ADVOCACY UNIT

ANTHONY G. BROWN
Attorney General

WILLIAM D. GRUHN
Division Chief

KIMBERLY S. CAMMARATA
Unit Director

PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief Operating Officer

IRNISE WILLIAMS
Deputy Unit Director

March 24, 2025

TO: The Honorable Pamela Beidle, Chair
Senate Finance Committee

FROM: Irnise F. Williams, Deputy Director, Health Education and Advocacy Unit

RE: House Bill 1314 – Prior Authorizations – Prohibiting Fees – **SUPPORT WITH AMENDMENTS**

The Health Education and Advocacy Unit (HEAU) supports, with amendments, House Bill 1314, which prohibits in-network providers from charging patients a fee to obtain prior authorization from a carrier or managed care organization, defined as entities regulated by the state. The HEAU has not received complaints from consumers regarding such fees but a quick google search reveals it is happening in other states, with consumers reportedly facing fees as high as $80 per prior authorization. To be clear, the practice of billing insured consumers for such fees is likely a violation of the Consumer Protection Act. Maryland Medicaid balance-billing rules, Maryland's HMO balance-billing rules, and most carrier-provider contracts prohibit charging plan beneficiaries' administrative fees, or other fees inherent in the delivery of covered services. Accordingly, the bill language merely codifies current law. Our concern with the bill as drafted is that it could suggest that nonparticipating providers are free to impose such fees without adequate pre-treatment notice, which would also likely be a violation of the Consumer Protection Act.

There is little doubt that the prior authorization process has become a significant burden for providers and patients, which is why the General Assembly has taken steps over the last several years and has introduced bills this year to minimize those burdens. Additionally, there is consideration at the national level to create CPT codes for services related to the prior authorization of procedures, and ultimately payment for those services. At the base of this issue are the patients who need care and should not be facing completely unexpected fees for accessing the care they need.

The HEAU does not believe this bill is necessary because such fees are likely prohibited in the first instance. Should the Committee wish to codify the prohibition, we ask that consumers who are using out-of-network providers either willingly, or because they are forced out-of-network due to the lack of adequate networks or for other reasons, be protected from charges for obtaining prior authorization. If consumers are not protected from these charges, the fees should be capped, and the consumer should be provided with clear advance notice of any such add-on fees so they can make informed decisions about where to seek care. We offer the suggested amendments below.

cc: The Honorable April Miller *et.al*

HEAU Amendments

Amendment No. 1.

On page 2, line 13, strike "subject to regulation by the state".

Rationale – We want to ensure the consumers with plans that aren't regulated by the State, such as self-funded plans, are offered the same provider billing protections as those with regulated plans.

Amendment No. 2.

On page 3, line 1, strike "AN IN-NETWORK"

Rationale – Consumers should not be put in the middle of provider-carrier compensation disputes and should not face add-on fees to access the care they need.

Alternative to Amendment 2.

- On page 3, in line 1, before "AN IN-NETWORK" insert "(A)".

- On page 3, in line 4, insert

  "B. SUBJECT TO SUBSECTIONS (C), (D), (E), AND (F) OF THIS SECTION, IF AN OUT-OF-NETWORK PROVIDER SEEKS TO CHARGE A FEE TO OBTAIN A PRIOR AUTHORIZATION FROM A CARRIER, THE OUT-OF-NETWORK PROVIDER SHALL PROVIDE THE PATIENT WITH WRITTEN NOTICE, SEPARATE FROM ANY OTHER FORMS OR NOTICE, THAT:

  (1) THE PROVIDER CHARGES A FEE TO OBTAIN PRIOR AUTHORIZATION FROM CARRIERS;
  (2) A DESCRIPTION OF WHAT IS MEANT BY PRIOR AUTHORIZATION AND DESCRIPTIVE EXAMPLES;
  (3) THE FEE THE PROVIDER CHARGES, INCLUDING THE TERMS OF THE FEE; AND
  (4) THAT OTHER PROVIDERS MAY NOT CHARGE SUCH FEES.

(C) (1) FOR AN APPOINTMENT MADE IN PERSON OR BY TELEPHONE:

(I) ORAL NOTICE OF ALL THE INFORMATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE GIVEN AT THE TIME THE APPOINTMENT IS MADE; AND

(II) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THE WRITTEN NOTICE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE SENT TO THE PATIENT ELECTRONICALLY AT THE TIME THE APPOINTMENT IS MADE.

(2) FOR AN APPOINTMENT MADE ELECTRONICALLY OR USING A WEBSITE, THE WRITTEN NOTICE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE:

(I) PROVIDED AT THE TIME THE APPOINTMENT IS MADE; AND

(II) SENT TO THE PATIENT ELECTRONICALLY AT THE TIME THE APPOINTMENT IS MADE.

(3) IF THE PATIENT REFUSES ELECTRONIC COMMUNICATION THE WRITTEN NOTICE SHALL BE SENT TO THE PATIENT BY FIRST–CLASS MAIL AT THE TIME THE APPOINTMENT IS MADE.

(D) BEFORE PROFESSIONAL MEDICAL SERVICES ARE PROVIDED ON THE DATE OF THE APPOINTMENT, THE PATIENT SHALL ACKNOWLEDGE IN WRITING THAT THE NOTICE REQUIRED UNDER THIS SECTION WAS PROVIDED AT THE TIME THE APPOINTMENT WAS MADE.

(E) AN OUT-OF-NETWORK HEALTH CARE PROVIDER MAY NOT CHARGE, BILL, OR ATTEMPT TO COLLECT A FEE TO OBTAIN A PRIOR AUTHORIZATION UNLESS THE PATIENT WAS GIVEN NOTICE IN ACCORDANCE WITH THIS SECTION.

(F) AN OUT-OF-NETWORK HEALTH CARE PROVIDER MAY NOT CHARGE, BILL, OR ATTEMPT TO COLLECT A FEE TO OBTAIN A PRIOR AUTHORIZATION IN EXCESS OF $10.

(G) A VIOLATION OF THIS SECTION IS:

(I) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE, AS DEFINED UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

(II) SUBJECT TO ENFORCEMENT AND PENALTY PROVISIONS OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE.