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February 11, 2025

TO: The Honorable, Joseline A. Peña-Melnyk, Chair
Health and Government Operations Committee

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

RE: House Bill 0820- Health Insurance - Utilization Review - Use of Artificial
Intelligence- **SUPPORT with Amendments**

The Health Education and Advocacy Unit (HEAU) supports with amendments, House Bill 0820, which requires carriers to identify if Artificial Intelligence (AI), algorithmic tools, or other software was used in making adverse decisions. Additionally, among other things, the bill would ensure that even if AI is used in the process of making an adverse decision that the role of the health care provider in the determination process is not eliminated, and that use of such tools does not result in discrimination. This is one of several bills that attempt to address the use of Artificial Intelligence in the health insurance claims review process, which was highlighted in a recent [ProPublica article](#).

The ProPublica investigation featured a patient who was experiencing shortness of breath, swollen ankles, and difficulty sleeping while lying down and was advised by his doctor that he needed a heart catheterization and more testing. The insurance company denied the physician's request twice and the physician decided not to fight the insurance company and provided the patient with a different treatment plan. Within three months after the initial denial, the patient received a stress test instead of the recommended treatment and died in his sleep before he even received the results. The cost difference of a nuclear stress test generally is \$315 versus the catheterization which averages \$3500. The insurance company delayed care, saved money, but cost a family their loved one and a patient their life. There are many stories about the impact of adverse decisions and the need to identify how these decisions are being made is critical to the health and safety of Marylanders whose care is being determined by AI.

The report also highlighted that some insurance companies have outsourced the process of medical reviews to companies that market their companies by promising to increase profits and revenues by increasing denials using AI tools. These AI tools and algorithms can be adjusted to cause a higher rate of denials that may be based on discriminatory factors. Among many other alarming findings,

the [ProPublica investigation](#) revealed that one particular company tweaked its proprietary algorithm to increase the number of requests sent for review by a provider, which correlated with a higher chance of denials. An analysis of that company's data showed that, since 2021, the company turned down prior authorization requests, in full or in part, almost 20% of the time in Arkansas, which requires the publication of denial rates. By comparison, the [equivalent figure](#) for federal Medicare Advantage plans was about 7% in 2022."

The use of AI is transforming utilization review practices by causing delays in care and harm to consumers physically, mentally, and financially. In the last few years, the General Assembly has continuously worked to increase transparency in denial trends, and this would be another step toward understanding the variability of utilization review processes. Without adequate legislative and regulatory frameworks on the use of AI in utilization review decisions, many consumers who don't pursue their own claims or seek help from the HEAU or MIA will continue to go without care or will face financial challenges. We support this bill that establishes a statutory framework and appears largely to include the key components advocated by the Consumer Representatives to the National Association of Insurance Commissioners, in its November 2024, [Final Report – Artificial Intelligence in Health Insurances: The Use and Regulation of AI in Utilization Management](#). The guiding principles include:

- Transparency & Data
- Accountability
- Effective Oversight

In the spirit of those guiding principles, we propose the following amendments to ensure transparency, accountability, and effective oversight of the use of AI in carrier's decision-making process.

We look forward to working with the stakeholders to ensure transparency and equity when AI is used in the carrier's decision-making process and urge a favorable report that includes the HEAU's proposed amendments.

cc: The Honorable Terri L. Hill
The Honorable Anne R. Kaiser
The Honorable Aaron M. Kaufman
The Honorable Jazz Lewis
The Honorable Jeffrie E. Long, Jr.
The Honorable Malcolm P. Ruff
The Honorable Caylin Young

House Bill 0820- Health Insurance - Utilization Review - Use of Artificial Intelligence

HEAU Proposed Amendments

1. On page 4, line 12, after “a” INSERT “the enrollee or”
We request this amendment because consumers often submit their own claims or pursue their own grievances and appeals.
2. On Page 5, at the end of line 14, after “as applicable;” INSERT
 - (11) Prior to the deployment of artificial intelligence, and regularly thereafter, establish a written risk-based governance and risk management framework that evaluates the risk of using artificial intelligence for the intended purpose and the robustness of any controls that are put in place to mitigate the identified risks.
 - (12) Disclose to enrollees when artificial intelligence is used in the course of making decisions that have an impact on health care services or coverage.
2. On Page 5, after “(D)” INSERT
 - (E) Any determination made by artificial intelligence that negatively impacts health care services directly or indirectly is reviewed by a human before being delivered to the health care provider or enrollee.

Rationale: The HEAU believes that human oversight must be embedded into utilization review when AI is used, and those reviewers must have the authority and ability to overturn decisions made by the AI without consequences or delays. Supporting source:

https://content.naic.org/sites/default/files/national_meeting/Final-CR-Report-AI-and-Health-Insurance-11.14.24.pdf.