

4/4/22 and 4/20/2022

Thank you to Representatives Amabile and Young and Senators Kolker and Fenberg for drafting this important bill. Thank you also to all others present for reviewing this testimony. My name is Dr. Lisa Griffiths, Licensed Psychologist, active member of the Medicaid advocacy group COMBINE, and owner of a medium sized mental health clinic and training program. Our clinic provides 60-70% of our therapeutic services to Medicaid recipients across the state. I am in support of this bill and its current amendments as are the independent providers of COMBINE.

This bill ensures a level of protection for providers who have delivered and been compensated for a legitimate, covered mental health service. Recoupment, or a clawback, is when a payer takes back money from a provider for services rendered in good faith. With the exception of fraud, which is addressed appropriately in this bill and should always be subject to recoupment, a provider should not be held financially or administratively liable for factors that are out of their control. These include payer software glitches, payers not being ready on time for a federally or state mandated policy rollout, or client eligibility issues in which a recipient of services is later determined not to have been eligible at the time of service.

In the last year, many providers in the IPN have seen several recoupment attempts, some in which payers were successful in recouping and some not, for the reasons I mentioned. Some were so egregious that the press got involved and those actions may have even inspired the writing of this bill. Medicaid providers began giving notice that they would no longer serve this vulnerable population because of the threat of recoupment, as it can easily close a practice. Bottom line, recoupment has a direct effect on Medicaid members when those who provide the services are no longer willing to endure the financial abuses that recoupment delivers.

Historically, backdating for disenrollment can often go back a year and then the provider then must pay back money for services they actually delivered because the payer did not have correct eligibility information for its own member at the time of service. Of note, Title 25.5, states that the state department cannot recoup for eligibility errors or retroactive disenrollment from "county departments" and "other entities," even though they may have the financial capital to cover those losses. Individual and group providers do not have the same financial cushion. With the introduction of this bill, individual or small group providers would now have access to some of these same financial safeguards, including for the upcoming large-scale disenrollment.

This bill also guarantees that Medicaid payers will no longer be able to require prior authorizations for routine outpatient therapy services. Recently, HCPF altered its policy which aligns with this bill to halt all prior authorizations for outpatient psychotherapy starting July 1. However, policy is not law and if leadership changes, so too can policy. This was a major concern for the IPN and sponsors of this bill. The sponsors of this bill have noted that without this in statute, policy reversals can occur at any time with changes in leadership at HCPF or the Medicaid payers. They really want this in statute and so do the providers who are impacted by these administratively burdensome, impractical, wasteful, and costly PAR programs. No

commercial plan in Colorado requires preauthorization for routine mental health care either nor does the FFS medical plan, so this would also ensure parity for routine mental health services as well.

We ask that you support this bill so providers can continue to do the important work of direct care, without fear of the financial or administrative drain that prior authorization and recoupments present.

COLORADO SOCIETY OF CLINICAL PATHOLOGISTS

5523 Yank Way • Arvada, CO 80002
cscpmgr@hotmail.com • www.cscpweb.org

April 22, 2022

The Honorable Susan Lontine
Chair, House Health and Insurance Committee
HCR 112
200 E Colfax Avenue
Denver, CO 80203

The Honorable David Ortiz
Vice-Chair, House Health and Insurance Committee
HCR 112
200 E Colfax Avenue
Denver, CO 80203

RE: Amend Senate Bill 78- Prior Authorization Exemption Health-Care Provider

Dear Chair Lontine and Vice-Chair Ortiz:

The Colorado Society of Clinical Pathologists (CSCP), with the support of the College of American Pathologists (CAP), submit the following written comments requesting a critical amendment to Senate Bill 78 to protect our patients and health care providers.

While we appreciate the intent to alleviate administrative burdens on health care providers by requiring an exemption for prior authorization for qualified providers, we are deeply concerned about potential adverse claims impacts upon both health care providers and patients given the legislation's omission of any statutory protections to ensure coverage and payment for health care services. This omission generates a bill that largely favors health insurances plans to the potential financial detriment of both patients and health care providers.

Specifically, the bill does not afford protections to patients against retrospective denials of coverage for services which have been subject to the prior authorization waiver. Quite simply, without these protections the bill presents substantial financial risk to certain providers, including pathologists, who receive orders for health care services from physicians who have received a waiver from prior authorization. Similarly, patients will be at financial risk from receiving retrospective denials of coverage- a protection that is currently in Colorado law based upon prior authorization being granted.

Accordingly, we urge an amendment to ensure when prior authorization requirements are waived under an 'exemption' there will be a statutory protection against an adverse claims impact upon any physician that performs or supervises a service exempted from such prior authorization. Without this statutory protection, pathologists and laboratories can be denied or limited payment for the services subject to prior authorization exemptions. In these cases, patients may be at financial risk for uncovered health care services.

To protect against this scenario, Texas's 2021 model gold carding prior authorization law included safeguards to protect against adverse claims impact upon the waiver of prior authorization for qualified physicians.

Texas Law Sec. 4201.659.

(a) A health maintenance organization or insurer may not deny or reduce payment to a physician or provider for a health care service for which the physician or provider has qualified for an exemption from preauthorization requirements under Section 4201.653 based on medical necessity or appropriateness of care unless the physician or provider:

(1) knowingly and materially misrepresented the health care service in a request for payment submitted to the health maintenance organization or insurer with the specific intent to deceive and obtain an unlawful payment from the health maintenance organization or insurer; or (2) failed to substantially perform the health care service.

As noted, of concern, Colorado's current protection under Colo. Rev. Stat. § 10-16-704 is nullified under Senate Bill 78, which provides the following retrospective denial safeguard when prior authorization has been approved by a health plan carrier:

(4) When a treatment or procedure has been preauthorized by the plan, benefits cannot be retrospectively denied except for fraud and abuse. If a health carrier provides preauthorization for treatment or procedures that are not covered benefits under the plan, the carrier shall provide the benefits as authorized with no penalty to the covered person.

The CAP and CSCP believe that analogous safeguard language must be included to protect against any downstream adverse claims impact upon providers of the health care services ordered by providers exempted from prior authorization.

For these reasons, we urge the following amendment:

1) Amend Page 4, Line 12 by Inserting New:

(VII) A carrier or organization shall not deny or reduce payment for a health care service exempted from a prior authorization requirement as provided under subsection 10-16-112.5. (c)(I)(A), including a health care service performed or supervised by another physician when the physician or provider who ordered such service received a prior authorization exemption unless the physician or provider: (1) knowingly and materially misrepresented the health care service in a request for payment submitted to a carrier or organization with the specific intent to deceive and obtain an unlawful payment from the carrier or organization; or (2) failed to substantially perform the health care service.

In conclusion, we implore you to amend Senate Bill 78 to incorporate the payment safeguard to protect patients and physicians from adverse claims impact and undue financial risk.

Thank you for your consideration.

Sincerely,



Bryan Coffing, MD, FCAP
Colorado Society of Clinical Pathologists, President

cc: Barry Ziman, Director, Legislation and Political Action, College of American Pathologists
Amy Berenbaum Goodman, JD, MBE, Senior Director of Policy, Colorado Medical Society
Emily Bishop, Director of Government Affairs, Colorado Medical Society