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Testimony of Rep. Anne-Marie Mastraccio introducing
LD 1407, An Act to Amend the Maine Insurance Code Regarding Payments by Health Insurance Carriers to Providers
Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services

Senator Bailey, Representative Perry and fellow members of the Health Coverage, Insurance and Financial Services Committee, I am Anne-Marie Mastraccio, Representing House District 142, part of the City of Sanford and the Village of Springvale. I am before you today to present **LD 1407, An Act to Amend the Maine Insurance Code Regarding Payments by Health Insurance Carriers to Providers**.

This legislation deals with the relationship between providers and carriers. It does four things, two of which are relatively minor and two of which are significant. Please refer to the bill language as I go through the testimony. Let's start with the minor issues.

1. Section 4 (page 2). Limitation on carrier ability to deny claims retroactively.

Under current Maine law, a health insurance company can retroactively deny a claim it has approved and paid. They can pay a claim and then take it back.

Current law limits retroactive denials to 1 year – UNLESS – one of six conditions exist (see lines 27-36). If one of these six conditions exist, there is currently no limit on how far back a carrier can go and recoup a paid claim. Most legal actions have a statute of limitations. Even criminal acts have a statute of limitations.

We need to impose a second limit for retroactive denials that occur pursuant to an exception. LD 1407 proposes a two-year limitation. While it is somewhat arbitrary, almost all statutes of limitation are somewhat arbitrary. We need a second limit of some duration as it should not remain completely open-ended.

2. Sections 1 and 2 (page 1). Obligations on carriers acting as third-party administrators (TPAs).

These two sections impose on TPAs the same obligations that are imposed on these very same carriers when the carriers are issuing coverage in the market. Both of these sections deal with the manner by which carriers deny claims.

There should be no debate about whether existing Maine policy is appropriate– we've collectively already imposed these obligations on carriers. The question is a legal issue – may we as a state impose these obligations on carriers when they are acting as TPAs?

Generally speaking, we are told that states may not regulate TPAs because of the federal "ERISA preemption." That is, a carrier acts as a TPA when another company is self-insuring. Corporate self-insured plans are not regulated by states, they are regulated by the ERISA law. However, I am also under the impression – though I am no expert – that ERISA preemption is not absolute. It feels as if we as a committee often act as though ERISA preemption is absolute. My hope is that we can impose some market conduct regulations on TPAs.

3. Section 3 (page 2). Unilateral policy changes by carriers and Bureau of Insurance oversight.

This is the heart of the bill. There are two distinct changes proposed in section three of LD 1407.

Unilateral policy changes. First, the bill further limits, albeit modestly, the ability of carriers to impose unilateral policy changes on providers.

Carriers adopt dozens and dozens of "policies" that dictate to providers how the providers must practice medicine in order to get reimbursed by the carrier. Whether its prior authorization or medical necessity or whatever, the carrier tells the provider via a "policy" under what circumstances a particular test or procedure will be reimbursed.

It is my understanding that contracts between carriers and providers often expressly allow carriers to unilaterally change these policies at any time. I was surprised to learn that providers sign these contracts. Why would any party to a contract let the other party change it at any time? Maine law does not say very much about these unilateral contract changes. In essence, our laws only require that carriers give notice to the providers that a change is being made.

Some of these unilateral policy changes are minor, and in speaking with providers, are not a problem. For example, updating CPT codes or CPT code descriptions as those CPT codes get changed by others. However, other unilateral policy changes are not minor and can have an impact on both patient access to care and provider reimbursement.

If you recall, unilateral policy changes were at the heart of the Maine Medical Center (MMC) vs. Anthem dispute last summer that nearly led to MMC leaving Anthem's network. Many of us

were alarmed at this stand-off and this is my attempt, with the support of the hospitals, to mitigate the risk of such a dispute in the future.

Intervening in private contracts is a big step, I recognize that. But, we've already intervened by expressly allowing carriers to make unilateral contract changes in statute. I'm not sure that was the right decision. I believe contract terms that allow one party to unilaterally change those contract terms implicates public policy and that we should act. My proposal constitutes such action.

Bureau of Insurance Oversight. The second change in section 3 is to give the Bureau of Insurance more oversight of disputes between carriers and providers.

One of the themes of this session is that there appears to be no enforcement provision for the laws we enact governing provider-carrier relations. We pass laws, like prior authorization requirements, but then we don't have an enforcement mechanism in place. I think that needs to change. Right now, we simply leave it to providers to incorporate our laws in their contracts and then enforce their contracts.

This bill, in lines 13-15 on page two, gives the Bureau enforcement responsibility. However, it should say, the Bureau "**shall**" enforce rather than "**may**" enforce this law in line 14. The Bureau already has the ability to enforce these kinds of laws, it just doesn't. I want to mandate that they do.

This is a big deal. Historically, the Bureau has resisted enforcing these disputes. But, as you can tell from the number of bill titles on this topic this session, many of us feel this must change. A fiscal note is no doubt in order.

Keep in mind, if we don't do something, the providers only have one choice: to cancel contracts and go out-of-network. They can't enforce the law. They can try and enforce their contracts, but that would typically involve lawsuits. Some contracts have arbitration provisions, but many don't. Providers are not going to file lawsuits. It's not a realistic solution to the problem of disputes over claims.

The big parts of this bill are big. But, hospitals going out of network with carriers is a threat we can't ignore and just hope it goes away. This is my attempt to tackle some of those issues. I am of course happy to work with this committee as we weigh through all the bills that seek solutions to this problem.

Thank you for your time, and I am happy to take any questions.