STATE OF MAINE
DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
BUREAU OF INSURANCE

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DPFR Commissioner

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Acting Superintendent

TESTIMONY OF TIMOTHY N. SCHOTT
ACTING SUPERINTENDENT OF INSURANCE
BUREAU OF INSURANCE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

In Opposition to L.D. 1498

An Act to Create an Advocacy and Complaint Process for Health Care Providers within the Bureau of Insurance

Presented by Representative Anne Perry

Before the Joint Standing Committee on Health Coverage, Insurance & Financial Services

April 24, 2023 at 10:00 a.m.

Senator Bailey, Representative Perry, and members of the Committee, I am Acting Superintendent of Insurance Tim Schott. I am here today to testify in opposition to L.D. 1498.

This bill takes the structure of the Bureau's Consumer Health Care Division to create an additional, separate division – the Health Care Provider Assistance Division (HCPAD). HCPAD's duties would include:

- Staffing a provider hotline, similar to the Bureau's consumer hotline.

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- Giving providers health plan coverage information: We note that the Bureau does not collect or maintain provider-oriented coverage information, such as reimbursement rates and fee schedules.
- Assisting providers in "navigating the health insurance industry:" Again, the Bureau does not have information on areas such as claims submission and reimbursement processes internal to each carrier, nor contractual provisions agreed upon by the parties.
- Assisting providers with claim denials and prior authorization requests: The Bureau is geared to assist consumers in these areas, and carriers are required to have appeals processes which meet State requirements.
- Addressing system-wide provider concerns, such as credentialing delays and misapplied medical standards: We note that LD 1196 tightened the timeframe for carrier decision on credentialing applications, and that the Bureau does not have the expertise to determine the correctness of application of medical standards.
- Investigating provider complaints: The bill specifically references investigations "for complaints concerning issues that relate to violations of statutes or rules...." We would note that for complaints related to individual consumers, the bill allows the provider to submit a release from the affected consumer, but the bill also allows for individual consumer related complaints without that signed release. Currently, providing personal health information without the consumer's written consent is permitted only in limited circumstances.[1]

The bill would make information from insurers, law enforcement, or regulatory agencies immune from discovery or admission into evidence in a private civil action, giving a higher level of confidentiality to portions of provider

[1] This is permitted only under certain HIPAA exceptions, as well as under 22 M.R.S. § 1711-C(I) and (J), and 24-A M.R.S. § 2215 (E).

complaint investigations than is given to consumer complaint investigations in their entirety.[2]

The bill would also require the Bureau to provide a provider-complainant a copy of the carrier's response to the complaint, contrary to the Bureau's long-standing interpretation that 24-A M.R.S. § 216's confidentiality requirements do not allow us to share information received from opposing sides to a complaint with the other. All parties to a complaint should expect confidentiality to be as free as possible from public disclosure of potentially detrimental information. The Bureau should be able to expect that the parties are sharing relevant information to help us decide whether a statutory or regulatory violation has occurred. The complaint process should not be used as an end-run around civil or criminal discovery processes.

The bill as drafted would require the Bureau to provide assistance and investigate complaints from all providers, from sole proprietors to billion dollar health systems. The issues the Bureau has seen mostly come from sole proprietors or small practices which may not have the resources to keep up with contract changes coming from multiple carriers regarding claim submission processes and procedures; large health systems have the resources to respond to these issues. The sole proprietors/small businesses contacting the Bureau have anecdotally shared their frustration about attempting to connect with a carrier's provider relations staff only to face long wait times to connect, or getting a staff person who lacks the training or ability to assist.

We suggest that instead of establishing a new division within the Bureau – which would require personnel, work space, computer systems, and time and attention from senior managers and other Bureau staff which would diminish to

[2] 24-A M.R.S. § 216 makes consumer complaints subject to subpoena and therefore possibly admissible into evidence in some circumstances.

some extent our ability to perform our core mission of protecting consumers – the Committee consider requiring the carriers to have robust provider relations/services units with trained staff that can adequately handle the duties listed in the bill, including answering a provider hotline promptly, and providing correct and accurate information. The carriers could be required to provide service operations metrics to the Bureau on their provider relations division, such as average speed of answer, and average handle time.

We surveyed other states to see if they have provider assistance divisions. Our understanding is that the vast majority of state insurance departments do not have separate provider complaint divisions. We are aware that New Hampshire has a process for receiving provider complaints.

Thank you, I would be glad to answer any questions now or at the work session.