



601 Pennsylvania Avenue, NW T 202.778.3200
South Building, Suite 500 F 202.331.7487
Washington, D.C. 20004 ahip.org

May 2, 2023

Senator Donna Bailey, Co-Chair
Representative Anne Perry, Co-Chair
Joint Health Coverage, Insurance & Financial Services Committee
100 State House Station
Augusta, ME 04333

RE: AHIP Comments on L.D. 796, An Act Concerning Prior Authorizations for Health Care Provider Services -- OPPOSE

To Chairs Senator Bailey, Representative Perry and Members of the Joint Health Coverage, Insurance, and Financial Services Committee,

America's Health Insurance Plans (AHIP) appreciates the opportunity to comment on LD 796, legislation that contains extensive provisions on utilization review timeframes and disclosures, criteria for reviewers as well as mandating the voluntary practice of "gold-carding" by waiving utilization review without any guardrails to ensure provider accountability and patient safety.

We share with you the goal of ensuring that Mainers receive effective, safe, and affordable care. Prior authorization (PA) and other utilization management tools do just this – they provide health insurance providers the ability to deliver the most appropriate care at the right time and in the right setting to ensure quality care for patients and efficiently use healthcare dollars.

However, AHIP respectfully opposes LD 796 for these reasons outlined below, and we ask the Committee to not pass the bill.

LD 796 undermines critically important medical management tools that ensure safe and effective patient care.

Health insurance providers work diligently to ensure that enrollees and insureds are getting the right care, at the right time, from the right provider. PA is an effective tool that helps lower a patient's out-of-pocket costs, protects patients from overuse, misuse or unnecessary (or potentially harmful) care, and ensures care is consistent with evidence-based practices. It improves care coordination and is supervised by medical professionals.

All health insurance providers rely on data and evidence to understand what treatments best improve patient health. Based on that information, health insurance providers use PA sparingly, typically less than 15% of covered services, procedures, and treatments.¹ However, PA helps to provide big health care savings for consumers because it critical to identifying potential overuse, misuse, and safety issues before care is delivered.

¹ *Prior Authorization: Selectively Used & Evidence-Based: Results of an Industry Survey.* America's Health Insurance Plans. https://www.ahip.org/wp-content/uploads/Prior_Authorization_Survey_Infographic.pdf.

Plans report that up to 30% of PA requests they receive from clinicians are for unnecessary care that is not supported by medical evidence. Additionally, numerous studies show that Americans frequently receive inappropriate care including overuse, misuse, or underuse of health care services. In fact, 25% of unnecessary treatments² were associated with complications or adverse events, and billions of dollars are wasted³ annually on excessive testing and treatment. For example, PA can help ensure safer opioid prescribing; help prevent dangerous drug interactions from antibiotics and other infection fighting drugs; and help protect patients from unnecessary exposure to potentially harmful radiation from inappropriate diagnostic imaging, such as CT scans for back pain.

Despite these cost and safety concerns, in January 2018, AHIP, together with providers and hospitals, issued a joint consensus statement with other critical interests in the health care community outlining our shared commitment to industry-wide improvements to PA processes and patient-centered care.⁴ Our recent surveys of our members show that health insurance providers are waiving or reducing PA requirements, as providers take on the financial risk related to their medical decisions by participating in value-based care arrangements. Furthermore, the surveys show that the percentage of plans waiving or reducing PA based on participation in risk-based contracts increased between 2019 to 2022 (for medical services, from 25% to 46%, for prescription medications, from 5% to 8%)⁵.

We are particularly concerned with Section 4304-14 requiring that a carrier allow a provider to participate in a gold carding program if they have a PA approval rate for a health care service of no less than 80% within the most recent 12-month period. This is completely inadequate. ***This low bar means at least 20% of the prescribed care could be medically inappropriate, dangerous, wasteful, or even fraudulent.*** Patients should expect to receive safe and appropriate care 100% of the time, period. The lax gold carding qualification standard also significantly limits a carrier's ability to ensure health care dollars are used most efficiently to produce high quality health outcomes. Thus, LD 796 ends the accountability of fraud, waste, and abuse by allowing providers who are wasteful and abusive 20% of the time to still receive PA exemptions.

LD 796 deprives Mainers of nationally recognized standards of care and safety.

Limiting who can perform utilization review to Maine-licensed providers unnecessarily prolongs the review process and ultimately adds significant costs to customers and patients. These requirements deprive Mainers of the medical and scientific expertise available from nationally prominent specialists and other accredited utilization review agents across state lines. In a dynamic health care environment where new technologies and telehealth are increasingly utilized, this bill creates a misguided mandate to limit available medical tools and expertise.

² *Overtreatment in the United States*. Lyu H, Xu T, Brotman D, Mayer-Blackwell B, Cooper M, et al. (2017) *Overtreatment in the United States*. PLOS ONE 12(9): e0181970. <https://doi.org/10.1371/journal.pone.0181970>.

³ *Institute of Medicine's "Best Care at Lower Cost": Transformation of Health System Needed to Improve Care and Reduce Costs*. Institute of Medicine, The National Academies (2012). PNHP. <https://pnhp.org/news/institute-of-medicines-best-care-at-lower-cost/>.

⁴ *Consensus on Improving the Prior Authorization Process*. American Hospital Association, America's Health Insurance Plans, American Medical Association, American Pharmacists Association, Blue Cross Blue Shield Association, and Medical Group Management Association. Available at <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/arc-public/prior-authorization-consensus-statement.pdf>.

⁵ *Improving Prior Authorization Processes: How Health Insurance Providers Are Delivering on their Commitments*. America's Health Insurance Plans. https://www.ahip.org/documents/202207-AHIP_IP_Consensus_Statement_Actions-v02.pdf.

LD 796 is a complicated, expensive mandate that will likely greatly increase health care costs for Maine and become a huge expense on employers.

LD 796 mirrors, in large part, a Texas gold carding law that passed in 2021. While the law had an effective date of January 1, 2022, implementation was delayed due to a particularly cumbersome rulemaking process. Now in 2023, over a year since the effective date, Health care system stakeholders are still unsure whether they will be able to implement gold carding programs due to how complicated and administratively burdensome it will be to adhere to the requirements of the law.

Aside from those logistical concerns, as carriers prepare to implement these programs, we have a better picture of the significant cost impacts that gold carding programs will have in the state. ***The Texas law is estimated to increase premiums for small businesses and individuals by more than \$1 billion annually in the fully insured market alone. Just one health plan estimates that the gold carding mandate will cost consumers \$500 million a year to end prior authorizations – a figure that is estimated for just its members.***

For these reasons, we urge you not to pass SB 796. Dismantling programs like prior authorization that have been effective in addressing the long-standing challenges to safe and affordable evidence-based health care will harm Maine consumers and employers.

Thank you for your consideration of our comments. AHIP and its members stand ready for further discussions on this important topic.

Sincerely,



Sarah Lynn Geiger, MPA
Regional Director, State Affairs
America's Health Insurance Plans
slgeiger@ahip.org / (609) 605-0748

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