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

Janet T. Mills
Governor

Anne L. Head
DPFR Commissioner

Timothy N. Schott
Acting Superintendent

April 13, 2023

Senator Donna Bailey, Senate Chair
Representative Anne Perry, House Chair
Joint Standing Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, ME 04333-0100

Re: L.D. 1383, An Act to Regulate Insurance Carrier Prior Authorization Requirements for Physical and Occupational Therapy Services

Dear Senator Bailey, Representative Perry, and Members of the Committee:

The Bureau of Insurance takes no position on L.D. 1383. The purpose of this letter is to provide you with background information.

Currently, a prior authorization must be answered within 72 hours or two business days, whichever is less, except for a request in exigent circumstances. This requirement applies both to prescription drugs[1] and non-emergency services.[2] This bill would require carriers to respond to requests for prior authorization responses for physical therapy, occupational therapy, chiropractic services, and physical medicine or rehabilitative services for chronic pain patients within 24-hours. This is the same time period that current law requires for responses to prior authorizations where exigent circumstances exist.

A prior authorization denial is an "adverse health care treatment decision"[3] and, accordingly, is already subject to the appeals process set forth in the HPIA and Rule 850. Therefore, in our opinion, the section of the bill on appeal rights is not necessary.

Current law provides that when a prior authorization is granted, a carrier may not retrospectively deny coverage or payment for the originally approved service unless fraudulent or materially incorrect information was provided at the time prior approval was granted.[4] As written, proposed section 4303-A(5) could be read as allowing carriers to do a retrospective medical necessity review even when the prior authorization has been granted. This would therefore conflict with existing law.

[1] 24-A M.R.S. § 4311(1-A)(B) requires a carrier to have a process for expedited review of prescription drugs if the enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment. When an expedited review has been requested, the carrier must make a decision within 24 hours of the request.
[2] Rule 850(8)(E)(3).
[3] 24-A M.R.S.§ 4301-A(1).
[4] 24-A M.R.S. § 4304(4).

The bill also does not define the term "physical medicine" used in proposed § 4303-A(2). This term does not appear anywhere in Title 24-A, and in Title 32 only in the context of naturopathic physical medicine.[5] If the Committee wishes to vote this bill ought to pass, we suggest inserting a definition that clarifies the bill's intent.

I hope this information is useful to the Committee. Please let me know if I can provide any further assistance.

Sincerely,

Timothy N. Schott
Acting Superintendent

Cc: Senator Stacy Brenner

[5] 32 M.R.S. § 12501(12).