SENATE BILL NO. 447

INTRODUCED BY V. RICCI, C. SCHOMER, C. HINKLE, J. ETCHART, L. DEMING, J. KARLEN

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATED TO PRIOR AUTHORIZATION; EXTENDING THE LENGTH OF A PRIOR AUTHORIZATION CERTIFICATION; PROVIDING THAT A PRIOR AUTHORIZATION FOR TREATMENT OF A CHRONIC CONDITION IS VALID FOR THE DURATION OF THE CONDITION; PROHIBITING PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 33-32-102, 33-32-107, AND 33-32-221, MCA.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-32-102, MCA, is amended to read:

"**33-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Adverse determination", except as provided in 33-32-402, means:

(a) a determination by a health insurance issuer or its designated utilization review organization that, based on the provided information and after application of any utilization review technique, a requested benefit under the health insurance issuer's health plan is denied, reduced, or terminated or that payment is not made in whole or in part for the requested benefit because the requested benefit does not meet the health insurance issuer's requirement for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness or is determined to be experimental or investigational;

(b) a denial, reduction, termination, or failure to provide or make payment in whole or in part for a requested benefit based on a determination by a health insurance issuer or its designated utilization review organization of a person's eligibility to participate in the health insurance issuer's health plan;

(c) any prospective review or retrospective review of a benefit determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit; or

(d) a rescission of coverage determination.

(2) "Ambulatory review" means a utilization review of health care services performed or provided in

an outpatient setting.

(3) "Authorized representative" means:

(a) a person to whom a covered person has given express written consent to represent the covered person;

(b) a person authorized by law to provided substituted consent for a covered person; or

(c) a family member of the covered person, or the covered person's treating health care provider, only if the covered person is unable to provide consent.

(4) "Case management" means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or otherwise complex health conditions.

(5) "Certification" means a determination by a health insurance issuer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, and level of effectiveness.

(6) "Chronic condition" means a condition that lasts 1 year or more and requires ongoing medical attention or limits activities of daily living.

~~(6)~~(7) "Clinical peer" means a physician or other health care provider who:

(a) holds a nonrestricted license in a state of the United States; and

(b) is trained or works in the same or a similar specialty to the specialty that typically manages the medical condition, procedure, or treatment under review.

~~(7)~~(8) "Clinical review criteria" means the written policies, written screening procedures, decision abstracts, determination rules, clinical and medical protocols, practice guidelines, or any other criteria or rationale used by a health insurance issuer or its designated utilization review organization to determine the medical necessity of health care services.

~~(8)~~(9) "Concurrent review" means a utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care setting.

~~(9)~~(10) "Cost sharing" means the share of costs that a covered member pays under the health

insurance issuer's health plan, including maximum out-of-pocket, deductibles, coinsurance, copayments, or similar charges, but does not include premiums, balance billing amounts for out-of-network providers, or the cost of noncovered services.

~~(10)~~(11)"Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms of a health plan.

~~(11)~~(12)"Covered person" means a policyholder, a certificate holder, a member, a subscriber, an enrollee, or another individual participating in a health plan.

~~(12)~~(13)"Discharge planning" means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives after discharge from a facility.

~~(13)~~(14)"Emergency medical condition" has the meaning provided in 33-36-103.

~~(14)~~(15)"Emergency services" has the meaning provided in 33-36-103.

~~(15)~~(16)"External review" describes the set of procedures provided for in Title 33, chapter 32, part 4.

~~(16)~~(17)"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health insurance issuer or its designated utilization review organization at the completion of the health insurance issuer's internal grievance process as provided in Title 33, chapter 32, part 3.

~~(17)~~(18)"Grievance" means a written complaint or an oral complaint if the complaint involves an urgent care request submitted by or on behalf of a covered person regarding:

(a) availability, delivery, or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) claims payment, handling, or reimbursement for health care services; or

(c) matters pertaining to the contractual relationship between a covered person and a health insurance issuer.

~~(18)~~(19)"Health care provider" or "provider" means a person, corporation, facility, or institution licensed by the state to provide, or otherwise lawfully providing, health care services, including but not limited to:

(a) a physician, physician assistant, advanced practice registered nurse, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, licensed addiction counselor, or licensed

professional counselor; and

(b) an officer, employee, or agent of a person described in subsection ~~(18)(a)~~ (19)(a) acting in the course and scope of employment.

~~(19)~~(20)"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including the provision of pharmaceutical products or services or durable medical equipment.

~~(20)~~(21)"Health insurance issuer" has the meaning provided in 33-22-140.

~~(21)~~(22)"Medical necessity" means health care services that a health care provider exercising prudent clinical judgment would provide to a patient for the purpose of preventing, evaluating, diagnosing, treating, curing, or relieving a health condition, chronic condition, illness, injury, or disease or its symptoms or comorbidities, including minimizing the progression, symptoms, or comorbidities of a health condition, chronic condition, illness, injury, or disease, and that are:

(a) in accordance with generally accepted standards of practice;

(b) clinically appropriate in terms of type, frequency, extent, site, and duration and are considered effective for the patient's illness, injury, or disease; and

(c) not primarily for the economic benefit of the insurer or convenience of the patient or health care provider and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the patient's illness, injury, or disease.

~~(22)~~(23)"Network" means the group of participating providers providing services to a managed care plan.

~~(23)~~(24)"Participating provider" means a health care provider who, under a contract with a health insurance issuer or with its contractor or subcontractor, has agreed to provide health care services to covered persons with the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health insurance issuer.

~~(24)~~(25)"Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in

this subsection.

~~(25)~~(26)"Preservice claim" means a request for benefits or payment from a health insurance issuer for health care services that, under the terms of the health insurance issuer's contract of coverage, requires authorization from the health insurance issuer or from the health insurance issuer's designated utilization review organization prior to receiving the services.

~~(26)~~(27)"Prospective review" means a utilization review, MEDICAL NECESSITY REVIEW, OR PRIOR AUTHORIZATION conducted of a preservice claim prior to an admission or a course of treatment.

~~(27)~~(28)(a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that has a retroactive effect.

(b) The term does not include a cancellation or discontinuance under a health plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a failure to timely pay required premiums or contributions toward the cost of coverage.

~~(28)~~(29)(a) "Retrospective review" means a review of medical necessity conducted after services have been provided to a covered person.

(b) The term does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

~~(29)~~(30)"Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health care provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

~~(30)~~(31)"Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration of the condition is, within a reasonable medical probability, likely to result from or occur during the transfer of the individual from a facility.

~~(31)~~(32)(a) "Urgent care request" means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination could:

(i) seriously jeopardize the life or health of the covered person or the ability of the covered person

to regain maximum function; or

(ii) subject the covered person, in the opinion of a health care provider with knowledge of the covered person's medical condition, to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b) Except as provided in subsection ~~(31)(c)~~ (32)(c), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the health insurance issuer shall apply the judgment of a prudent lay person who possesses an average knowledge of health and medicine.

(c) Any request that a health care provider with knowledge of the covered person's medical condition determines is an urgent care request within the meaning of subsection ~~(31)(a)~~ (32)(a) must be treated as an urgent care request.

~~(32)~~(33)"Utilization review" means a set of formal techniques designed to monitor the use of or to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinions, certification, concurrent review, case management, discharge planning, or retrospective review.

~~(33)~~(34)"Utilization review organization" means an entity that conducts utilization review for one or more of the following:

(a) an employer with employees who are covered under a health benefit plan or health insurance policy;

(b) a health insurance issuer providing review for its own health plans or for the health plans of another health insurance issuer;

(c) a preferred provider organization or health maintenance organization; and

(d) any other individual or entity that provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to a person treated by a health care provider under a policy, plan, or contract."

Section 2. Section 33-32-107, MCA, is amended to read:

"**33-32-107. Length of prior authorization.** (1) ~~A~~ Except as provided in subjection (2), certification by a utilization review organization approving health care services is valid for at least ~~3~~ 12 months from the date

the health care provider receives the certification unless the covered person loses coverage under the applicable health plan or health insurance coverage.

(2) A certification by a utilization review organization approving a health care service for treatment of a chronic condition is valid for the duration of the condition. The utilization review organization may not require the covered person to obtain certification again for the same health care service. The utilization review organization may require documentation that the chronic condition remains present no more frequently than every 12 months."

Section 3. Section 33-32-221, MCA, is amended to read:

"**33-32-221. Prior authorization requirements.** (1) A health insurance issuer or an entity that ~~a health insurance issuer~~ IT contracts with to perform ~~a~~ prior authorization on ~~the health insurance issuer's~~ ITS behalf may not perform prior authorization on benefits for:

(a) any generic prescription drug that is not listed within any of the schedules of controlled substances found at 21 CFR 1308.11 through 21 CFR 1308.15 or the schedules of controlled substances found in Title 50, chapter 32, after a covered person has been prescribed the covered drug at the same quantity without interruption for 6 months;

(b) any prescription drug or drugs, generic or brand name, on the grounds of therapeutic duplication for the same drug if the covered person has already been subject to prior authorization on the grounds of therapeutic duplication for the same dosage of the prescription drug or drugs and coverage of the prescription drug or drugs was approved;

(c) any prescription drug, generic or brand name, solely because the dosage of the medication for the covered person has been adjusted by the prescriber of the prescription drug, as long as the dosage is within the dosage approved by the food and drug administration or is consistent with clinical dosing for the medication; ~~or~~

(d) any prescription drug, generic or brand name, that is a long-acting injectable antipsychotic~~;~~

~~(e) controlled substances found at 21 CFR 1308.15 or the schedules of controlled substances found in Title 50, chapter 32~~ AND ANY FORMULARY ORAL OR INHALED NONBIOLOGIC GENERIC PRESCRIPTION DRUG

THAT IS NOT LISTED AS A SPECIALTY TIER DRUG BY MEDICARE PART D, OR WITHIN ANY OF THE SCHEDULES OF CONTROLLED SUBSTANCES FOUND AT 21 CFR 1308.11 THROUGH 21 CFR 1308.15 OR THE SCHEDULES OF CONTROLLED SUBSTANCES FOUND IN TITLE 50, CHAPTER 32;

~~(f)~~(E) any prescription drug, generic or brand name, prescribed for treatment of a substance use disorder, provided that the prescription does not exceed the U.S. food and drug administration labeled dosages; or

~~(g)~~(F) AT LEAST ONE PRESCRIPTION DRUG OPTION APPROPRIATE FOR CHILDREN AND ONE APPROPRIATE FOR ADULTS, WITHIN EACH ~~any~~ of the following prescription ~~drugs~~DRUG THERAPEUTIC CLASSES, generic or brand name~~, except as provided in subsection (3):~~

(i) an inhaled corticosteroid;

(ii) an inhaled short-acting beta-agonist;

(iii) an inhaled combination corticosteroid and beta-agonist;

(iv) a short-acting insulin for diabetes; or

(v) a long-acting insulin for diabetes.

~~(3) If an individual has multiple prescriptions for any one kind of prescription drug listed under subsection (1)(g), a health insurance issuer or its utilization review organization may perform a prior authorization on all but one prescription.~~

~~(4)~~(3) If the health insurance issuer or its utilization review organization makes an adverse determination for a prescription drug during prior authorization, the health insurance issuer or its utilization review organization shall provide a written adverse determination notice that includes a list of reasonable therapeutic alternatives that are covered by the insurer's formulary.

~~(2)(5)~~(4) Any adverse determination for a prescription drug made during prior authorization by a health insurance issuer must be made by a physician whose specialty focuses on the diagnosis and treatment of the condition for which the prescription drug was prescribed to treat, provided that prior authorization that does not result in an adverse determination does not require the involvement of a physician on the part of a health insurance issuer."

COORDINATION SECTION. **Section 4. Coordination instruction.** If both House Bill No. 398 and [this act] are passed and approved and if both contain a section that amends 33-22-102, then the sections amending 33-22-102 are void and 33-22-102 must be amended as follows:

"**33-32-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Adverse determination", except as provided in 33-32-402, means:

(a) a determination by a health insurance issuer or its designated utilization review organization that, based on the provided information and after application of any utilization review technique, a requested benefit under the health insurance issuer's health plan is denied, reduced, or terminated or that payment is not made in whole or in part for the requested benefit because the requested benefit does not meet the health insurance issuer's requirement for medical necessity, appropriateness, health care setting, level of care, or level of effectiveness or is determined to be experimental or investigational;

(b) a denial, reduction, termination, or failure to provide or make payment in whole or in part for a requested benefit based on a determination by a health insurance issuer or its designated utilization review organization of a person's eligibility to participate in the health insurance issuer's health plan;

(c) any prospective review or retrospective review of a benefit determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit; or

(d) a rescission of coverage determination.

(2) "Ambulatory review" means a utilization review of health care services performed or provided in an outpatient setting.

(3) "Authorized representative" means:

(a) a person to whom a covered person has given express written consent to represent the covered person;

(b) a person authorized by law to provided substituted consent for a covered person; or

(c) a family member of the covered person, or the covered person's treating health care provider, only if the covered person is unable to provide consent.

(4) "Case management" means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or otherwise complex health conditions.

(5) "Certification" means a determination by a health insurance issuer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based on the information provided, satisfies the health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, and level of effectiveness.

(6) "Chronic condition" means a condition that lasts 1 year or more and that requires ongoing medical attention or limits activities of daily living.

~~(6)~~(7) "Clinical peer" means a physician or other health care provider who:

(a) holds a nonrestricted license in a state of the United States; and

(b) is trained or works in the same or a similar specialty to the specialty that typically manages the medical condition, procedure, or treatment under review.

~~(7)~~(8) "Clinical review criteria" means the written policies, written screening procedures, decision abstracts, determination rules, clinical and medical protocols, practice guidelines, or any other criteria or rationale used by a health insurance issuer or its designated utilization review organization to determine the medical necessity of health care services.

~~(8)~~(9) "Concurrent review" means a utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care setting.

~~(9)~~(10) "Cost sharing" means the share of costs that a covered member pays under the health insurance issuer's health plan, including maximum out-of-pocket, deductibles, coinsurance, copayments, or similar charges, but does not include premiums, balance billing amounts for out-of-network providers, or the cost of noncovered services.

~~(10)~~(11)"Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms of a health plan.

~~(11)~~(12)"Covered person" means a policyholder, a certificate holder, a member, a subscriber, an enrollee, or another individual participating in a health plan.

~~(12)~~(13)"Discharge planning" means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives after discharge from a facility.

~~(13)~~(14)"Emergency medical condition" has the meaning provided in 33-36-103.

~~(14)~~(15)"Emergency services" has the meaning provided in 33-36-103.

~~(15)~~(16)"External review" describes the set of procedures provided for in Title 33, chapter 32, part 4.

~~(16)~~(17)"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health insurance issuer or its designated utilization review organization at the completion of the health insurance issuer's internal grievance process as provided in Title 33, chapter 32, part 3.

~~(17)~~(18)"Grievance" means a written complaint or an oral complaint if the complaint involves an urgent care request submitted by or on behalf of a covered person regarding:

(a) availability, delivery, or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) claims payment, handling, or reimbursement for health care services; or

(c) matters pertaining to the contractual relationship between a covered person and a health insurance issuer.

~~(18)~~(19)"Health care provider" or "provider" means a person, corporation, facility, or institution licensed by the state to provide, or otherwise lawfully providing, health care services, including but not limited to:

(a) a physician, physician assistant, advanced practice registered nurse, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist, licensed addiction counselor, or licensed professional counselor; and

(b) an officer, employee, or agent of a person described in subsection ~~(18)(a)~~ (19)(a) acting in the course and scope of employment.

~~(19)~~(20)"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease, including the provision of pharmaceutical products or services or durable medical equipment.

~~(20)~~(21)"Health insurance issuer" has the meaning provided in 33-22-140.

~~(21)~~(22)"Medical necessity" means health care services that a health care provider exercising prudent clinical judgment would provide to a patient for the purpose of preventing, evaluating, diagnosing, treating,

curing, or relieving a health condition, chronic condition, illness, injury, or disease or its symptoms or comorbidities, including minimizing the progression, symptoms, or comorbidities of a health condition, chronic condition, illness, injury, or disease, and that are:

(a) in accordance with generally accepted standards of practice;

(b) clinically appropriate in terms of type, frequency, extent, site, and duration and are considered effective for the patient's illness, injury, or disease; and

(c) not primarily for the economic benefit of the insurer or the convenience of the patient or health care provider and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the patient's illness, injury, or disease.

~~(22)~~(23)"Network" means the group of participating providers providing services to a managed care plan.

~~(23)~~(24)"Participating provider" means a health care provider who, under a contract with a health insurance issuer or with its contractor or subcontractor, has agreed to provide health care services to covered persons with the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health insurance issuer.

~~(24)~~(25)"Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in this subsection.

~~(25)~~(26)"Preservice claim" means a request for benefits or payment from a health insurance issuer for health care services that, under the terms of the health insurance issuer's contract of coverage, requires authorization from the health insurance issuer or from the health insurance issuer's designated utilization review organization prior to receiving the services.

~~(26)~~(27)"Prospective review" means a utilization review, medical necessity review, or prior authorization conducted of a preservice claim prior to an admission or a course of treatment.

~~(27)~~(28)(a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that has a retroactive effect.

(b) The term does not include a cancellation or discontinuance under a health plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a failure to timely pay required premiums or contributions toward the cost of coverage.

~~(28)~~(29)(a) "Retrospective review" means a review of medical necessity conducted after services have been provided to a covered person.

(b) The term does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

~~(29)~~(30)"Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health care provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service.

~~(30)~~(31)"Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration of the condition is, within a reasonable medical probability, likely to result from or occur during the transfer of the individual from a facility.

~~(31)~~(32)(a) "Urgent care request" means a request for a health care service or course of treatment with respect to which the time periods for making a nonurgent care request determination could:

(i) seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

(ii) subject the covered person, in the opinion of a health care provider with knowledge of the covered person's medical condition, to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b) Except as provided in subsection ~~(31)(c)~~ (32)(c), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the health insurance issuer shall apply the judgment of a prudent lay person who possesses an average knowledge of health and medicine.

(c) Any request that a health care provider with knowledge of the covered person's medical condition determines is an urgent care request within the meaning of subsection ~~(31)(a)~~(32)(a) must be treated

as an urgent care request.

~~(32)~~(33)"Utilization review" means a set of formal techniques designed to monitor the use of or to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinions, certification, concurrent review, case management, discharge planning, or retrospective review.

~~(33)~~(34)"Utilization review organization" means an entity that conducts utilization review for one or more of the following:

(a) an employer with employees who are covered under a health benefit plan or health insurance policy;

(b) a health insurance issuer providing review for its own health plans or for the health plans of another health insurance issuer;

(c) a preferred provider organization or health maintenance organization; and

(d) any other individual or entity that provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits to a person treated by a health care provider under a policy, plan, or contract."

COORDINATION SECTION. **Section 5. Coordination instruction.** (1) If both House Bill 398 and [this act] are passed and approved and if both contain a section that amends 33-22-107, then [section 4 of House Bill No. 398], amending 33-32-107, is void.

(2) If both House Bill No. 399 and [this act] are passed and approved and if both contain a section that amends 33-22-221, then [section 3 of this act], amending 33-22-221, is void.

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