

July 16, 2022

Elizabeth Fine, Esq.  
Counsel to the Governor  
State Capitol, Executive Chamber  
Albany, NY 12224

**RE: A.879 (GOTTFRIED)/S.8113 (CLEARE) – AN ACT to amend the public health and insurance law, in relation to definition of clinical peer reviewer**

Dear Ms. Fine:

Our respective associations, which together represent tens of thousands of physicians across the state of New York providing care to hundreds of thousands of New Yorkers each year, are writing to you regarding the above referenced legislation that would establish necessary qualifications for a person with whom a health plan must consult before deciding to deny a treatment or needed prescription medication for a patient that has been requested by the patient's treating physicians. We respectfully request **that you recommend that Governor Hochul sign this bill into law.**

This bill seeks to assure that those who make "medical necessity" determinations on behalf of a health insurance company are appropriately qualified to make those decisions. Under current law, the only qualification required for a person who, on behalf of a health plan, may contradict the treatment recommendation of the patient's treating physician is that such reviewer be a licensed physician. The physician does not even need to be licensed to practice in New York State. Moreover, there is no requirement that the reviewing physician have the same qualifications as a physician who would typically render or facilitate the treatment that is being recommended for the patient. Therefore, the person reviewing the treatment request may not have the sufficient training or experience necessary to decide whether the treatment or prescription medication that has been recommended is appropriate. As a result, care that may be needed for our patients may be unnecessarily delayed or denied while the patient has to resort to taking an internal and, if necessary, External Appeal, to attempt to receive the care that has been recommended, which risks putting the patient's health in jeopardy while these appeals are processed.

For example, we note that, according to the most recent NYDFS Consumer Guide to Health Insurers ([2021 New York State Consumer Guides](#)), there were nearly 52,000 internal appeals made by patients against New York-regulated health insurers for claim or pre-authorization denials in 2020, with nearly 50% of these appeals reversed. In 2019, according to the previous years' DFS Guide ([2020 Edition \(ny.gov\)](#)), there were nearly 60,000 internal appeals filed against New York-regulated health insurers for claim or pre-authorization denials, with over 50% of these appeals reversed.

The same NY DFS Annual Guides noted that there were also 1,400 External (Independent) Appeals filed against health insurers in 2020, and 1,500 External (Independent) Appeals filed in 2019, with a full or partial reversal nearly 40% of the time for both years. Tens of thousands of patients are impacted by these unnecessary care delays prompting either or both Internal and External Appeals, caused by initial unjustified denials. It is essential for health insurers to use appropriately trained physicians to provide reviews of claims or pre-authorization requests submitted by patients and their physicians to protect patients from needless delays in accessing necessary care.

This bill would do just that. It would ensure that a health plan may not deny a request for needed patient care unless the reviewing physician is adequately qualified to review the

treatment requested or provided, by requiring that such reviewing physician be board-certified or board eligible in the same or similar specialty as the physician who typically recommends the treatment or manage the condition that is under review. It would also require that such physician have a New York license to practice medicine. Overall, this bill would provide much-needed additional protections to ensure that our patients will have coverage for the care they are expecting and entitled to receive. **Therefore, our groups respectfully request that this legislation be enacted into law.**

**AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS, DISTRICT 2  
MEDICAL SOCIETY OF THE STATE OF NEW YORK  
NEW YORK AMERICAN COLLEGE OF EMERGENCY PHYSICIANS  
NEW YORK CHAPTER AMERICAN COLLEGE OF PHYSICIAN SERVICES INC.  
NEW YORK CHAPTER AMERICAN COLLEGE OF SURGEONS  
NEW YORK STATE ACADEMY OF FAMILY PHYSICIANS  
NEW YORK STATE AMERICAN ACADEMY OF PEDIATRICS, CHAPTERS 1, 2 & 3  
NEW YORK STATE NEUROSURGICAL SOCIETY  
NEW YORK STATE OPHTHALMOLOGICAL SOCIETY  
NEW YORK STATE PSYCHIATRIC ASSOCIATION  
NEW YORK STATE RADIOLOGICAL SOCIETY  
NEW YORK STATE SOCIETY OF ANESTHESIOLOGISTS  
NEW YORK STATE SOCIETY OF ORTHOPEDIC SURGEONS  
NEW YORK STATE SOCIETY OF OTOLARYNGOLGY – HEAD & NECK SURGERY  
NEW YORK STATE SOCIETY OF PLASTIC SURGEONS**