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TESTIMONY OF SHELDON TOUBMAN BEFORE THE HUMAN SERVICES COMMITTEE IN SUPPORT OF S.B. 147 (TO PROVIDE BASIC CONSUMER PROTECTIONS UNDER PREFERRED DRUG LISTS)

February 6, 2007

Good morning Senator Harris, Rep. Villano and other committee members. I am here to testify in support of SB 147. The protections contained in this bill will dramatically reduce the ongoing harm from the use of preferred drug lists ("PDLs") in various state medical assistance programs. These protections are essential to protect access to needed prescriptions for low-income Connecticut residents in several state programs-- Medicaid fee for service, HUSKY, SAGA and ConnPACE.

The new Medicare Part D drug program has demonstrated the severe access problems created by the imposition of prior authorization ("PA") for prescription drugs. Doctors can't keep track of these obstacles and don't have the time to surmount them. This has meant that even those seniors who managed to pick a plan that had their drugs **listed** nevertheless were in practice blocked from access to many of those drugs as a direct result of the Medicare plans' use of burdensome PA procedures. The legislature has done the right thing by stepping up to the plate and ensuring that when a Medicare enrollee who is also on Medicaid or ConnPACE is rejected for a drug by their drug plan, they will not walk out of the pharmacy empty-handed. Rather, it has provided for a temporary supply and DSS has appropriately implemented this by then collecting daily information about the issuance of such temporary supplies, so that prescribers can be timely informed of the options available to prevent interruption of treatment.

But these protections are essentially nonexistent for the over 200,000 individuals enrolled in two of the four Medicaid HMOs -- Anthem and Health Net. There is essentially no temporary supply available for these individuals, 70% of whom are children, because the Medicaid HMO contracts with DSS require the provision of temporary supplies only where there is an "urgent or emergent" situation, and more importantly, such supplies are only available under a complex system requiring multiple phone calls to be made by busy pharmacists. It is not significantly different for the approximately 35,000 elderly and disabled fee-for-service Medicaid recipients subject to DSS's own PDL because they are not dually eligible and therefore are ineligible for Medicare D. This is the reality for these vulnerable recipients today:

- Prescribers routinely write prescriptions for non-listed drugs without realizing they require PA, because the PDLs are different for each plan and are regularly changed, making it very difficult for prescribers to keep track of which drug is on a specific PDL.
- Low-income recipients have no cash on hand to obtain the drug when rejected at the pharmacy for lack of PA, and, given their circumstances and tendency to receive

treatment at clinics, they have difficulty reaching their providers to even let them know of the rejection.

- Although the HMOs tout that they have temporary supplies available, in reality, the procedure for obtaining these supplies is extraordinarily complex; thus, the last time we were able to obtain data from just one of the HMOs-- Health Net—it showed about **2,600 denials at the pharmacy per month** for lack of PA, with **temporary supplies** being provided-- anytime in the 24 hours after the pharmacy rejection-- **only in about 3% of the cases.** (See Health Net data provided under oath in Karen L. v. Health Net, CA No. 3:99cv2244 (D.Conn.)(June 19, 2003 Responses to Interrogatories, Attachment A, pages 1-2)

The result of all of this is the denial of access to essential treatment needed by thousands of our most vulnerable Medicaid recipients, many on multiple medications for complex conditions, as well as those suffering from mental illness and cancer. And this often results in inappropriate and expensive treatment in hospital emergency departments, sometimes at the state's direct expense.

As just one illustration, I have a client who last Thursday was denied access to a pain medication needed related to a spinal cancer condition for which she has received radiation treatment. The doctor wrote the prescription and gave it to her, but it was rejected at the Wallgreen's pharmacy, with the pharmacist saying that the drug was "not covered" by her insurance. Nothing was said about temporary supplies or prior authorization. When I fortuitously learned about this later in the day, because she was in my office on an unrelated matter, I suggested that she go back to the pharmacy, ask that payment for the drug be electronically requested again, and obtain a copy of whatever the pharmacist's computer was being told by her HUSKY A plan, which in this case was Blue Care Family Plan (Anthem). She did this, and, disturbingly, the electronic message which she received, a copy of which is attached, said nothing about prior authorization and instead stated, falsely, that the drug was "not covered." Although there was a brief message about "temp supply," it apparently was indecipherable to either the pharmacist or the patient, and she again walked out with no drug.

This happens every day in Connecticut for many low-income people, most of whom do not know that this is a legal problem for which there is help, and so they go untreated. Accordingly, I urge this committee to pass favorably on SB 147 and mandate for all the Medicaid HMOs and DSS at least the same basic consumer protections already provided routinely by DSS under its wraparound for Medicare Part D dual eligibles **and** by the one non-profit Medicaid HMO, Community Health Network, for its Medicaid and SAGA populations:

- CHN has programmed its computers to automatically inform pharmacists, who submit claims electronically for **any** PA-only drugs for which PA has been not been obtained (not just "emergencies"), that a **temporary supply is available**, simply by typing in a code provided right on the computer screen at that time.
- CHN collects the data and then contacts the prescriber the next day to advise him or her that PA is needed for the drug, and how to go about it, as well to tell them about other drugs on the PDL that may work as effectively and not require PA.

Thank you for allowing me to speak with you about this today. I would be happy to answer any questions.