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**Testimony of Sheldon Toubman in Support of HB 6360, Requiring Written Notice and Followup with Prescribers When Medicaid Enrollees' Drugs Are Electronically Denied**

Senator Musto, Representative Tercyak and members of the Human Services Committee:

My name is Sheldon Toubman and I am a staff attorney with New Haven Legal Assistance Association. I am here to support HB 6360, a bill which would require written notice to both Medicaid enrollees and their providers when prescribed drugs are electronically denied, in whole or in part, at the pharmacy due to lack of prior authorization (PA) or for any other reason programmed into the pharmacy computer system by DSS or its contractor.

First, I should acknowledge that I have been urging this Committee for several years to adopt the basic consumer protections set forth in HB 6360. No legislation adopting either of these commonsense consumer protections has yet been passed.

Second, in January 2008, Attorney General Richard Blumenthal joined Child Advocate Jeanne Milstein in writing to Commissioner Starkowski to urge that three basic consumer protections be adopted as DSS took over responsibility for prescription drugs from the HUSKY HMOs, in February of that year. In their letter, a copy of which is attached, they strongly recommended: (1) automatic one-time 30 day temporary supplies be provided whenever drugs were electronically denied at the pharmacy for lack of PA, (2) followup with prescribers be automatically conducted by DSS whenever one of these temporary supplies was provided to advise the prescriber of the need to take further action- request PA or prescribe a different drug that does not require PA- and (3) written notice be mailed out to the enrollee within 24 hours whenever a drug is electronically denied for lack of PA or for any other reason (such as dosage limits imposed on certain drugs). As noted in their letter, while all of these steps are essential to reduce harm, written notice to the enrollee also is required by federal Medicaid law:

“[I]n the event that an individual is denied access to even a temporary supply, either because he or she has returned a second time with a prescription for the same drug without prior authorization having been obtained, or for any other reason, a written notice to the recipient must be mailed out within 24 hours of an electronic denial at the pharmacy, explaining why the drug was denied and the means to request a hearing to review the denial. See 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. § 431.205(d) and 431.220(a)(1).”

Third, three years later, only a small portion of the Attorney General's recommendations have been implemented, even for children or for life-sustaining drugs. There initially was a 30-day one-time temporary supply provided, but this was reduced to 14 days by the legislature two years ago. This action was not accompanied with any mandate to adopt the other two consumer protections, such that, today, DSS **never** provides written notice to the enrollee when a drug is electronically denied at the pharmacy for any reason, even if no temporary supply is authorized (since the one-time supply has already been provided). There is followup with prescribers to advise that only a temporary supply has been provided and that no further supplies will be provided absent PA, but only for behavioral health medications. While we of course appreciate that there is this followup with prescribers for these drugs, obviously, there are many other categories of prescribed drugs the absence of which can have serious consequences, including hospitalizations at the state's expense.

Fourth, I have noted in the past that many people were being denied drugs at the pharmacy and that pharmacists were not in a position, in most cases, to take timely action so that the person would walk out with a supply of **some** drug, especially if the one-time temporary supply had already previously been dispensed. However, we did not have quantitative evidence concerning the frequency that these denials were occurring. Thanks to the oversight provided by the Medicaid Care Management Oversight Council, we now have such data -- and it is alarming.

A recent review conducted by DSS's contractor, Hewlett-Packard, at the Subcommittee's request looked only at HUSKY enrollees, a generally healthier and far less medication-dependent Medicaid population than elderly and disabled Medicaid enrollees. HP found in its review (attached) that, just for this healthy population, in a 10-month period from 2008 to 2009, **5,142** claims for drugs were denied by DSS electronically at the pharmacy because the drug the individual sought was not on the state's Preferred Drug List (PDL) and therefore required PA, PA had not been obtained, and the person had already obtained his or her **one-time** 14-day temporary supply before returning to the pharmacy seeking another supply of the same drug. (A full 120 days later, 1350 of these claims still had not resulted in PA for the particular drug being obtained or a switch to a different drug not subject to PA). These "second-time-around" denials occur with frequency because, with the exception of mental health-related drugs, DSS does not follow up with providers to advise the prescribers that PA is needed for the recipient to get a further supply of the drug (or that a different drug should be prescribed) — followup which one of the HUSKY HMOs actually did on its own before DSS took over the provision of drugs.

Now that we have data confirming that the Department's prior authorization systems frequently result in low-income Medicaid enrollees walking out of the pharmacy with no drug at all, the need for the commonsense consumer protections set forth by the Attorney General is apparent. For all these reasons, I urge you to pass favorably on HB 6360. Thank you.