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Insurance and Real Estate Committee Public Hearing

March 14th, 2016

Re: Written Testimony in Support of Raised S.B. Bill 435, AN ACT CONCERNING HEALTH CARRIERS' USE OF CLINICAL PATHWAYS AND HEALTH INSURANCE COVERAGE FOR SERVICES RENDERED BY A CHIROPRACTOR.

Dear Committee Members:

On behalf of the physicians of the Connecticut Oncology Association, I thank you for the opportunity to present this testimony to you today in support of Raised Senate Bill 435, An Act Concerning Health Carrier's Use of Clinical Pathways and Health Insurance Coverage for Services Rendered by a Chiropractor

Why is this being proposed? Patients have the right to credible evidence-based decision making by their physician and the medical community, not any other entity, particularly a for-profit health carrier or insurer.

Physician specialties are moving toward personalized treatment and building not just accepted guidelines for care but consensus driven, evidence based clinical pathways that lead to preferred treatments for patients. These clinical pathways are extensive, transparent, regularly updated, readily available, and constructed with the opinions and involvement of hundreds of treating physicians in the specialty. For example, there are two major specialty specific clinical pathways in oncology: One set created initially by US Oncology, a group of over 1200 physicians and since expanded with the creator of the national guidelines standards for oncology – the National Comprehensive Cancer Network (NCCN) to create Value Pathways powered by NCCN, and the other set was created initially by the University of Pittsburgh Medical Center and called Via Oncology. Both sets of clinical pathways are fairly similar, but available on different platforms. Each provide transparent clinical pathways vetted by over 500 academic and active clinical physicians in the specialty. At this point both sets are universally available to every oncology practice and center in the United States, and being embedded in the predominant electronic medical records systems utilized in oncology.

A guideline is like a multi-lane highway, with various reasons for choosing different lanes for treatment. A clinical pathway is the equivalent of choosing one lane for more than 75% of all patients with a specific disease, regardless of individual differences.

Today, insurers covering a majority of commercial patients in CT have decided to invent their own clinical pathways that are not transparent, that have been created by an external for profit vendor, and rubber stamped by handful of paid physicians, which deviate as much as 20% - 30% from clinical pathways embraced by the treating medical community and which offer to pay treating physicians additional amounts **ONLY** when they choose to put patients on that preferred treatment chosen by the insurer (which has no direct knowledge of the patient, their medical history, or situation.)

Insurers should be encouraged to support clinical pathways accepted by the medical community, not invent their own. Insurers and physicians can most benefit patients and employers by supporting the physician that includes consideration of credible medical community created clinical pathways, rather than paying physicians to use a treatment chosen by the insurer.

Physicians and their medical specialties should create evidence based, transparent clinical pathways, and insurers should support and encourage use of those, rather than inventing their own.

As we move toward tighter management of health care and health care costs, we want to make sure that patients are still receiving appropriate care. Clinical pathways identify one preferred treatment for patients within a disease, as defined by the originator of that pathway.

Since the last legislative session (starting in July 2015 in CT), insurers composing a majority portion of the commercially insured population have introduced clinical pathways that were developed internally or with a commercial external vendor. They are strongly encouraging physicians to utilize these proprietary clinical pathways for their insured patients, regardless of other clinical decision making processes the physician might prefer to use, and are providing payments specifically and only obtainable when the physician chooses to treat the patient with a treatment the insurer's clinical pathway has marked as "preferred". Patients with the same disease could receive completely different treatments if they have different insurers, which raises questions about the "evidence-based" portion of the insurers' clinical pathway.

The treating physician should be able to review credible evidence based clinical pathways developed within their own specialty and determine the most appropriate treatment for a given patient. The payer community should be encouraged to support evidence based medical decision making in its physician network, but not to dictate to physicians specific treatments or to pay physicians for choosing one treatment over another.

We do not believe it is appropriate for insurers to create their own clinical pathways or purchase clinical pathways from an external vendor and place those between the patient and the treating physician. In another state, legislation is under review that prohibits such actions as corporate practice of medicine.

We do not believe it is appropriate for insurers to invent or purchase commercial clinical pathways that seek to supersede and deviate from valid existing and available medical community clinical pathways.

We want to ensure, for the safety and quality of care for patients in CT, that insurer recognition of clinical pathways affecting treatment choices follows a medical community based clinical standard for development, application and transparency.

What will the proposed language do and cost?

- There is no cost to the State of CT in defining standards through Raised S.B. 435
- Raised S.B. 435 will set forth expectations of transparency and appropriate clinical evidence and process for the use of clinical pathways by an insurer
- Raised S.B. 435 will define that any clinical pathways programs that an insurer uses for CT health benefits offerings must give preference to those developed by that specialty's medical community and be published following explicit standards, and that the costs of healthcare for patients and the healthcare community in CT not be increased by redundancy if a creditable clinical pathway is already available.

What will happen if the proposed language is not adopted into CT law?

- Only the physician has firsthand knowledge of the patient and their unique disease. Physicians should be able to choose treatments for their patients from the body of knowledge developed within the relevant medical community (credible clinical pathways).
- Patients in CT are more likely to receive sub optimal care, if an insurer promulgates a proprietary clinical pathway that deviates from clinical pathways developed within the relevant medical community and then also incentivizes physicians to choose the insurer's "preferred" treatment. If an insurer clinical pathway does not meet these standards, it will not be defensible medically and may present a clinical liability to physicians, patients and the insurer.
- Physicians should be paid for evidence-based management of all patients, regardless of treatment choice. If physicians are paid by insurers to select just certain treatment options presented by a proprietary clinical pathway

that does not meet these standards, patients will not know if the treatment they are receiving was truly the best option available to them.

The oncology physicians who treat the cancers patient of Connecticut appreciate the wisdom and vision of the Committee in moving Raised S.B. 435 forward for approval and legislative action. However, we would strongly suggest the following changes in the language of the bill:

subparagraph (B) of subdivision (2)

(2) No health carrier shall:....

~~(B) Use a mandatory clinical pathway in conjunction with a financial incentive that is offered or provided to a prescribing practitioner and requires such practitioner to adhere to specific treatments within the clinical pathway for over eighty per cent of such practitioner's patients, unless (i) the health carrier maintains a procedure by which a prescribing practitioner may opt out from such adherence target when a new treatment becomes available but such clinical pathway has not yet been reviewed and updated to account for the new treatment, (ii) the health carrier maintains a program to track and evaluate health outcomes from such adherence target, and (iii) the health carrier has disclosed to prescribing practitioners the procedures described under subparagraphs (B)(i) and (B)(ii) of this subdivision; or~~

~~(C) Offer or provide a financial incentive or penalty that rewards to a prescribing practitioner for selecting a specific treatment or, procedure or clinical pathway.~~

~~(d) Each health carrier that offers or provides a financial incentive to prescribing practitioners for participation in a clinical pathways program shall disclose to prospective covered persons, and annually to its covered persons and the Insurance Department, information about the clinical pathways such health carrier uses and any financial incentive such health carrier offers or provides to prescribing practitioners for participation in the health carrier's clinical pathways program. Such information shall include (1) a summary describing the clinical pathways used by the health carrier, (2) a statement that prescribing practitioners are offered a financial incentive to consider treatment for their patients in accordance with such clinical pathways, (3) for each clinical pathway for which the health carrier offers or provides a financial incentive to a prescribing practitioner, a description of such financial incentive or the manner in which amounts for shared cost savings are determined, (4) the Internet web site address where, or the process by which, a prospective covered person or a covered person may access the information set forth in subsection (c) of this section, (5) a specific description of the appropriate use criteria of each clinical pathway and a statement that the health carrier's practices concerning such clinical pathway conform to such appropriate use criteria, (6) the procedures by which a prescribing practitioner may opt out of a health carrier's adherence target pursuant to subparagraph (B) of subdivision (2) of subsection (b) of this section, and (7) contact information for prospective covered persons and covered persons to obtain additional information about the clinical pathways used, the financial incentives offered or provided or the prescribing practitioners to whom such financial incentives are offered or provided, by the health carrier.~~

The reason we feel it is appropriate to delete the identified lines in (B), (C) and (d) is that no patient should have to worry that an insurer paid their physician to choose a specific treatment. Physicians treat patients, not insurers.

For additional consideration: Raised S.B. 435 does not address some elements of inefficiencies in the health system that can significantly raise costs. Insurers, physicians, patients and those who ultimately pay for care can benefit from reduced costs in the processing and management of care when appropriate, credible clinical pathways are recognized by both insurers and physicians. There can be a tremendous burden on the healthcare system (and risk to patients) if treating physicians are asked to comply with multiple clinical pathways for similarly situated patients because the insurers all pick or create different preferred treatments. We do not see any provisions in this bill that would effectively address this issue. To address these issues of inefficient cost burdens and risk of deviant care, please consider adding the following:

"A health carrier that adopts a clinical pathway or clinical pathway system shall take effective steps to minimize inefficiencies in care imposed on prescribing practitioners due to variations in clinical pathways adopted by different

health carriers. A health carrier will be presumed to have met this requirement if the health carrier adopts at least one clinical pathway or clinical pathway system option that is widely recognized on a national or regional basis for every clinical condition subject to clinical pathways by the health carrier."

Thank you for your consideration. We at the Connecticut Oncology Association support Raised S.B. 435 with the recommended changes and are very pleased that it is being considered in the 2016 Legislative Session.

Sincerely,



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