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## MEMORANDUM

**To:** Representative William Lippert, Chair, House Committee on Health Care

**From:** Steven M. Costantino, Commissioner, Department of Vermont Health Access

**Cc:** Hal Cohen, Secretary, Agency of Human Services

**Date:** April 18, 2016

**Re:** S.255 - DVHA REQUEST TO ALTER THE AMENDMENT TO S.255

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This memorandum is to provide further information regarding the impact the amendment to S.255 has on the Department of Vermont Health Access (DVHA).

DVHA appreciates the committee's alteration to exclude the department from the appeal requirements found in DFR 2009-03.

DVHA is requesting two additional changes to the bill. Explanations regarding the need for these changes are below:

1. Subsection (b) (1) currently requires a "clinician trained in the specialty of the treating clinician" to properly uphold the denial of a service or a prior authorization. The Medicaid Act does not require that DVHA respond and match each physician specialty. Thus, this requirement would mandate the department to hire sub-specialists of every kind to match potential member provider specialists.

In the area of disabled children this requirement will be very problematic. For instance, a member who sees a sub-specialist in Boston that we have already paid for to transport and care for would then require Medicaid to hire yet another specialist to determine whether she/he agrees with our determination.

This requirement will cost many more dollars. More importantly, it is unlikely that DVHA could hire all the specialists in Vermont to perform this type of review and avoid a conflict of interest, given the size of the state and its finite number of providers and those serving in specialty areas. It is important to note that after DVHA makes any determination of coverage or services, the Human Services Board independently reviews its assessment. This independent review is not performed in the private sector.

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DVHA requests to alter the amendment as follows:

(1) a licensed and clinically trained provider ~~clinician trained in the specialty of the treating clinician~~ is involved in the review whenever authorization is denied or payment is stopped for services already being provided;

If the language is not amended, DVHA would incur a significant impact as a result of needing to contract with a wide range of provider specialists. Initial low-end fiscal estimates consider the need to contract with approximately eight additional provider specialists routinely submitting claims, plus the need for ad-hoc contracting with a variety of highly specialized providers, costing DVHA an additional \$225,00 per year in contracts. This fiscal assumes DVHA would need to contract five hours per week for each of the following provider specialties, ranging from \$40 to \$250 an hour, as well as highly specialized providers on an as-needed bases, ranging from \$250-\$750/hour.

- Chiropractor (\$75/hour); occupational therapist (\$40/hour); speech and language pathologist (\$40/hour); pediatrician (\$100/hour); child psychologist (\$250/hour); board certified behavior therapist (\$60/hour); licensed alcohol and drug abuse counselor (\$40/hour); licensed mental health counselor (\$40/hour).

Additionally, July 1, 2016 would not be a reasonable amount of time to contract with the array of provider specialists that would be required as a result of this language.

2. Subsection (b)(2) currently provides “adverse determination letters delineate the specific clinical criteria” regarding DVHA’s determination. While DVHA provides adverse letters today, the official Medicaid terminology of “adverse action” provides more clarity. Thus, DVHA requests to change the words “adverse determination” to “adverse action”. This better describes the Medicaid notice. As a secondary matter, the clinical criteria used by Medicaid is proprietary. DVHA fears that the requirement of “specific clinical criteria” would require the department to name the criteria chosen, which would be prohibited due to the proprietary nature of the criteria. However, as the law requires as drafted, DVHA can enunciate the clinical criteria it is using. DVHA does this now.

DVHA requests to alter the amendment as follows:

(2) adverse ~~action determination~~ letters delineate the ~~specific~~ clinical criteria upon which the adverse ~~action determination~~ was based; and