

MEMORANDUM

TO: Senate Committee on Finance
FROM: Department of Financial Regulation
SUBJECT: H. 766, An act related to prior authorization and step therapy requirements, health insurance claims, and provider contracts
DATE: April 19, 2024

The Department of Financial Regulation (the “DFR”) is aware that the Senate Committee on Finance has been reviewing H. 766, and submits this written testimony in response to the recent amendment from the Senate Committee on Health & Welfare to exempt inhalers for members under the age of 18 from prior authorization. Under 42 C.F.R. § 156.125 (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-156/subpart-B/section-156.125>), health insurers are prohibited from having benefit designs that discriminate on the basis of an “individual’s age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.” With respect to prior authorization, the U.S. Department of Health and Human Services has interpreted this language to mean that insurers “could not implement prior authorization in a manner that discriminates on the basis of membership in a particular group based on factors such as age, disability, or expected length of life that are not based on nationally recognized, clinically appropriate standards of medical practice evidence or not medically indicated and evidence-based.” 78 F.R. 12847 (<https://www.federalregister.gov/d/2013-04084/p-277>). For that reason, if this language were enacted as written, insurers would be required to waive all prior authorization for inhalers, regardless of the member’s age, at potentially considerable cost.

The DFR also reiterates the concerns raised during in-person testimony from Deputy Commissioner Brown and Assistant General Counsel Sebastian Arduengo about the general cost impact of this legislation to the commercial insurance market, particularly with respect to the proposed changes to claims editing and prior authorization. We are concerned that the potential costs may outweigh any potential benefit of reduced provider administrative burden given that this bill would only apply to a small portion of the market and may further diminish the fully insured marketplace. The DFR urges the General Assembly to commission and fund an independent actuarial study for a comprehensive analysis of the anticipated costs (and potential benefits) before changes to claims editing and prior authorization requirements are enacted or go into effect.