

Medica Letter on HB 2459

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February 3, 2020

Representative Jene Vickrey

Kansas State Capitol

300 SW 10<sup>th</sup> St, RM 276-W

Topeka, KS 66612

**Re: Mental Health Utilization Management HB 2459 - Opposed**

Dear Chairman Vickrey and Committee Members:

I am writing today to convey Medica's opposition to House Bill 2459 related to behavioral health coverage and utilization management.

Medica is an independent and nonprofit health care organization with approximately 1 million members in nine states, and is the only insurer to offer statewide coverage in the Kansas individual market since 2017. Medica's mission is to be the trusted health plan of choice for our customers, members, partners, and our employees.

Medica offers comprehensive and affordable health care coverage that allows our members to receive the care they need to live full and healthy lives. We support efforts to promote access to behavioral health services, particularly as it relates to serving individuals living with mental illness and/or substance use disorder (MI/SUD). While we recognize and appreciate the intent of House Bill 2459 to reduce barriers to care for individuals with MI/SUD, we are concerned the bill, as drafted, overreaches its intent and may create new barriers to affordable coverage and reduce levers to address fraud, waste, and abuse. We outline our concerns in detail below.

Medica has substantive and technical concerns with the new language in section 1(a)(2) relating to utilization management requirements, medical necessity determinations, and network exceptions.

The new requirements in subsection 1(a)(2)(A) remove several tools health plans use to ensure our members are receiving appropriate care for their behavioral health needs. We share the goal of helping our members access the right care they need in the right setting at the right time. Tools such as prior authorization, concurrent review, and other forms of utilization management help us meet those goals at the time care is sought and throughout the duration of our members' care, by ensuring the treatment being accessed is within the professional standards of care. Medica implements utilization management tools in ways that not only ensure appropriate care, but they help ensure members' safety and are an important tool to addressing potential fraud, waste, and abuse. If this language becomes law, Kansans will receive care that is unnecessary, inappropriate, and potentially harmful.

Subsection 1(a)(2)(B) removes additional levers health plans need to identify and address fraud, waste, and abuse. Removing the checks and balances on providers in a space that is already ripe for fraud<sup>1,2</sup> places Kansans living with mental illness and substance use disorder in an unnecessarily vulnerable position, financially and otherwise. We oppose legislation that would place medical necessity determinations solely within the realm of a treating health care provider, and are especially concerned that the language in subsection 1(a)(2)(B), with its reference to “any treatment” is too broad and we recommend it be removed from the bill. The reference to “any treatment” could be read to remove a health insurer’s medical necessity determinations for all medical and behavioral health treatment, not just those associated with members who have substance use disorder, are afflicted with suicidal ideation, or are actively suicidal, within the time frames spelled out in the proposed legislation. Health insurers have an important role to play in the health care system to help providers understand the standards of care, and medical necessity reviews are an important tool to ensuring our members’ safety.

Finally, we are opposed to the provision in subsection 1(a)(2)(C) that requires network exceptions and assurances from a health insurer when an in-network facility is not “immediately available.” Medica offers a care availability benefit in order to provide members with benefits for an otherwise out-of-network provider when care is not available within the network. We support strategies that allow for flexibility for our members to get the care they need. However, we disagree with the approach proposed in subsection 1(a)(2)(C) Because the phrase “no in-network facility immediately available” is undefined in the legislation and is overly broad. The broad applicability creates an opportunity for providers, including nefarious out-of-state providers, to encourage Kansans to bypass networks altogether and steer them towards their facilities.<sup>1</sup>

While we appreciate the intent of HB2459 to increase Kansans’ access to the behavioral health and substance use disorder services they need, we oppose the bill due to the array of unintended impacts of the legislation. Medica encourages the committee to weigh carefully these potential concerns when considering the bill and we welcome the opportunity to work with the committee to improve the bill.

Thank you for the opportunity to offer comment on HB 2459 and please contact me if you have any questions.

Sincerely,



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<sup>1</sup> <https://www.healthaffairs.org/doi/10.1377/hblog20180423.449595/full/>

<sup>2</sup> <https://www.dea.gov/press-releases/2019/02/07/six-individuals-indicted-48-million-health-care-fraud-conspiracy-drug>