June 27, 2022

The Honorable Richard Neal
Chair, Ways & Means Committee
372 Cannon House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member, Ways & Means Committee
1011 Longworth House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Chair, Energy & Commerce Committee
2107 Rayburn House Office Building

The Honorable Cathy McMorris Rodgers
Ranking Member, Energy & Commerce Committee
1035 Longworth House Office Building

The Honorable Ron Wyden
Chair, Senate Finance Committee
221 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member, Senate Finance Committee
239 Dirksen Senate Office Building
Washington, DC 20515

RE: Coalition to Preserve Rehabilitation Support for *The Improving Seniors' Timely Access to Care Act*

Dear Chairmen Neal, Pallone, and Wyden and Ranking Members Brady, McMorris Rodgers, and Crapo:

On behalf of the undersigned members of the Coalition to Preserve Rehabilitation (CPR), **we write to express our support for H.R. 3173/S. 3018, the *Improving Seniors' Timely Access to Care Act*, to reform the use of prior authorization in the Medicare Advantage (MA) program**. This bipartisan legislation would help protect patients, including those in need of rehabilitative care, from unnecessary delays in care due to the overuse and misuse of prior authorization in MA. The bill would streamline and standardize the use of prior authorization in many situations and provide much-needed transparency for rehabilitation patients in the MA program. We urge your committees to work to advance this legislation in any moving vehicle this year.

CPR is a coalition of national consumer, clinician, and membership organizations that advocate for policies to ensure access to rehabilitative care so that individuals with injuries, illnesses, disabilities, and chronic conditions may regain and/or maintain their maximum level of health and independent function. CPR is comprised of organizations that represent patients – as well as the providers who serve them – who are frequently inappropriately denied access to rehabilitative care in a variety of settings.

CPR has long held that overutilization of prior authorization is responsible for restrictions in access to medically necessary care, particularly in Medicare's post-acute care and rehabilitation benefit. Delays and denials in the MA program prevent beneficiaries from receiving the treatment they need in order to regain and/or maintain their maximum level of health and function following injury, illness, disability, or chronic condition. Many plans utilize prior authorization processes for items and services that are, in the end, routinely approved. Additionally, the use of prior authorization to approve care including rehabilitation services and devices, transplantation, non-elective surgeries, and cancer care is especially hard to justify, given that these and many similar medical services are unlikely to be over-utilized and often need to be provided in a timely manner in order to maximize their medical efficacy.

In these cases and others, prior authorization often serves as an unnecessary delay for beneficiaries seeking medically necessary care, and often results in no cost savings to the plan. The impact of prior authorization and other utilization management techniques employed by MA plans is stark; for example, data demonstrates that MA beneficiaries have only one-third the access to inpatient rehabilitation facilities (IRFs) that traditional Medicare beneficiaries have, despite the fact that MA beneficiaries are supposed to have access to the same benefits under the traditional Medicare program.[1] Especially during the COVID-19 public health emergency, this means that patients in need of high-intensity, coordinated, interdisciplinary medical rehabilitation are either being diverted to less appropriate settings or left to languish in acute care hospitals, occupying beds that are sorely needed to treat COVID-19 and other emergent patients.

The need for prior authorization reform has been most recently (and strikingly) emphasized by the Department of Health and Human Services Office of Inspector General's (HHS OIG) report released in April 2022.[2] This report found that MA Organizations (MAOs) "sometimes delayed or denied Medicare Advantage beneficiaries' access to services, even though the requests met Medicare coverage rules." Post-acute care services, particularly admissions to IRFs and skilled nursing facilities (SNFs), were among the most prominent types of frequent denials through the use of prior authorization. OIG found that MAOs often claimed that beneficiaries' needs could be met at lower levels of care, but OIG's own medical reviewers found denied patients met the clinical criteria for the IRF or SNF level, would have benefited from the higher level of care, and that the lower levels of care were, in fact, not clinically sufficient.

The failure to provide MAO beneficiaries with equal access to skilled post-acute care when needed is especially concerning given the demographic comparison between Medicare enrollees in the MA program and in traditional Medicare. According to a 2020 report conducted by Milliman, MAOs have a higher share of Medicare beneficiaries between ages 70 and 84 and a

[1] Medicare Payment Advisory Commission, Report to The Congress: Medicare Payment Policy 298 (Mar. 2017). (Finding that MA beneficiaries are admitted to IRH/Us at a rate nearly three times less than traditional Medicare beneficiaries)
[2] U.S. Department of Health and Human Services, Office of Inspector General. Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care; Report (OEI-09-18-00260) (Apr. 2022).

higher percentage of non-white beneficiaries than traditional Medicare beneficiaries.[3] Older Medicare beneficiaries and beneficiaries of color should indisputably have equal access to the kind of timely intensive rehabilitation that can preserve functional abilities and an individual's ability to remain in the community as independently as possible. When the overuse and misuse of prior authorization presents a barrier to such equal access, existing inequities in health and health care access can be exacerbated for those enrolled in MA plans.

These findings echo previous figures reported by OIG, including the finding that when beneficiaries and providers appealed initial denials, MA plans overturned their own denials 75% of the time.[4] This further demonstrates that MA plans routinely shift the burden onto patients and providers to appeal initial denials of care that are routinely approved when appealed. Unfortunately, the appeals process is cumbersome, time-intensive, and subject to significant delay due to a backlog of cases. Thus, beneficiaries and providers who do not press forward with the appeals process lose access to needed care.

The *Improving Seniors' Timely Access to Care Act* would be an important step forward in beginning to reform the overuse of prior authorization in the MA program and reducing the frequency of inappropriately delayed or denied rehabilitative care. The legislation is based on a consensus statement on prior authorization reform developed by leading national organizations representing physicians, medical groups, hospitals, pharmacists, and health plans, and would facilitate electronic prior authorization, improve transparency for beneficiaries and providers alike, and increase CMS oversight of how MA plans use prior authorization.

We particularly applaud the proposed addition of language requiring transparency on denials that were made "as a result of decision-support technology or other clinical decision-making tools," and "disclosure and description of any software decision-making tools the plan utilizes in making determinations" on prior authorization requests. Algorithms and artificial intelligence can import existing discriminatory assumptions on who does and does not benefit from rehabilitation and other medical services based on disability and other demographic characteristics, depending on who has received such treatments in the past.

As more enrollees, especially seniors and individuals with disabilities, choose Medicare Advantage for their health insurance needs, it is critical that prior authorization does not serve as a barrier to access for medically necessary services. We view this legislation as a necessary first step in normalizing the prior authorization process and making it more equitable for beneficiaries, and we urge Congress and the Administration to continue work in this area. We will continue to advocate for further reforms to prior authorization and to the Medicare Advantage program in order to ensure access to medically appropriate rehabilitative care for beneficiaries. Ongoing work is needed to truly meet patient needs; we strongly support this bill

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[3] Catherine Murphy-Barron, et al., Comparing the Demographics of Enrollees in Medicare Advantage and Fee-for-Service Medicare, Milliman Report commissioned by the Better Medicare Alliance (Oct. 2020).
[4] U.S. Department of Health and Human Services, Office of Inspector General. Medicare Advantage Appeal Outcomes and Audit Findings Raise Concerns about Service and Payment Denials; Report (OEI-09-16-00410) (Sept. 2018).

as a step forward in these efforts. **We urge Congress to pass this bipartisan legislation soon in any moving vehicle to advance protections for millions of MA beneficiaries nationwide**.

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If you have any additional questions, please contact Peter Thomas and Joe Nahra, CPR coordinators, at Peter.Thomas@PowersLaw.com and Joseph.Nahra@PowersLaw.com or by phone at 202-466-6550.

Sincerely,

The Undersigned Members of the Coalition to Preserve Rehabilitation

ACCSES
ALS Association
American Academy of Orthotists and Prosthetists
American Academy of Physical Medicine and Rehabilitation
American Association on Health and Disability
American Congress of Rehabilitation Medicine
American Heart Association
American Medical Rehabilitation Providers Association
American Music Therapy Association
American Occupational Therapy Association
American Physical Therapy Association
American Speech-Language-Hearing Association
American Spinal Injury Association
American Therapeutic Recreation Association
Amputee Coalition
Association of Rehabilitation Nurses
***Brain Injury Association of America* ***
***Center for Medicare Advocacy* ***
***Christopher & Dana Reeve Foundation* ***
Disability Rights Education and Defense Fund
Epilepsy Foundation
***Falling Forward Foundation* ***
Lakeshore Foundation
The Michael J. Fox Foundation for Parkinson's Research
National Association for the Advancement of Orthotics and Prosthetics
National Association of Rehabilitation Providers and Agencies
National Association of Social Workers (NASW)
National Association of State Head Injury Administrators
National Association for the Support of Long Term Care

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***National Multiple Sclerosis Society* ***
Rehabilitation Engineering and Assistive Technology Society of North America
Spina Bifida Association
***United Spinal Association* ***

**** CPR Steering Committee Member***

CC:

Representative Suzan DelBene
Representative Ami Bera
Representative Mike Kelly
Representative Larry Bucshon
Senator Roger Marshall
Senator Kyrsten Sinema
Senator John Thune
Senator Sherrod Brown