Consumers for Affordable Health Care
Advocating the right to quality, affordable health care for all Mainers.

mainecahc.org

PO Box 2490
Augusta ME 04338

1-800-965-7476

Superintendent Robert L. Carey
Bureau of Insurance
Maine Department of Professional and Financial Regulation
#34 State House Station
Augusta, Maine 04333-0034

Re: Comments Regarding Proposed Changes to Rule 850

Dear Superintendent Carey,

The following are comments submitted on behalf of Consumers for Affordable Health Care ("CAHC") regarding the proposed changes to Rule 850. We would like to thank you for the opportunity to comment on the proposed changes.

Consumers for Affordable Health Care is a nonpartisan, nonprofit organization that advocates the right to quality, affordable health care for all people in Maine. CAHC serves as Maine's Health Insurance Consumer Assistance Program, which provides toll-free access to certified application counselors who help Mainers understand their health coverage options and to apply and enroll in private health insurance. In addition, we also help people navigate private insurance plans, including helping people who have been denied insurance coverage to file complaints and private insurance appeals. It is with this experience that we offer the following comments.

Proposed amendments to Rule 850 in accordance with 24-A M.R.S. §§ 212, 2772, 2774, 4218, 4218-A, 4222-A, 4303, 4309, and 4309-A.

Section 1. Purpose. As a general proposition, CAHC supports amendments to Rule 850 that increase consumer protections by improving transparency and accountability in the health insurance industry. We note any concerns or reservations with particular provisions of the proposed Rule below.

Section 3. Applicability and Scope

A. CAHC ***supports*** the inclusion of pharmacy benefits managers that conduct utilization review under Rule 850.

Section 4. Affordable Care Act

B. CAHC ***supports*** the elimination of exemptions for health plans heretofore entitled to grandfathered status.

Section 5. Definitions

A. CAHC ***supports*** the removal of the term "or" in the definition of "Adverse benefit determination."

A-1. CAHC ***supports*** the inclusion of a prior authorization determination within the definition of "Adverse health care treatment decision."

D. CAHC ***has reservations*** about the inclusion of "actively treating physician, facility, or health care provider" as representatives of a covered person for the purposes of the appeals procedure.

Our understanding is that providers and consumers have separate tracks for appealing denied claims for coverage. To the extent that the proposed provision collapses these two tracks, we have serious concerns. In our experience, some provider appeals do not address important components of an appeal, such as health insurance contract provisions and, occasionally, clinical guidelines. Addressing these matters can make the difference between a successful and failed appeal.

> Ex.: a health insurance company denied coverage of a consumer's test for hypoglycemia because obesity was not a covered condition. However, the consumer's contract specified that treatments for morbidly obese patients were covered under certain conditions. The provider did not identify that issue for appeal.
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> Ex.: a specialist in Boston recommended dual biologics for a patient with refractory Crohn's disease. The local provider was unaware that successfully appealing the denial of coverage required finding medical studies showing the efficacy of dual biologics for certain patients.
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> Ex.: a local provider, considered a top surgical specialist in Maine, referred a consumer to an out-of-network provider because he lacked the requisite skill to treat the patient. The insurance company declined to cover the out-of-network surgeon. The general surgeon coordinating the consumer's care did not know how to challenge the adequacy of the insurance company's network.

In each of these examples, the provider lacked basic understanding of health insurance contracts and how to successfully prosecute an appeal. Yet consumers may understandably rely upon such providers to be their advocates. Our concern is that consumers may find out their trust is misplaced only after their appeal rights are exhausted.

Unless there are separate provider and consumer appeals tracks, CAHC's recommendation would be for the Bureau to actively discourage inexperienced providers from functioning as authorized representatives in consumer appeals (in contrast to a provider appeal). We make this recommendation in the interests of preserving consumer rights. Further, when an

adverse health care treatment decision or an adverse benefit determination is made, including an appeal decision upholding a denial of coverage, the consumer must be provided a description of their appeal options in clear, plain language, with time frames for submitting an appeal, how do so, and where they can turn for help, including information about Maine's Health Insurance Consumer Assistance Program.

MM. CAHC ***supports*** the proposed revision.

RR. CAHC ***supports*** the proposed revisions and the express inclusion of the terms "pharmaceutical or" in the definition.

SS. CAHC ***supports*** the revisions, which include the express inclusion of pharmacy benefits managers that conduct utilization review as subject to the Rule.

Section 6. Quality Assurance Standards.

CAHC ***supports*** the revision.

Section 7. Access to Services.

A. Access Plan

3) CAHC ***takes no position*** on the revision.

6) CAHC ***supports*** the revision.

B. Access to Health Care Providers

2) Network Adequacy. CAHC ***supports*** the revisions.

G. Provider Credentialing for Carriers Offering Managed Care Plans.

CAHC ***takes no position*** on the revision.

Section 8. Adverse Health Care Treatment Decisions.

D. Operational Requirements.

7) To the extent that the revision is intended to ensure "other providers that are actively treating covered persons" with access to review staff for the purposes of *provider appeals*, CAHC ***supports*** the provision. To the extent that the revision is intended to ensure that treating physicians can file an appeal on behalf of a consumer, our concerns as stated in comments on proposed changes to Section 5 D remain.

E. Procedures for Review Decisions.

1) CAHC ***supports*** the inclusion of the term "prior authorization" in the requirement to maintain written procedures.

2) CAHC ***supports*** the requirement that health carriers or their designated URE notify a consumer's actively treating provider of an initial determination within 72 hours.

3) CAHC ***supports*** the revision.

4) a) CAHC ***supports*** the revision.

5) b) CAHC ***supports*** the revision.

6) CAHC ***supports*** the revision, which includes "prior authorization denial" in the requirement to provide written notification of any adverse health care treatment decision to the covered person and the actively treating provider.

6) h). CAHC ***supports*** the revision that requires that requires carriers to provide an "authorized representative" with information on and assistance in initiating an appeal. CAHC **has reservations**, as stated in the comment on Section 5 D, if a provider can initiate an appeal on a consumer's behalf.

j) CAHC ***supports*** the revision.

G. Appeals of Adverse Health Care Treatment Decisions

1) Standard Appeals.

a) i-vi) CAHC ***has reservations***, as stated in the comment on Section 5 D, about treating providers functioning as authorized representatives for the purposes of consumer appeals. CAHC ***supports*** the revisions requiring carriers to provide authorized representatives access to claim file, additional evidence, rationale, etc.

c) i-x) CAHC ***supports*** the revisions requiring carriers to provide authorized representatives with a statement of the reviewer's understanding of the request for appeal, clinical rationale, evidence, or documentation, etc.

2) Expedited Appeals

CAHC supports the inclusion of "prior authorization denial" in the written procedures for expedited review of an adverse health care treatment decision.

G-1. Second Level Appeals of Adverse Health Care Treatment Decisions

1. CAHC **supports** the revisions pertaining to timing of decision notification (depending upon whether an in-person panel review is requested.) CAHC ***has reservations***, as stated in the comment on Section 5 D, if providers, acting as a consumers authorized representative, can initiate an appeal on a consumer's behalf.

2. CAHC ***supports*** the revision.

3. CAHC ***supports*** the revision. However, CAHC ***has reservations***, as stated in the comment on Section 5 D, if providers, acting as a consumers authorized representative, can initiate a second level appeal on a consumer's behalf.

H. Emergency Services

5) CAHC **supports** the addition of this proposed amendment.

I. **Disclosure Requirements**

1. CAHC **supports** the revision.

Section 9. Adverse Benefit Determinations not Involving Adverse Health Care Treatment Decisions

CAHC ***supports*** the revisions to Section 9. However, CAHC ***has reservations***, as stated in the comment on Section 5 D, if providers, acting as a consumers authorized representative, can initiate appeals on consumers' behalf.

CAHC sincerely appreciates the opportunity to provide comments on the proposed changes to Rule 850 and thanks the Bureau for consideration of our concerns. If you have further questions, please contact me at junderwood@mainecahc.org.

Sincerely,

Julia Underwood
Associate Director