

HALL Brooke M * DCBS

To: EMERSON Lisa * DCBS; SOUCY Cassandra * DCBS; OBRIEN Jesse E * DCBS
Subject: RE: HB 3046 Utilization Management Criteria Legislative Intent

From: Rep Nosse <Rep.RobNosse@oregonlegislature.gov>
Sent: Thursday, February 10, 2022 10:22 AM
To: SOUCY Cassandra * DCBS <Cassandra.SOUCY@dcbs.oregon.gov>
Subject: HB 3046 Utilization Management Criteria Legislative Intent

Good morning Cassie and members of the HB 3046 Rules Advisory Committee, (Cassie please forward along to the RAC members)

I am writing to provide background on Section 8, Subsection 5(a) of House Bill 3046, regarding criteria and guidelines used by insurance carriers to determine level of care and utilization management decisions.

Really quickly the bill was amended to purposefully delineate between two different sets of medical necessity related decisions: level of care placement and all others. This was done after I requested that a representative of the bill's proponents negotiate with a representative from the insurance carriers specifically on this section. My understanding and intention with the changes in the amendment, and the passed legislation, are as follows:

One. Level of care placement criteria was specifically separated out to maintain its connection with the federal court decision *Wit v. United Behavioral Health* (UBH). In that decision, the United States District Court found that UBH's self-created guidelines dictating what would be covered for mental health illness and substance use disorders did not meet generally accepted standards of care in the commercial and self-insured health insurance markets.

Additionally, the Court provided a list of resources, developed by non-profit associations, that experts and the court agreed were considered generally accepted standards of care. Those include the following: 1) the American Society of Addiction Medicine Criteria ("ASAM Criteria"); 2) the American Association of Community Psychiatrist's ("AACP") Level of Care Utilization System ("LOCUS"); 3) the Child and Adolescent Level of Care Utilization System ("CALOCUS") developed by AACP and the American Academy of Child and Adolescent Psychiatry ("AACAP"), and the Child and Adolescent Service Intensity Instrument ("CASII"), which was developed by AACAP in 2001 as a refinement of CALOCUS; and 4) the Medicare benefit policy manual issued by the Centers for Medicare and Medicaid Services ("CMS Manual").

Rather than specifically call out this list in the bill, language was included to allow for other criteria developed by a nonprofit association in the relevant clinical specialty, should it exist outside of the specialties included above.

But it was not written to allow for carriers to utilize criteria developed in-house or by a third-party outside of that narrow definition.

Two. For all other utilization management decisions not related to level of care placement decisions, language was added to allow for criteria outside of that created by non-profit professional associations, so long as it is based on "generally accepted standards of care". I made this decision

over the objections of the proponents of the bill because I believe that carriers should be able to consider other sources for utilization management outside of level of care. This is where carriers have flexibility to use criteria that has been developed in house or by a third-party, so long as that criteria is made available to the public and its plan members. I hope that the department gives some consideration for creating rules around the provision of that criteria, so that the public and plan members can easy access this important information.

Thank you for the opportunity to clarify my intentions with HB 3046 and to provide context for the changes made during the legislative session. Hope this is helpful. I wonder if we might have you all come to the House Behavioral Health Committee and give a report out on how things are going?

Rob Nosse

State Representative HD 42

Inner SE and NE Portland

Preferred pronouns he, him, and his.

