From: Sen.Darling <Sen.Darling@legis.wisconsin.gov>
Sent: Thursday, October 21, 2021 4:20 PM
To: *Legislative All Assembly <ALLASM@legis.wisconsin.gov>; *Legislative All Senate <ALLSEN@legis.wisconsin.gov>
Subject: Co-Sponsorship of LRB 4440/1: Koreen's Law

PATIENTS FIRST WISCONSIN

CO-SPONSORSHIP MEMORANDUM

DATE: **October 21, 2021**

TO: **Legislative Colleagues**

FROM: **Senator Darling, Senator Marklein, Senator Erpenbach, and Senator Bernier**
Representative Kurtz, Representative Swearingen, Representative Goyke,
Representative James, Representative Petryk , Representative Summerfield

RE: **Support Koreen's Law: Co-Sponsor LRB 4440/1**
SHORT DEADLINE: Reply by October 28, 2021 at 5:00 PM

Eight months into her pregnancy, Koreen Holmes was told she had breast cancer. "It was life or death," said Koreen, who is just 32 years old. "Obviously I chose life which meant many months of cancer treatments and powerful medication." The expectant mom delivered her baby early – on Jan. 28, 2021, and treatments at the Prevea Cancer Center at HSHS Sacred Heart Hospital in Eau Claire began six days later. She required infusion treatments every three weeks. Despite the curveball thrown at the Holmes family, they remained positive, and Koreen's life-saving medications were working.

Then came July 1.

"We found out our insurance wasn't going to pay for the medication anymore because the company put a new policy in place that dictated where we had to get the medicine from– something called 'white bagging,'" said Koreen's husband Nate.

White bagging is a practice by insurance companies which requires a patient to receive their clinician-administered drugs by a specialty pharmacy selected by the insurance company, rather than the patient's local care provider. While their care provider and local pharmacy remain in-network for most things, an insurance company picks and chooses certain drugs that will then become out-of-network resulting in patients experiencing more confusion, cost and disrupted

care. For patients to keep their providers, they would be required to pay the costs associated with receiving out-of-network care.

This is just the beginning of Koreen's two-front battle following her cancer diagnosis – one battle with cancer and another battle with her insurance company over the very treatment she needed to be a mom to her newborn baby. "Immediately, in the back of your mind, you go to the financial burden that's about to set in," Nate said. "We talked at one point about filing bankruptcy or draining our savings so we could keep getting treatment with the people who had been taking such good care of us. Whatever we had to do would be worth it because it's Koreen's life."

Fortunately, Koreen was eventually granted a 90 day continuance of care exception after countless efforts and hours on the phone with her insurance company. This continuance should be enough to finish her cancer treatment. Less than two weeks after being granted the exception, Koreen was notified that a second continuance of care request for necessary follow-up treatments will be denied; no appeals will be entertained.

To read more about Koreen's story of courage and determination, click here.

Now Koreen wants to make sure this doesn't happen to anyone else.

On behalf of Koreen, her husband Nate, her family, and many other patients across Wisconsin, we are introducing LRB 4440/1 as Koreen's Law to prohibit health insurance companies from mandating the practice of white bagging. There is a growing trend among states to enact laws prohibiting this practice, due to the safety concerns associated with payer-mandated white bagging, its financial and health care cost to patients and its impact on patient care delivery.

Vizient Health conducted a nationwide survey of hospitals and found that 92% of hospitals experienced problems with medication received through white/brown bagging which included issues such as wrong drug, damaged product, doses not arriving in time for administration, and doses no longer appropriate due to patient's therapy changes.

This is a growing problem that will continue to affect our constituents without legislative action. Click the link below to learn about the case of a family in Grafton, to see how white bagging creates barriers for pediatric patients with cerebral palsy, their families, and the patient's care team at Children's Wisconsin.

To better understand the impacts of white bagging on Wisconsin patients and providers visit www.PatientsFirstWI.com.

We ask for you to join us in support of **Koreen's Law** by co-sponsoring this legislation. Please contact Rachel in Senator Darling's office (6-5830) or Ellen in Representative Kurtz' office (6-8531) **before Thursday, October 28 at 5:00 PM** to sign on. Sponsors will be added to both the Senate and Assembly version unless requested otherwise.

Analysis by the Legislative Reference Bureau

This bill prohibits certain practices relating to clinician-administered drugs under the state's insurance unfair marketing and trade practices law. The bill defines "clinician-administered drug" as an outpatient prescription drug, other than a vaccine, that, due to medical necessity, cannot reasonably be self-administered by the patient or an individual assisting the patient and is typically administered by an authorized health care provider in a physician's office, hospital outpatient department, or other clinical setting. Under the bill, an insurer offering a health benefit plan, a pharmacy benefit manager, or an agent of the insurer or pharmacy benefit manager may not do any of the following:

1. Refuse to authorize, approve, or pay a participating provider for providing a covered clinician-administered drug and related services to an enrollee, policyholder, or insured.
2. Condition, deny, restrict, refuse to authorize or approve, or reduce payment to a participating provider for a covered clinician-administered drug and related services when all criteria for medical necessity are met because the provider obtains the drug from an entity that is not selected by the plan. Also prohibited are health benefit plan designs that prevent participating providers from receiving reimbursement for

a covered clinician-administered drug and any related service at an applicable rate as specified in the contract.

3. Impose coverage or benefit limitations, or require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or coinsurance, or penalty when obtaining a clinician-administered drug from an authorized health care provider or pharmacy.
4. Require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or coinsurance, or other form of a price increase for a clinician-administered drug when the drug is not dispensed by a pharmacy or acquired from an entity that is selected by the plan.
5. Interfere with an enrollee's, policyholder's, or insured's right to choose to obtain a clinician-administered drug from a participating provider or pharmacy of choice.
6. Limit or exclude coverage for a clinician-administered drug when not dispensed by a pharmacy or acquired from an entity selected by the plan when the drug would otherwise be covered.
7. Require a pharmacy to dispense a clinician-administered drug directly to an enrollee, policyholder, insured, or the insured's agent with the intention that the individual will transport the drug to a health care provider for administration.
8. Require or encourage the dispensing of a clinician-administered drug to an enrollee, policyholder, or insured in a manner that is inconsistent with the federal Drug Supply Chain Security Act.
9. Require that a clinician-administered drug be dispensed or administered to an enrollee, policyholder, or insured in the residence of the enrollee, policyholder, or insured or require the use of an infusion site external to the office or clinic of the enrollee's, policyholder's, or insured's provider.

Under the bill, a participating provider is a provider who is under contract with a defined network plan, preferred provider plan, or limited service health organization to provide health care services, items, or supplies to enrollees of the plan or organization or a clinic, hospital outpatient department, or pharmacy under the common ownership or control of the provider.

State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4440/1
TJD&EKL:cdc

2021 BILL

AN ACT *to create* 628.34 (5m) of the statutes; **relating to:** prohibiting certain practices relating to insurance coverage of clinician-administered drugs.

Analysis by the Legislative Reference Bureau

This bill prohibits certain practices relating to clinician-administered drugs under the state's insurance unfair marketing and trade practices law. The bill defines "clinician-administered drug" as an outpatient prescription drug, other than a vaccine, that, due to medical necessity, cannot reasonably be self-administered by the patient or an individual assisting the patient and is typically administered by an authorized health care provider in a physician's office, hospital outpatient department, or other clinical setting. Under the bill, an insurer offering a health benefit plan, a pharmacy benefit manager, or an agent of the insurer or pharmacy benefit manager may not do any of the following:

1. Refuse to authorize, approve, or pay a participating provider for providing a covered clinician-administered drug and related services to an enrollee, policyholder, or insured.

2. Condition, deny, restrict, refuse to authorize or approve, or reduce payment to a participating provider for a covered clinician-administered drug and related services when all criteria for medical necessity are met because the provider obtains the drug from an entity that is not selected by the plan. Also prohibited are health benefit plan designs that prevent participating providers from receiving reimbursement for a covered clinician-administered drug and any related service at an applicable rate as specified in the contract.

3. Impose coverage or benefit limitations, or require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or

coinsurance, or penalty when obtaining a clinician–administered drug from an authorized health care provider or pharmacy.

4. Require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or coinsurance, or other form of a price increase for a clinician–administered drug when the drug is not dispensed by a pharmacy or acquired from an entity that is selected by the plan.

5. Interfere with an enrollee's, policyholder's, or insured's right to choose to obtain a clinician–administered drug from a participating provider or pharmacy of choice.

6. Limit or exclude coverage for a clinician–administered drug when not dispensed by a pharmacy or acquired from an entity selected by the plan when the drug would otherwise be covered.

7. Require a pharmacy to dispense a clinician–administered drug directly to an enrollee, policyholder, insured, or the insured's agent with the intention that the individual will transport the drug to a health care provider for administration.

8. Require or encourage the dispensing of a clinician–administered drug to an enrollee, policyholder, or insured in a manner that is inconsistent with the federal Drug Supply Chain Security Act.

9. Require that a clinician–administered drug be dispensed or administered to an enrollee, policyholder, or insured in the residence of the enrollee, policyholder, or insured or require the use of an infusion site external to the office or clinic of the enrollee's, policyholder's, or insured's provider.

Under the bill, a participating provider is a provider who is under contract with a defined network plan, preferred provider plan, or limited service health organization to provide health care services, items, or supplies to enrollees of the plan or organization or a clinic, hospital outpatient department, or pharmacy under the common ownership or control of the provider.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 628.34 (5m) of the statutes is created to read:

628.34 **(5m)** CLINICIAN–ADMINISTERED DRUGS. (a) In this subsection:

1. "Clinician–administered drug" means an outpatient prescription drug, other than a vaccine, that meets all of the following conditions:

a. Due to medical necessity as determined by the prescribing provider, the drug cannot reasonably be self–administered by the patient to whom the drug is prescribed or by an individual assisting the patient with the self–administration.

b. Due to medical necessity as determined by the prescribing provider, the drug is typically administered by a health care provider who is authorized under the laws of this state, including when acting under the delegation and supervision of a physician, to administer the drug and is typically administered in a physician's office, hospital outpatient department, or other clinical setting.

2. "Health benefit plan" has the meaning given in s. 632.745 (11).

3. "Participating provider" means any of the following:

a. A provider that is under contract with a defined network plan, preferred provider plan, or limited service health organization to provide health care services, items, or supplies to enrollees of the plan or organization.

b. A clinic, hospital outpatient department, or pharmacy under the common ownership or control of a provider described in subd. 3. a.

4. "Pharmacy benefit manager" has the meaning given in s. 632.865 (1) (c).

5. "Provider" has the meaning given in s. 609.01 (5m).

(b) No insurer offering a health benefit plan, pharmacy benefit manager, or agent or affiliate of the insurer or pharmacy benefit manager may do any of the following:

1. Refuse to authorize, approve, or pay a participating provider for providing a covered clinician–administered drug and related services to an enrollee, policyholder, or insured.

2. Condition, deny, restrict, refuse to authorize or approve, or reduce payment to a participating provider for a covered clinician–administered drug and related services to an enrollee, policyholder, or insured when all criteria for medical necessity are met because the participating provider obtains the drug from an entity that is not selected by the plan. Any health benefit plan design that prevents

participating providers from receiving reimbursement for a covered clinician–administered drug and any related service at an applicable rate as specified in the contract is prohibited under this subdivision.

3. Impose coverage or benefit limitations, or require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or coinsurance, or penalty when obtaining a clinician–administered drug from a participating provider authorized under the laws of this state to administer the drug or a pharmacy.

4. Require an enrollee, policyholder, or insured to pay an additional fee, higher copay or coinsurance, second copay or coinsurance, or other form of a price increase for a clinician–administered drug when the drug is not dispensed by a pharmacy or acquired from an entity selected by the plan.

5. Interfere with the right of an enrollee, policyholder, or insured to choose to obtain a clinician–administered drug from the participating provider or pharmacy of choice, including by inducement, steering, or offering financial or other incentives.

6. Limit or exclude coverage for a clinician–administered drug when not dispensed by a pharmacy or acquired from an entity selected by the plan when the drug would otherwise be covered.

7. Require a pharmacy to dispense a clinician–administered drug directly to an enrollee, policyholder, or insured or agent of the insured with the intention that the enrollee, policyholder, or insured or agent of the insured will transport the medication to a health care provider for administration.

8. Require or encourage the dispensing of a clinician–administered drug to an enrollee, policyholder, or insured in a manner that is inconsistent with the supply

chain security controls and chain of distribution set by the federal drug supply chain security act, 21 USC 360eee, et seq.

9. Require that a clinician–administered drug be dispensed or administered to an enrollee, policyholder, or insured in the residence of the enrollee, policyholder, or insured or require use of an infusion site external to the office, department, or clinic of the provider of the enrollee, policyholder, or insured. Nothing in this subdivision prohibits the insurer, pharmacy benefit manager, or agent of the insurer or pharmacy benefit manager from offering the use of a home infusion pharmacy or external infusion site.

(END)