

Chair Nosse and members of the House Behavioral Health and Health Care Committee,

My name is Larry Conner. I am one of the sponsors of HB 2029. I am a Licensed Professional Counselor in an individual private practice in Lake Oswego. I have been a counselor for 38 years and in private practice for 33. Up through 2021, I was an advocate for Licensed Professional Counselors and Licensed Marriage and Family Therapists for 15 years as the Founder and Past-President of COPACT, and I was one of the authors of HB 3046, which passed in 2021. Today I am writing on behalf of 80+ group practices and numerous individual practices throughout the state. **I ask for your support for HB 2029, which will reform the insurance audit process for mental health providers and thereby protect access to reasonable cost mental health care in Oregon.**

### **The Problems with Audits and Recoupments**

Over the last eight or more years Mental Health Providers have noticed a marked increase in private insurance and Continuing Care Organizations (CCO) audits. These audits can lead to enormous refunds that are demanded of providers called “recoupments.” These troubling recoupments have ranged from \$10,000 to \$750,000. **Mental Health Providers do not have the profit margins to be able to afford paying recoupments of that size.** In 2019 the US office of Labor and Statistics published income levels for professions in Oregon. Masters level Mental Health Providers were the lowest paid profession they studied. For example, on average, we make less income than teachers. Please understand, we cannot afford to pay these recoupments.

In 2021, with the overwhelming support of legislators in both the House and Senate, the Legislature passed HB 3046 which defines that Oregonians need to be able to access low cost, effective care for mental health care through the use of their insurance benefits. These current audits with large recoupments are blocking what the Legislature intended in 2021. **Because of these audits many providers feel compelled to stop accepting certain insurances or to stop accepting any insurance whatsoever. Some providers have even closed their practices following abusive audits. Because of these audits, access to reasonable cost mental health care is diminishing.**

Just for the record, HB 2029 is essentially the same bill this committee passed two years only to have it languish and die in Ways and Means because of a lack of quorum near the end of the session. Please note that HB 2029 has two major sections, one that applies to commercial insurers and one that applies to CCOs. There are different requirements in each section because of state vs Federal rules. We changed only a few things from the bill that passed out of committee two years ago at the requests of commercial insurers and OHA and we reduced the fiscal impact.

### **These are the ways HB 2029 will reduce the size of recoupments**

1. Current Statute allows audits to extend back in time with no limit and insurers/CCOs can begin the audit process years after the care is completed.

- HB 2029 will limit the amount of time audits can go back to one year for commercial insurers, which is a growing legislative consensus throughout the country. The lookback period for CCOs will be limited to 5 years due to Federal Medicaid rules. These changes will reduce the size of recoupments.

2. Auditors, who often work for third party agencies, are commonly paid a portion of the recoupment as a bonus, incentivizing auditors to increase the size of recoupments.

- HB 2029 will prohibit paying auditors a portion of the recoupment, thus reducing the size of recoupments.

3. Auditors commonly examine only a small number of claims and then extrapolate how many mistakes they assume are in the rest of the claims.

- HB 2029 will allow commercial auditors to use extrapolation, but it will require auditors to individually examine any claims that need to be recouped.

### **These are the ways HB 2029 will reduce the number of audits**

1. Each insurer or CCO has different requirements for what must go into a successful mental health claim. Yet insurers and CCOs do not explain to providers what those requirements are. We must engage in trial and error, which is likely to lead to an audit. Many insurers have been resistant to explaining exactly what they want in a claim, which leads many providers to conclude that at least some insurers and CCOs are banking on providers making mistakes, suggesting that audits and recoupments are revenue-creating strategies for at least a portion of the insurers and CCOs in Oregon.

- HB 2029 will require insurers and CCOs to issue a statement to each provider who submits a mental health claim, which defines exactly what that particular insurer or CCO requires to be included in a successful mental health claim. This will reduce the overall number of audits substantially. Additionally, with this legislation OHA will create an online training process that will update Oregon Medicaid and CCO providers on any changes in Medicaid claim requirements and will train those providers to create successful claims.

2. Large recoupments often result from simple clerical errors that could be easily corrected.

- HB 2029 will follow the lead of the Pharmacy statute to not allow recoupments based on simple clerical errors, but will allow providers to correct mistakes without facing a recoupment. This will reduce the number and size of recoupments substantially. This requirement will apply only to commercial insurers and not CCOs due to Medicaid rules.

### **These are ways HB 2029 will make the audit process more fair and reasonable**

1. Auditors without any mental health training often challenge providers on whether the client meets the criteria for medical necessity, which is necessary for payment on a claim, and auditors can challenge the diagnoses we give clients or the treatment we provide them.

- HB 2029 will require that audits of commercial mental health claims will be reviewed by behavioral health professionals, and OHA/CCO audits will be performed by

behavioral health providers. Both of these requirements will ensure that audits and recoupments are fair and clinically sound.

2. Often the audit process can be drawn out for well over a year, leaving providers in a state of constant fear about the outcome.

- HB 2029 requires that the audit process is completed within 180 days.

3. Due to new behaviors we are seeing from commercial insurers, under HB 2029 no insurer will be able charge providers for the cost of their audits, something we find particularly troubling because it is just another substantial cost on top of what are already huge and unreasonable audit costs.

**In summary, HB 2029 will effectively reduce the size and number of recoupments, minimizing the number of providers stopping to accept insurance clients or closing their practices.** HB 2029 will reinforce the intent of HB 3046 from 2021 in strengthening the opportunity for vulnerable Oregonians to get effective mental health care in a timely and financially reasonable fashion.

**It is important to note that HB 2029 will not change current statute which allows insurers and CCOs to obtain recoupments due to fraud or double payments.** We are not opposed to legitimate audits for legitimate purposes. We are opposed only to unjust and high-cost audits that lead to a reduction in access to care throughout the state.

I ask you to pass HB 2029 with a do-pass recommendation so that we can ensure that Oregonians will have more options to get reasonable cost mental health care, not less.

Thank you for this opportunity to speak up about this important issue.

Gratefully,

Larry Conner MA, LPC  
Legislative Chair, Oregon Mental Health Providers PAC