



Jim Justice
Governor of West Virginia

March 28, 2018

VIA HAND DELIVERY

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill 442

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 442.

Enrolled Committee Substitute for Senate Bill No. 442 requires the Public Employees Insurance Agency (PEIA), managed care organizations (MCOs) and private commercial insurance companies to develop forms and accept electronic prior authorization requests by specific deadlines. Most notably, the legislation purports to void existing contractual agreements governing the prior authorization process by declaring them "unenforceable".


Enrolled Community Substitute for Senate Bill 442 is concerning because it voids current contracts governing prior authorization response times would be ruled as unconstitutional. WV Code §33-4-22(i) of the bill violates the Contracts Clause of both the Constitutions of the United States (U.S. Const. Art. I, § 10, cl. 1) and of West Virginia (W.Va. Const. Art. III, § 3, cl. 4). Both the Supreme Court of Appeals of West Virginia and the United States Supreme Court have held state laws unconstitutional where a state statute "impairs the obligation of an existing contract" Devon Corp. v. Miller, 167 W. Va. 362, 280 S.E.2d. 108 (1981), cert. denied, 455 U.S. 993, 102 S. Ct. 1622, 7 L. Ed. 2d 855 (1982). If this provision would become law, insurance companies, with current contracts that govern response times for prior authorizations, would

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have no alternative but to unilaterally alter these contracts based on the requirements of this bill. This legislative interference with current contracts would be unconstitutional.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 442.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice
Governor

cc: The Honorable Mitch Carmichael
President of the Senate

The Honorable Tim Armstead
Speaker of the House of Delegates