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April 9, 2010

RE: AN ACT to amend the general
business law, in relation to the
approval of requests for insurance
coverage for wheelchairs

S. 713-A (Johnson, C)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the
Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York respectfully oppose this bill, which is confusing and unnecessary. This bill would amend the General Business Law in an attempt to regulate the timing of insurance approvals for wheelchairs. This issue is already governed by Article 49 of the Insurance Law and Article 49 of the Public Health Law, which provide identical protections beyond those proposed in this bill.

It seems this bill is directed toward approvals of custom-manufactured wheelchairs. In many circumstances, the provision of a custom wheelchair will require pre-authorization, which must be completed within three days. Notice of a pre-approval decision must be provided to both the provider and the insured. If retrospective review is implicated, a decision must be made within 30 days. In either circumstance, the insured and provider will be provided with a determination within the timeframes established by this bill. Additionally, the Insurance Law and Public Health Law set up a detailed process to allow for appeals of adverse decisions. A utilization review decision which is not made within the appropriate timeframe is considered an adverse determination, allowing the insured to access the appeals process. With this current mechanism in place, this bill is unnecessary.

Most importantly, while the bill purports to only require the insurer to inform the manufacturer and the insured of the existence and applicability of coverage, it anticipates the manufacturer will submit a request for payment directly to the insurer. Therefore, it appears this legislation contemplates a manufacturer will be paid directly by the insurer even when the plan does not have a contractual relationship with the manufacturer. This interpretation would seriously

undermine a plan's participating provider network as direct payment is a benefit reserved for those providers in the network. In fact, direct payment to a non-participating manufacturer would likely violate the subscriber contract.

For the foregoing reasons, we urge this legislation not be enacted.

Respectfully Submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans