



May 18, 2009

RE: AN ACT to amend the public health law and the insurance law, in relation to the reimbursement of out-of-network providers of clinical laboratory services by organizations providing or offering comprehensive health services plans.

A. 6741-A (Bradley)
S. 3180-A (Duane)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York oppose enactment of this legislation which would require managed care plans, to reimburse out-of-network providers of clinical laboratory services when plan participants are referred to such laboratories for services by an in-network provider. This legislation would diminish a managed care plan's ability to protect plan participants as well as significantly alter provider networks. In addition, in light of current New York State regulations this bill is unnecessary and would not benefit insureds.

THIS BILL WOULD UNDERMINE THE OVERALL PURPOSE OF PROVIDER NETWORKS BY ASSIGNING A PLAN PARTICIPANT'S RIGHT OF REIMBURSEMENT TO OUT-OF-NETWORK PROVIDERS; SUBSEQUENTLY INCREASING ADMINISTRATIVE COSTS.

This bill would undermine the overall purpose of clinical laboratory provider networks by assigning a plan participant's right of reimbursement to out-of-network laboratories. In fact, the bill provides that any payment made by a managed care plan directly to the plan participant, who holds the contractual right of reimbursement, does not satisfy the managed care plan's payment obligation. Instead this bill would require managed care plans to pay the out-of-network laboratory directly. The inherent result of this proposed requirement is the added administrative burden it places on plans. Reimbursing laboratories directly that are not delivering services within a network would exponentially increase the administrative requirements put on plans. For instance, plans

would need to considerably expand their provider file maintenance systems to issue 1099's to non-participating providers along with all other financial reporting requirements that govern plans. The inefficiency that would result from the passage of this bill would cause an increase in administrative costs and, like any other costs incurred by the plans, would ultimately be passed along to consumers in the form of higher premiums.

Moreover, this bill would remove the most important incentive that laboratories have to contract with plans and participate in networks. Under current law, contracting laboratories agree to accept plan allowances for covered services and pledge not to balance bill members. In exchange for their pledge, participating laboratories are guaranteed prompt, fair and direct payment for their services as well as access to numerous health plan members for network coverage. The sponsors of this bill are seeking to effectively eliminate this mutually advantageous arrangement. If enacted, laboratories would be incentivized to terminate their participating status because they would receive all the advantages of membership without joining. The dramatic decrease in provider networks stemming from enactment of this bill would severely restrict any cost control efforts of the managed care plan. Furthermore, altering the network construct would cause managed care plans to lose their ability to ensure that only the best, most qualified, laboratories provided services to their members. If enacted, members would receive treatment from less qualified, un-credentialed laboratories representing an unsubstantiated risk to patients.

CURRENT LAW PERMITS REFERRALS TO NON-PARTICIPATING LABORATORIES UNDER CERTAIN CIRCUMSTANCES.

The sponsors of this legislation contend that patients referred by their primary care provider (PCP) to out-of-network laboratories for services are subsequently billed by the out-of-network laboratory for such services. However, 10 NYCRR 98-1.13(i) states:

when an enrollee is referred by an MCO [Managed Care Organization] or by an MCO primary care practitioner or MCO provider authorized by the MCO to make such referrals to a participating or nonparticipating specialist for services included in the enrollee contract with such MCO, the enrollee shall incur no financial liability other than required co-payments.

Therefore, under current law, out-of-network laboratory services rendered as a result of a referral from a PCP are already reimbursed by managed care plans. In addition, plan participants who receive out-of-network laboratory services pursuant to a referral from their PCP are responsible for only applicable copays, coinsurance or deductibles for such services.

Furthermore, this bill is unnecessary as in-network laboratory services are readily available. Unlike some specialty services where a managed care plan does not have a similar in-network provider requiring a plan participant to go out-of-network, managed care plans have contracts for in-network laboratory services which serve as a necessary

cost containment tool. As such this bill would only benefit providers and not plan participants.

For the forgoing reasons, the Blue Cross and Blue Shield Plans of New York oppose the enactment of this legislation.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC
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