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February 23, 2009

RE: AN ACT to amend the public health law and the insurance law, in relation to the repeal of certain provisions allowing a health plan to charge a fee for an appeal

A.728 (Gottfried)

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 the enactment of this legislation which would increase the administrative costs for insurers without conferring any significant benefit to enrollees. This bill eliminates the \$50 application fee an insured must pay in order to file an external appeal. In addition, the bill requires that notification be provided to the patient's designee and the healthcare provider of a utilization review final adverse determination and an external appeal determination.

1. **REMOVING THE PROVISION THAT ALLOWS INSURERS TO CHARGE FOR EXTERNAL REVIEW CONVEYS NO BENEFIT FOR OVERTURNED DECISIONS AND WILL NOT SERVE TO PROVIDE EXTERNAL APPEALS FOR THOSE WHO VIEW THE COST AS A BARRIER.**

Although the insurance law and the public health law authorize insurers to charge \$50 for an external review, the fee is refunded in the event that the external appeal agent overturns the final adverse determination of the insurer. Moreover, insurers are not allowed to charge a fee where the enrollee is on medical assistance, Child Health Plus or where the fee would pose a hardship. With these significant carve-outs, individuals with legitimate claims for external review have ample opportunity to use the system without any significant barriers.

Where the insurer's determination is upheld, the insurer retains the \$50 payment, which is applied to offset the administrative costs of the program. If this fee were prohibited, the cost of

the administrative expenses would result in increased premium rates so that insurer's could recoup their costs.

2. **REMOVAL OF THE FEE FOR AN EXTERNAL APPEAL WILL ENCOURAGE FRIVOLOUS APPEALS AND INCREASE COSTS TO INSURERS.**

With the removal of this fee, enrollees would no longer have a disincentive to file an external appeal legitimate or otherwise. Currently, those with justifiable claims can file for an external appeal with the understanding that if their appeal is successful, the fee will be returned. Conversely, those with only a chance of success are likely to view the narrow prospect of the return of their funds as a disincentive to filing. If this provision were repealed, everyone would file for external review on the off chance that they may be successful. With no disincentive for filing frivolous claims, the administrative costs borne by insurers would be substantially increased and, likely, passed on to enrollees in the form of increased premiums.

Respectfully submitted,

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