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March 5, 2009

RE: AN ACT to amend the insurance law, in
relation to mandatory health insurance
coverage for providing prosthetic devices

A.770 (Gunther)

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 require health plans to cover prosthetic devices in a manner that is equal to or greater than the coverage provided by Medicare. Due to the broad definition given to prosthetics by Medicare, the bill is overreaching and will have unintended consequences.

1. **THE BILL'S REQUIREMENT THAT PLANS' COVERAGE FOR PROSTHETICS BE EQUAL OR ABOVE MEDICARE'S COVERAGE FOR PROSTHETIC DEVICES IS, AT BEST, AMBIGUOUS AND CONFUSING FOR BOTH PLANS AND CONSUMERS.**

The bill's requirement that plans provide coverage of prosthetics at a level that is equal to or above Medicare's coverage for prosthetics is ambiguous. The Medicare rule for prosthetic devices, which is set forth in Soc. Sec. Act §1861(s)(8), requires coverage for "prosthetic devices (other than dental), which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lense." This definition is not specific and will make coverage determinations more difficult to make based on this language.

The difficulties of adhering to such a mandate are further complicated by the unique Medicare system of national and local determinations. Thus, the mandate contained in the proposed

legislation would change depending on the plan member's residence. In New York, there are three insurance companies that act as the Medicare carriers; Empire Medicare Service for Downstate, Health Now for Upstate, and GHI for Queens. Each area can make its own local coverage determinations, so long as they do not conflict with national coverage determinations. Consequently, the proposed mandate would impose three different standards based upon the areas in which patients reside. This would lead to unnecessary confusion for consumers. The different standards would also create inequities among consumers and additional administrative complexities and expenses for plans.

2. THE COVERAGE MANDATED UNDER THE BILL IS OVER-BROAD.

In addition to the ambiguities that are created by the Medicare language, the proposed mandated coverage is overly broad and extends beyond the meaning commonly attribute to its language. The Medicare website illustrates this point. The site includes a section entitled "Coverage Issues", which outlines whether certain procedures are covered under a particular section. This section is used to help clarify difficult coverage determinations. A sampling of prosthetic devices listed in this section include:

- Carotid Sinus Nerve Stimulators
- Cochlear Implantation
- Deep Brain Stimulation
- Electrical Nerve Stimulators
- Phrenic Nerve Stimulator
- Sacral Nerve Stimulation
- Electronic Speech Aids
- Hydrophilic Contact Lenses
- Urinary Drainage Bags

Mandating coverage by the language proposed in this bill constitutes an enormous addition to New York's mandated benefits that will increase the cost of health insurance for all persons. Moreover, it does not appear that the proposed legislation is intended to cover these types of prosthetic devices.

3. THE LEGISLATURE'S CONTINUAL EXPANSION OF COVERAGE THREATENS PUBLIC HEALTH, AS EACH EXPANSION OF HEALTH MANDATES DIRECTLY RESULTS IN INCREASES IN PREMIUMS AND INCREASES IN THE NUMBER OF UNINSURED NEW YORKERS.

As discussed above, this bill would mandate coverage for a myriad of devices and treatments, referred to as "prosthetic devices" under the Medicare Law. The number of mandated benefits has increased to more than twenty five times of those in existence in 1970. New mandates increase health care costs, thereby decreasing employers' ability to offer coverage, which is highly sensitive to price increases. A study by the Lewin Group indicates that each one-percent increase in private insurance premiums results in an increase of 400,000 to the population of uninsureds. New mandates also result in less wages for workers, as employers offering health insurance must pay more for each of their benefits.

The mandate contained in this bill will increase insurance costs and make health care coverage unattainable for more employers and individuals. This mandate is particularly troublesome because of broad scope of its language which mandates coverage for a large number of items.

4. **THE LEGISLATION WOULD NOT PROVIDE THE BENEFITS THAT WERE INTENDED BY ITS SPONSOR.**

As this bill is currently written it would not mandate coverage for prosthetic limbs, the apparent goal of its sponsor. The sponsor's memorandum focuses on the loss of a limb and mandating treatment for such losses, indicating that the bill was intended to cover artificial limbs. However, the Medicare definition of "prosthetic devices" does not include limbs, which are treated under a different section of the Medicare Law (See Soc. Sec. Act §1861(s)(9) – "Leg, Arm, Back and Neck Braces, and Artificial Legs, Arms and Eyes"). Linking coverage standards to the Medicare law not only creates confusion as to the breadth of the coverage, it fails to provide the intended coverage for artificial limbs.

The enactment of this bill into law would unduly increase health care costs, increase the number of uninsured, create complexity and confusion as to the coverage provided under this mandate, all while failing to provide the intended coverage.

It is for all these reasons that we oppose the enactment of this legislation.

Respectfully submitted,

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Blue Cross and Blue Shield Plans