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April 7, 2011

RE: AN ACT to amend the insurance law, in
relation to coverage for the screening,
diagnosis and treatment of autism spectrum
disorders

A. 6305 (Morelle)
S. 4005 (Fuschillo)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shield Plans strongly opposes enactment of this legislation, which would impose a costly and complex mandate on New Yorkers with health insurance coverage; a mandate which will unnecessarily drive up the cost of coverage. Specifically, the Bill requires coverage for a broad array of autism-related treatments, many of which are completely unrelated to healthcare services. Indeed, the Bill is far more costly, ambiguous and broader in scope than the Bill vetoed by Governor Paterson in 2010 and is broader in scope and is more costly than virtually every other autism mandate enacted in any other state in the country.

This Bill is especially objectionable because it circumvents the fundamental tenets of the Insurance law and health insurance generally. Specifically, the Bill requires coverage for services which are not evidence-based, peer reviewed, and clinically proven to be medically beneficial; a fundamental and basic requirement for all covered health benefits. The Bill goes far beyond the scope of any other mandate in New York's Insurance Law, requiring coverage for services that have questionable or diminishing positive impact on patients' health conditions, and, unlike every other health insurance mandate and benefit, radically restricts an insurer's vital ability to determine whether a particular course of treatment is medically necessary or appropriate.

Specifically, while the Bill generally allows for the utilization review of "health care services", it expressly prohibits an insurer from denying coverage "on the basis that the treatment is habilitative, non-restorative, or educational in nature"; terms which are both undefined and generally considered to be unrelated to healthcare. Moreover, with the exception of inpatient

care, the Bill expressly prohibits, for up to one year, an insurer from even reviewing the care provided to individuals who are receiving treatment for autism spectrum disorder, a term broadly defined to include a wide array of disorders and conditions. In other words, other than during an annual review, an insurer, and in turn, its customers, must simply pay for whatever services are included in that treatment plan, irrespective of cost, quality of care and safeness of care provided. These restrictions are outrageous departures from benefit coverage and are especially troubling considering the evolving science and diagnosis of autism spectrum disorder. Indeed, the coverage mandated by this legislation includes Applied Behavioral Analysis (“ABA”) which is widely considered by the conventional medical community to have questionable clinical benefit for older children and adults and is provided by professionals who are neither licensed nor regulated by the State.

In no other situation must insurers cover such a broad array of services provided by unlicensed practitioners in an unregulated profession. Incredibly, the Bill pushes still further, exempting autism coverage from the standard visit limits otherwise applicable to many other benefits in a policy, such as physical therapy or occupational therapy visit limitations. So, for example, while cancer patients, paralysis victims, and mental health patients are subject to many standard clauses and benefit limitations, individuals with autism spectrum disorder are expressly exempted from such limitations. Moreover, this legislation mandates coverage of prescription drugs for autism disorder treatments, blatantly ignoring the fact that the insured’s policy may not otherwise provide prescription drug coverage. This means that policies which provide no prescription drug coverage for all other policyholders may end up paying tens of thousands of dollars for prescription drugs for those policyholders receiving treatment for autism spectrum disorders. There is simply no plausible policy rationale for any of these unprecedented distinctions, especially considering the cost this mandate will add to premiums; a cost that will be born by every fully insured business, every insured municipality, the State itself, and by every individual who purchases insurance coverage.

This legislation is also poorly timed due to the continued implementation of federal health care reform. The insurance marketplace is on the verge of undergoing its most fundamental transformation in a generation. As the federal reform effort marches forward and exchanges are created and “essential benefits” are defined, this Bill may place a huge financial burden on New Yorkers. Specifically, policies offered through the exchanges will be required to include an “essential benefits package,” and while states may require coverage in excess of this package, they are responsible to the federal government for any additional cost associated with such required benefits. Whether autism-related care will be included in the still undefined essential benefits package is entirely unclear. But one thing is clear: mandated benefits exceeding the scope of the essential benefits package will be paid for by State. It would therefore be most prudent to pend any additional state mandates until after full implementation of the federal law.

Finally, this Bill fails to seek any analysis or input from the legislatively-created Mandate Review Commission before imposing a costly and convoluted mandate on New York’s insurers. This advisory panel was established in 2007 to provide critical analysis of the costs and benefits of health insurance mandates in order to ensure rationality and affordability in New York’s health insurance market. A proposal as sweeping and costly as this Bill is an ideal candidate for such an analysis, but unfortunately, the mandate review commission has yet to be established.

We strongly urge the Legislature to stay any action on this Bill until the Mandate Review Commission has been established and is able to thoroughly appraise the Bill's undoubtedly far-reaching effects.

For these reasons, the New York State Conference of Blue Cross and Blue Shield strongly opposes enactment of this legislation

Respectfully submitted,

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