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March 5, 2012

RE: AN ACT to amend the mental hygiene law, in relation to defining a bill of rights for persons with autism or autism spectrum disorders

A. 1708 (Gunther)
S.2148 (McDonald)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York strongly oppose the enactment of this bill which attempts to provide a broad scheme of “rights” to persons with autism or autism spectrum disorders. This bill would directly conflict with several of the provisions included in the historic autism legislation passed during last year’s Legislative Session; a new law that has yet to even go into effect. In fact, this bill’s sponsor praised the enactment of last year’s new autism law and the protections it provides to those affected by autism spectrum disorders. But this proposed legislation would undo some of those protections; safeguards which were the subject of intense scrutiny, discussion, and careful consideration before being passed by both Houses of the Legislature and receiving the Governor’s signature. Undoing or compromising the carefully thought out protections present in that new law, especially considering that it has not even been implemented yet, would negate much of the passionate work done by legislators, the autism community, and insurance plans less than a year ago.

Most notably, this bill would prevent any spending caps on treatment for autism spectrum conditions. When signing last year’s autism legislation, Governor Cuomo himself was in favor of reasonable spending limits, recognizing that they are entirely necessary to make autism coverage a workable proposition for integration into New York’s healthcare system. Removing these caps would have a dramatic and negative impact on last year’s legislation, not to mention the significant increases it would cause to health insurance premiums.

In addition, this bill contains serious technical flaws and is ambiguous with respect to who bears the responsibility to enforce the “rights” it outlines. For example, the bill defines increased investment in research, family-driven and patient-focused treatment, and coordinated care in which all providers work together as rights to which all individuals with autism or autism spectrum disorders are entitled. While these are laudable goals, it is unclear how the bill’s provisions could practically execute these aims. Further, the bill does not amend the insurance law or address the impact it would have on the State with respect to individuals covered by government programs or the uninsured, but it appears to be attempting to impose requirements on all types of health insurance coverage.

One of the most fatal flaws with this bill is its apparent attempt to circumvent legitimate medical necessity and utilization review mechanisms that are applicable to all benefits provided by health insurance policies. For example, some of the rights detailed in the bill imply that individuals may access providers without regard for network status. Plans carefully develop a network through a credentialing process that ensures their enrollees access to high quality providers. Use of out-of-network providers for any benefit will result in higher out-of-pocket expenses for the enrollee, a result termed a discriminatory barrier to treatment by this bill in the context of autism.

A finding by a health plan that a particular service is not medically necessary is subject to a carefully-regulated review process. This bill references “barriers to treatment” as discriminatory. Even if the denial of a particular service is upheld upon external review as appropriate due to a lack of medical necessity, it could still be considered discriminatory under this legislation. Determinations as to the appropriateness of an insurer’s actions, whether with respect to a particular medical necessity determination or more broadly with respect to a Plan’s benefit structure, are best left to the robust protections currently found in the Insurance Law.

While this legislation is well-intentioned, it would undo some of the carefully considered and historic reforms enacted into law by this same Legislature just last year. In addition, it creates misplaced, duplicative and confusing requirements on all players in the continuum of care for individuals diagnosed with autism spectrum disorders. For this reason, we respectfully oppose this legislation.

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans