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January 5, 2012

RE: AN ACT to amend the insurance law and the public health law, in relation to requiring a health care plan which provides coverage of out of network care to provide certain information to insureds, subscribers or enrollees

S.5068A (Hannon)

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 legislation, which seeks to require that a health plans providing out-of-network benefits reimburse out of network providers “significant coverage” for the 80th percentile of the providers charges. The goal of the Bill is simply to pay nonparticipating providers a greater reimbursement which will be based on providers’ own charges. The result of the Bill will be a further increase in the cost of coverage.

Health plans currently reimburse nonparticipating providers in a variety of ways, including, but not limited to, the “usual and customary rate” (“UCR”), a percentage of the in-network rate, a percentage of Medicare, or by a set fee schedule. Each of these methods is an example of current payment practices, each impacting the cost of coverage for consumers, and similarly, impacting whether providers will agree to participate in a plan’s network. Consumers currently have flexibility to select a plan with out of network benefits and rates that they feel is best suited for their health care needs and affordability.

This Bill eliminates many of these options for plans by dictating that out of network rates will be based on the provider's own charges and at the 80th percentile of UCR, an amount in excess of most current out of network reimbursement. This blatant attempt to increase provider reimbursement will only result in harm to consumers. Premiums will increase, fewer providers will agree to participate in networks, the number of policies offering out of network benefits will decline, substandard care will become the norm as providers circumvent the essential provider credentialing process, and providers will continue the money grab by continuing their abhorrent "balance billing" practices in seeking even greater reimbursement directly from consumers.

Moreover, the database to determine UCR is developed by FairHealth, a recently created entity which has only become fully operational within the last 3 months. Its algorithm remains in development and its livelihood is unclear as plans, under the agreement with the Attorney General, are only required to submit data for 5 years from 2009. Codifying in statute this method for calculating out of network rates is, at best, premature.

In addition to limiting the choice of products for consumers, this Bill has the potential to compromise the viability and the integrity of provider networks. A robust and carefully credentialed network of providers that adhere to the operating principles of the health plan is its cornerstone. A health plans credentialing process is an essential means for screening practitioners who provide treatment to its members, thereby elevating the quality of care rendered. Establishing a level of reimbursement for out-of-network services that both incentivizes the subscriber to access care outside the network and that disincentivizes a provider from participation in the network will seriously undermine the quality of care provided.

This Bill would also harm consumers by compromising the important "hold harmless" and quality of care protections currently afforded to health plan members. Without a network agreement between the provider and insurer, the provider is free to balance bill a patient for any portion of services not covered by the insurer. While this Bill would require "significant coverage" of the 80th percentile of the charges for the same services provided in the same geographical area "as reported in a benchmarking database," this has absolutely no bearing on what a specific out-of-plan provider may charge a subscriber. And because there is no network agreement between the provider and HMO, the provider is free to balance bill the subscriber for any difference between the actual charges and the amount covered by the contract.

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

Respectfully submitted,

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