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September 26, 2017

RE: AN ACT to amend to the insurance law, in relation to the denial of coverage of treatment related to health care services for which pre-authorization was granted

A. 1129 (Hunter)

S. 3568 (Hannon)

### **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 oppose enactment of this Bill, which would vastly expand a balanced approach that was recently negotiated by hospitals, health insurers and the State to establish guidelines for the preapproval of services. This Bill would significantly expand this carefully developed expansion of the prior authorization requirements, reducing the effectiveness of utilization review, eliminating the patient assurance that services will be covered and ultimately contributing to rising health care costs.

The current law, which was mutually agreed upon by hospitals, health plans and physician groups, requires insurers to cover surgical or invasive procedures that are closely related to and rendered at the same time as services that had already received prior authorization. This approach prevented patients from needing to receive an additional prior authorization for procedures that arose directly, and immediately, from the provision of prior authorized services. This was a limited exception to the prior authorization process that allowed patients to receive immediately necessary care and services, and for hospitals and other providers to know that payment for such services would not be denied due to the patient not receiving prior authorization for the procedure.

This Bill would dangerously expand this limited exception to include treatment of “concurrent symptoms or side effects” and deviates from the intent of the original exception. The 2007 legislation recognized that enrollees requiring surgical or invasive procedures immediately upon receiving a prior authorized service would be unable to obtain prior authorization for such services. The ambiguous and undefined services and procedures contemplated by this Bill do not have the same requisite immediacy or urgency as those services included in the original

exception. If the service or procedure a patient is receiving prior authorization has known “side-effects”, treatment for such side-effects can be included in a prior authorization request prior to the provision of such services. In seeking to except services or procedures that do not arise directly from the provision of prior authorized services, but are potentially related (“concurrent or side-effects”) to a prior authorized service, this Bill would greatly expand the services that are provided in a hospital or other provider setting that are exempt from utilization review requirements.

Prior authorization is an important and necessary function that allows health insurers to preapprove services to enrollees ensuring that the care is appropriate and effective. Insurers use the prior authorization process to ensure that services requested by an enrollee are medically necessary, meet necessary clinical standards, and are delivered efficiently and consistent with the law.

Significantly, from a consumer perspective, with prior authorization, the member or patient is assured that coverage will be provided and the services will be paid. Under this legislation, the coverage can still be denied after the fact, which will ultimately force the member or patient to pay for the costs out of pocket. **Thus, this bill is actually harmful to consumers as they lose the safety net of prior authorization and are at risk of excessive billing by providers.**

The current process assures payment by the insurer and also prevents unnecessary utilization in order to ensure the continued access to medically necessary items for all individuals covered under a plan, using evidence based compendia to objectively determine whether the requested services are medically necessary and meet necessary clinical standards.

For all the foregoing reasons, we strongly oppose the passage of this bill.

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans