HINMAN STRAUB PC
ATTORNEYS AT LAW

121 State Street
Albany, New York 12207-1693
Tel: 518-436-0751
Fax: 518-436-4751

September 26, 2017

RE: AN ACT to amend the social services law and the public health law, in relation to prescription drugs in Medicaid managed care programs; and to repeal certain provisions of the social services law, relating to payments for prescription drugs

A. 700 (Rodriguez)

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 legislation as it will undermine Medicaid Managed Care Plans' ability to protect the health and safety of Medicaid recipients, fight fraud and abuse, and control costs to ensure that taxpayer dollars are managed appropriately.

As part of Medicaid Redesign efforts, the Medicaid prescription drug benefit was "carved in" to the Medicaid Managed Care ("MMC") benefit package. The logic behind this change was that Medicaid Managed Care plans could more effectively manage the benefit in conjunction with the medical benefit, both from a quality and a cost perspective. This legislation would significantly inhibit a plan's ability to achieve that goal in a number of ways.

1. **IMPOSING 'PRESCRIBER PREVAILS' ON ALL DRUG CLASSES UNDER MEDICAID MANAGED CARE UNDERMINES THE ROLE OF "MANAGED CARE" AND INHIBITS THE ABILITY OF PLANS TO EFFECTIVELY CONTROL PRESCRIPTION DRUG COSTS.**

This bill would impose sweeping "prescriber prevails" language on all drug classes, undermining plans' ability to ensure quality and control costs through preferred drug lists and clinical edits. Prescriber prevails already exists in the MMC context for a number of drug classes (including atypical anti-psychotics, anti-depressant, antiretroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic) and, while touted as a patient protection, has proven itself to undermine the goals of the prescription benefit carve-in. This legislation ostensibly provides criteria needed to justify the use of a particular non-preferred drug over

another preferred product, such as the patient has tried and failed on a preferred product or the patient is already stabilized on the non-preferred product, but ultimately, even if these empirical criteria are not met, the prescriber's subjective determination shall be final.

2. **LIMITIATIONS ON PRIOR AUTHORIZATION FOR A BROAD RANGE OF DRUG CLASSES WOULD SIGNIFINCANTLY INCREASE COSTS WHILE REDUCING CLINICAL AND SAFETY OVERSIGHT.**

Beyond "prescriber prevails", this legislation would prohibit prior approval under any circumstances for a broad range of drug classes. This prohibition would eliminate important clinical and safety oversight for these drugs. The prior approval process is not a barrier to access and does not create new clinical documentation requirements, but rather ensures that prescription drugs are provided efficiently and consistent with the law. The process prevents unnecessary utilization in order to ensure the continued access to medically necessary items for all individuals covered under a plan. The process uses evidence based compendia to objectively determine whether the prescribed drugs are medically necessary and meet necessary clinical standards.

More specifically, the legislation authorizes the elimination of all prior approval requirements for therapeutic classes to treat Hepatitis-C ("HCV"). Even setting aside current discussions related to new, very expensive products that have just entered the marketplace, the treatment regimen for HCV is complex, requiring multiple products, baseline testing as well as periodic testing of viral counts throughout treatment, and the general oversight and management of a clinician that is well-versed in these treatments. Prior approval serves as a check point to ensure these critical standards are being met. Clinical criteria used by the Medicaid fee-for-service program, detailed at the March 2014 Drug Utilization Review Board meeting, outlines these very complex requirements for all Hepatitis-C agents, underscoring the importance of a prior approval step to ensure the safety and welfare of patients, not simply as a means of cost control. This legislation would permit any prescriber, whether or not well-versed in a particular complex condition/treatment regimen such as serious mental health issues, HIV/AIDS and anti-rejection therapies, to prescribe any drug or combination of drugs for a host of serious and complex diseases without any backstop to ensure such prescribing is appropriate and safe.

In an attempt to address these concerns, the legislation directs Managed Care plans and the Department of Health to monitor "prescribing patterns which are suspected of endangering the health and safety of the patient or which demonstrate a likelihood of fraud and abuse." In other words, instead of permitting plans to utilize reasonable front-end mechanisms to ensure patient safety and the integrity of the Medicaid program, this bill would set up a system whereby a pattern of endangering safety or committing fraud must be detectable before the plan or department may investigate or take remedial actions. In the interim, the plan has little to no ability to intervene should a prescriber demand access to a particular prescription drug.

This legislation unjustifiably overbroad and will completely undermine MMC plans' ability to properly manage the prescription drug benefit in Medicaid, resulting in potentially dangerous health outcomes, increased fraud and abuse and increased costs in an already strained Medicaid budget.

For the foregoing reasons, the New York State Conference of Blue Cross and Blue Shield Plans strongly opposes this legislation and urges that it not be enacted.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC.
Legislative Counsel for the Blue Cross and Blue Shield Plans of New York

4820-8029-9584, v. 1