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June 15, 2017

RE: AN ACT to amend the social services law and the public health law, in relation to payments for behavioral health services

S.6219-B (Ortt)
A.8011-A (Gottfried)

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 opposes the enactment of this legislation, which would require rates paid by managed care and managed long term care (MLTC) plans to behavioral health providers to be adjusted as of the effective date of the rate change. While well intentioned, this Bill is simply not necessary because plans are already required to pass-through rate increases to providers where the Department of Health or law requires.

This Bill ignores the realities of the managed care and MLTC programs, in which premium adjustments to plans are not made immediately and provider rate increases are processed retroactively, after the Department of Health has time to evaluate the impact and work with plans on an effective way to pay providers the increased amount. In the absence of a mechanism within this Bill language requiring the State to include payments to plans to account for a rate increase to providers, or where the State has told Managed Care plans to pay providers the increased amount and that this increase will be subsequently reflected in their premiums, this Bill would require plans to make payments to behavioral health providers with no guarantee if or when plans would receive premium to cover such payments, resulting in rates being no longer actuarially sound. Given the high cost of behavioral health services, this could also negatively affect the financial viability of managed care plans that are forced to make significant cash outflows.

Currently, when provider rates are adjusted due to statutory or budget changes, re-basing or workforce increases, the State, through the Department of Health, undertakes a comprehensive review of the rate changes to determine the best approach to implement the change and reimburse managed care plans for the change. Under this process, managed care plans wait for direction from DOH on how and when to implement the rate change in payments to providers. This is important as it is in the interest of all parties—the State, the provider, and the plan—to receive consistent guidance and direction. Often such changes require DOH to calculate the financial

impact of an increase so they can develop actuarially sound rate adjustments with the State's actuaries, work on formal guidance and payment codes to process the changes, develop instructions for the resubmission of encounters to the All Payer Database, among other tasks that must be addressed to facilitate a smooth transition. Forcing plans and the State to make payments before plans and State systems are ready to handle this will result in delay, confusion, and errors.

Further, there is no need for this legislative change. The assertions in the Sponsor's Memo that plans are allowed to keep payment increases and not required to make retroactive payment adjustments, is simply not true. Plans are required under the law to pay behavioral health providers at "government rates" and where a Medicaid rate increase has been approved by DOH and CMS, must pass through rate increases to these providers. The notion that plans simply pocket any rate increase paid to them on behalf of their network providers is also completely false. Thus, where a State Plan Amendment is approved requiring the reprocessing of historical claims, DOH works with plans and providers impacted to make the necessary retroactive payments in the most expeditious manner possible. It is not in the interest of the State or the plan to force plans to begin making these payments "immediately", nor is it possible due to the systems changes and other practical considerations that must be evaluated. This is especially true if the payment increase, as here, is unexpected. Plans need to address any cash flow concerns and make necessary arrangements to ensure they maintain required reserves.

For the foregoing reasons, the Blue Cross and Blue Shield Plans opposes this Bill and urges that it not be enacted.

Respectfully submitted,

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