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RE: AN ACT to amend the insurance law, in relation to synchronization of multiple prescriptions and dispensing fee standardization

S.5196-A (Lanza)
A.4306-A (Quart)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shields Plans oppose enactment of this Bill, which is a short-sighted attempt to replicate Medicare's prescription drug synchronization policy without actually incorporating *any* of the safeguards that were included in the Medicare regulation[1] to ensure it would be viable. This Legislation would require plans to cover "short-fills" and accept pro-rated cost sharing amounts even if the short fill has nothing to do with a synchronization plan, and ultimately, would create a process that would be virtually impossible to administer and would result in increased costs for health plans and businesses. Recent amendments to this Bill that add "conditions" to use synchronization are simply adding existing insurance requirements, such as requiring that the prescription actually be covered by the insurer. Further, efforts to limit the use of synchronization to one sync per prescribed drug are illusory as the prescriber can simply change the dosage or frequency to continue the use of short-fills.

While the phrase "synchronizing" is not defined in the Bill, the term relates to the coordination of refill dates for two or more prescription medications by short-filling (providing less than a 30 day supply) or long-filling (providing a supply greater than the standard fill) a person's prescriptions to allow them to receive all of their prescriptions on the same date. This legislation relates only to short fills, and would require insurers to **cover short fills that have nothing to do with a synchronization plan, for any number of days, and for an unlimited number of prescriptions**. The Bill also requires health insurers to accept a pro-rated cost sharing amount for the short fill, though there is no detail provided on how this would even be calculated or what prescriptions would

1 §423.104 (requirements related to qualified prescription drug coverage), §423.153 (Drug utilization management, quality assurance, and medication therapy management programs (MTMPs). 77 Federal Register No. 71, April 12, 2012 (P.22169).

be eligible, with the Bill applying vaguely to the treatment of chronic illness.

This Bill also includes no limitation on which insureds would be able to take advantage of a short fill, and how frequently they would be able to modify the short fill, imposing an unwieldy mandate. Sync plans are designed primarily for the elderly who have multiple chronic conditions and possible mental infirmities. Yet, as currently drafted, any individual could take advantage of a short fill for their own convenience, as the legislation only requires that the individual's provider *or* pharmacist determine that a short-fill is either in the "best interests" of the patient or for the purposes of a sync plan, before the individual is able to receive short-fills and take advantage of the pro-rated cost sharing. Of note, the cost-sharing has no impact on pharmacy dispensing fees, which would still need to be paid in full and is expressly prohibited from being pro-rated, even though less medication is being dispensed.

Unfortunately, insurers would have no say in whether a short fill is in the best interest of the patient, and there is not even a requirement that they be notified when a short-fill or synch plan is implemented. Currently, insurance claim systems are set up to automatically deny claims for fills for less than a 30-day supply in order to prevent diversion, fraud, and abuse. Claims for short-fills would therefore be automatically denied as plans would have no way to identify an improper claim from an appropriate short- fill. Indeed, even if plans were given advanced notice, plans would still have to manually review *literally thousands of claims every month*, devoting substantial resources to claim review and follow up calls to pharmacists to verify that the fill and cost share amounts are correct. This will not only result in significant delays to pharmacy reimbursement, but will greatly increase administrative costs and lead to higher premiums.

Further, while the Sponsors point to the recent adoption of Medicare synchronization rules to support this Legislation, the Bill fails to include important parameters that are central to the Medicare regulation. First, the Medicare regulation provides that only "solid, oral dose drugs" are eligible pro-rated cost sharing, while specifically excluding solid oral dose antibiotics, and solid oral dose drugs that the FDA requires to be dispensed in their original packaging. Also, by only allowing solid, oral dose drugs to be synched, the regulation effectively excludes countless other prescription drugs, such as liquids, sprays and topical ointments, all of which may seem like obvious non-candidates for short fills, but would be subject to this Bill's mandate nonetheless.

Additionally, the Medicare regulation includes a <u>clear description of the cost-share formula that would be used.</u> Despite the prominence of this particular provision in this Legislation, the Bill includes no such detail as to how cost-sharing would be applied, all but guaranteeing reimbursement issues will arise. Further, with respect to implementation, the Medicare regulation on synchronization was finalized April 2012. However, because CMS realized it would take significant time for plans, PBMs, and pharmacists to work through the various implementation issues, it provided nearly <u>two full years</u> for all stakeholders to work together to prepare for its implementation, which did not occur until January 2014. Conversely, this Bill seeks to implement this massive undertaking in a mere four months. This bill will require insurers to undertake a far more

comprehensive mandate with a fraction of the planning time and far less programmatic detail, subjecting prescription drug access and premium dollars to an unnecessary and unjustifiable risk.

Finally, it should be recognized that by expanding access to short-fills across the board without limitation, this Bill will primarily benefit drug manufacturers and retail pharmacies. The Bill attempts to provide retail pharmacies with an advantage over their mail order counterparts and push more volume to network retail pharmacies that are capable of providing individualized short-fills on the spot, which is preferred by the manufacturers, as these pharmacies are not able to negotiate price as effectively as PBMs and mail order pharmacies. Among the myriad other issues already noted as to why this legislation would be highly problematic, this Bill would force seniors to choose between accepting lower cost prescriptions delivered right to their home, or synchronized prescriptions at a higher cost that their mail order pharmacist cannot provide.

For the foregoing reasons, the Blue Cross and Blue Shield Plans urge that this bill not be enacted.

Respectfully submitted,

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