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February 3, 2017

RE: AN ACT to amend the public health law and the insurance law, in relation to certain application and referral forms for health care plans

A. 2389 (Gottfried)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the
Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York oppose the enactment of this legislation, which would require managed care plans to allow newly licensed health care professionals to become participating providers and provide services and receive payment from the network during the pendency of their application. Additionally, this bill would require the development of universal credentialing and referral forms which have the potential to deviate from current industry standard.

1. ALLOWING PHYSICIANS TO PROVIDE CARE PRIOR TO SATISFACTORILY COMPLETING THE CREDENTIALING PROCESS IS UNWISE AND PUTS THE PATIENTS' HEALTH AT RISK.

The credentialing process is designed to protect consumers against health care providers who are not qualified or have a history of risking the safety of patients. To remove this substantial protection is irresponsible and could threaten the health of countless New Yorkers. The National Committee for Quality Assurance ("NCQA") provides guidelines for the credentialing of providers. It is mandatory that HMOs comply with these guidelines. NCQA's intent for this process is "that organizations [HMOs], having assumed responsibility for managing the health care of their members, have a responsibility to implement a rigorous process to select and evaluate practitioners and to monitor sanctions and complaints between credentialing cycles." This bill would circumvent this process by allowing providers to render care without being subject to the credentialing process.

2. **PERMITTING NEWLY LICENSED PHYSICIANS TO RECEIVE PAYMENT FOR SERVICES RENDERED PRIOR TO THEIR ACCEPTANCE AS A PARTICIPATING PROVIDER WOULD RESULT IN INCONSISTENT TREATMENT AMONG PHYSICIANS AND INCREASE ADMINISTRATIVE BURDENS.**

Currently, all providers wishing to participate in the network must obtain credentials that are approved by a health plan. This is necessary in order for the plan to determine whether the provider is capable of providing the level of care and services to plan members. The purpose of physician credentialing is to ensure that consumers are given access to providers of the highest quality and competence. This bill would continue this practice with regard to all existing physicians, but would allow minimally experienced physicians to circumvent the process. In allowing new providers to bypass the credentialing process, this legislation is harmful to patients in that it eliminates a critical quality assurance concept for patient protection.

Managed care plans that establish provider networks assume a responsibility to ensure that their participating providers deliver high quality services. Once in the network, a provider's service is evaluated through the use of utilization review and quality assurance programs. Enactment of this bill would make it more difficult for a payor to ensure the quality of service provided by its network. In addition to creating two separate classes of physicians for credentialing purposes, the bill creates special concessions for the most untried and inexperienced individuals-- those who are newly licensed. These newly licensed physicians should be subject to the same credentialing process as other members of their profession and should not be allowed to provide care and receive payment as a Plan provider when they could subsequently be rejected from participation.

Moreover, HMOs would stand at substantial risk of litigation if they allowed a non-credentialed physician to render care. That is, if a patient were harmed by what ultimately turns out to be an unqualified physician after the plan represented him or her to enrollees as qualified, only to learn too late of the physician's inadequacies, it would place the health plans in an extremely vulnerable position for a lawsuit.

Finally, the bill contains no direction on how an insurer could recapture payments made to a physician who receives payment under its provisions and is subsequently rejected by the Plan. For example, would the provider (who is ultimately rejected by the Plan) be entitled to keep the compensation or would the insurer be entitled to recapture the payment? If the Plan could recapture the payment, from whom would it be reimbursed, the member or the provider? The complexities involved with reimbursing a non-network provider make this bill unworkable.

3. THE PRACTICAL RESULT OF THIS BILL WORKS AGAINST ITS STATED GOALS BY UNDERIMINING BROADER EFFORTS TO CONTROL PLANS' ADMINISTRATIVE COSTS AND SIMPLIFY THE CREDENTIALING PROCESS.

This bill calls for a universal credentialing form to be developed with various stakeholders' input. According to the Sponsor's Memo, the goal is to "to streamline and simplify the process by which physicians and other health care professionals are credentialed by health care plans and hospitals." However, the approach taken by this bill – a standardized process specific to New York - has the potential undermine national standardization and savings efforts as plans typically use the Council for Affordable Quality Healthcare's (CAQH) national, standardized information database and credentialing forms. CAQH initiatives have become the industry standard and are designed to lower health care costs by bringing providers and plans together in a uniform data infrastructure. The goals of this bill are already being addressed on the national level and implementing a state program which deviates from this approach could actually undermine the legislation's purpose.

4. THIS BILL WOULD CAUSE UNNECESSARY INTERRUPTIONS AND DELAYS IN PATIENT CARE OR HIGHER OUT OF POCKET EXPENSES FOR PATIENTS.

Allowing newly licensed health care professionals to provide services and receive payment from the network during the pendency of their application to become a participating provider will cause unnecessary interruptions and delays in health care services for patients. If these doctors are permitted to receive payment, then they will begin to treat plan members during the pendency of their application. If the application is ultimately denied, the patient would have to choose whether to continue their care and pay the non-participating provider's fees out of their own pocket, or change doctors. Many are likely to change doctors, thus having to establish a relationship with a new physician, experience interruption in the care for an ongoing health problem or experience delays as they select a new physician and arrange for an appointment.

This bill would create inequities among physicians, administrative difficulties for plans and inconveniences and unnecessary risks in patient care. For these reasons, we oppose the enactment of this legislation.

Respectfully submitted,

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Blue Cross and Blue Shield Plans