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June 4, 2018

RE: AN ACT to amend the insurance law, in relation to establishing the mental health and substance use disorder parity report act

S.1156-C (Ortt)  
A.3694-C (Gunther)

**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 health insurers to submit a significant volume of data on annual basis to the Department of Financial Services (DFS) and Commissioner of Health to measure compliance with federal and state mental health and substance abuse parity laws. This Bill is unnecessary in light of existing mechanisms for State oversight on health insurer compliance with mental health and substance abuse parity requirements, such as market conduct exams and Attorney General oversight. The annual reporting under this Bill will not accurately ensure, or measure, insurer compliance with mental health and substance abuse parity requirements.

Currently, DFS is authorized to initiate market conduct examinations for health insurers, which focus on the fair treatment of policyholders in relation to areas such as claims and benefits. Market conduct exams are designed specifically to evaluate insurer compliance with New York and federal insurance requirements. Market conduct exams utilize uniform data collection systems to collect market-related information and to conduct their market analysis. In addition, the Attorney General has authority to investigate the business practices of health insurers, including the administration of behavioral health benefits. In fact, the Sponsor's memorandum highlights that the Attorney General has reached settlements with five health insurers regarding the administration of behavioral health benefits. This demonstrates that there are adequate oversight and enforcement mechanisms in place to ensure that all health insurers comply with mental health and substance abuse parity requirements.

The annual reports contemplated by this Bill are of such a nature that they should not be relied on for consumers to measure behavioral health performance. For example, the Bill requires insurers to identify the number of mental health and substance use disorder providers in their provider network, as well as identify those that have left or been removed and provide the reason that they left or were removed. This information will equate compliance with parity requirements with the

number of providers. However, the number of network providers is an inappropriate metric to measure compliance, and will only mislead consumers.

In order to control health care costs, and in turn health care premiums, health insurers need to strike the correct balance between the size of their provider network and ensuring network adequacy. In using the number of providers within an insurers network, and requiring insurers to provide an explanation of why certain providers left or were removed from the network, health insurers will be pressured into accepting providers who might not otherwise be qualified to participate in the network if consumers equate number of providers with compliance. This will unfortunately have the dual effect of negatively affecting the quality of mental health and substance use disorder services provided to members while also contributing to increased health care costs.

For the foregoing reasons, the Blue Cross and Blue Shield Plans opposes this Bill 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