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June 4, 2018

RE: AN ACT to amend the insurance law, in relation to insurance coverage for substance abuse disorder services

S. 2099 (Ritche)
A. 492 (Stirpe)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York strongly oppose enactment of this bill, which would mandate that health insurers provide at least ninety days of rehabilitation services for substance abuse disorders at a rehabilitation facility upon a doctor's prescription. This bill would create a coverage mandate that would require insurers to cover inpatient substance abuse services ordered by a provider, and require such coverage even when it is not medically necessary under evidence based treatment criteria developed by independent health care experts.

This Bill precludes insurance plans from performing any evidence-based medical necessity review for substance abuse treatment. This restriction is unprecedented with regard to any other mandated benefit, public or commercial, as all other benefits, including state mandated benefits, permit plans to utilize standard medical management tools, to ensure that the treatment is appropriate, in the best interest of the patient and whether treatment is medically necessary. Yet, this bill attempts to circumvent this important safeguard by mandating insurers to cover at least 90 days of inpatient rehabilitative services if a prescriber determines in his or her own independent judgment inpatient treatment is warranted. Put simply, this Bill is short-sighted in its approach and should not be enacted as it:

1. Creates an unfunded substance abuse treatment mandate on the Health Insurance Exchange that will need to be subsidized by the State;
2. Directly refutes State objectives under the Medicaid Redesign Team Waiver and the Delivery System Reform Incentive Payment program (DSRIP); and
3. Completely disregards and undermines the importance of medical necessity review utilized by health insurers.

1. **AS AN UNFUNDED MANDATE THE COST OF THIS BENEFIT WOULD NEED TO BE PAID BY THE STATE.**

The Essential Health Benefits under the Affordable Care Act and Federal Parity laws both provide individuals with unlimited substance abuse treatment services, including detoxification and rehabilitative services, but only where such services are medically necessary. Any health benefits which the State wishes to mandate that are not Essential Health Benefits as prescribed by the ACA must be paid for in full by the State, if such benefits are to be mandated on the State's Health Exchange. This Bill would expand coverage to include all inpatient treatment, regardless of medical necessity, a benefit which is in excess of the Essential Health Benefits. Thus, while this Bill's mandate would lead to increased premiums across all lines of health insurance, the cost would be particularly acute for all New Yorkers, as the Bill would require coverage of medically unnecessary services on the Exchange that the Federal government will not cover, meaning it would need to be entirely funded by the State.

2. THIS BILL WILL UNDERMINE EFFORTS TO MOVE INDIVIDUALS OUT OF INPATIENT SETTINGS AND INTO MORE APPROPRIATE COMMUNITY-BASED SETTINGS.

By requiring a fixed amount of inpatient coverage, this bill will lead to increases in inpatient admissions at a critical time when the State is seeking to reduce the use of inpatient settings under the Federal Medicaid Redesign 1115 Waiver and the DSRIP program. In fact, one DSRIP project in particular is wholly focused on developing withdrawal management services for substance use disorders within the community, while simultaneously transferring individuals out of unnecessary inpatient settings.¹ The project, which was co-developed by the Department of Health and CMS, includes the following rationale:

“The majority of patients seeking inpatient detoxification services do not require the intensive monitoring and medication management available in the inpatient setting. These patients can be monitored in an outpatient program until stability is assured and, then, rapidly integrated into a co-located outpatient treatment program. Such programs can address alcohol, sedative and opioid dependency as well as provide access to ongoing medication management treatment.”

Thus, the State and Federal government have explicitly acknowledged that too many New Yorkers are *already* inappropriately accessing many inpatient services; so much so that they are willing incentivize providers to develop more outpatient treatment. Requiring plans to cover inpatient services without the ability to determine whether less institutional care settings are appropriate clearly runs afoul of this policy and program.

3. MEDICAL NECESSITY REVIEW IS A CRUCIAL CONSUMER PROTECTION TOOL AND SHOULD NOT BE DISREGARDED TO ALLOW INDIVIDUAL DECISION MAKING TO TRUMP NATIONAL BEST EVIDENCE STANDARDS

¹ New York State Department of Health, DSRIP Project Toolkit, Project 3.a.iv. “Development of Withdrawal Management (ambulatory detoxification) capabilities within communities”, *available at* http://www.health.ny.gov/health_care/medicaid/redesign/docs/dsrrip_project_toolkit.pdf (P.43).v

This Bill ignores the fact that there are legitimate reasons why all medical services, including mental health and substance abuse services are subject to medical necessity review using evidence based treatment criteria. These evidenced based treatment criteria are based on independent, nationally renowned provider organizations to support better patient outcomes and ensure health care decisions are consistent and clinically appropriate. These guidelines reduce over and underutilization and foster appropriate care with specific evidence-based decision-making that aligns with Federal HHS guidelines. These criteria are also consistently reviewed and revised by *clinicians* and health care experts to ensure they remain current and appropriate, and should therefore not be disregarded simply because an individual clinician determines they think they know better than the national guidelines.

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

Respectfully submitted,

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