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June 18, 2018

RE: AN ACT to amend the financial services
law, in relation to establishing protections
from excessive hospital emergency charges

A.7611-C (Cahill)
S.4241-C (Seward)

MEMORANDUM IN SUPPORT

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shield Plans support enactment of this Bill, which would add charges billed by a non-participating hospital for emergency services to the “surprise bill” law and the independent dispute resolution (IDR) process that currently exists for non-participating physician emergency charges and “surprise bills”. This Bill addresses one of the key drivers of the cost of health insurance for New Yorkers by limiting the ability of non-participating hospitals to charge exorbitant fees for emergency services, which health insurers are currently required to pay in order to protect their enrollees, notwithstanding how excessive the charges might be.

In 2014, legislation was enacted to protect consumers from “surprise medical bills” for services performed by a non-participating physician at a participating (in network) hospital or physician practice. The goal was to protect the member from unknowingly receiving services from a non-par provider and provide for an independent process to determine the appropriate out of network charges. In addition, the legislation recognized that emergency physician charges by nonparticipating providers are often excessive and the need for an established an IDR process for both “surprise bills” and physician emergency charges was appropriate. The law, however, did not cover charges billed by non-participating hospitals for emergency services.

Currently, health insurers are required to ensure that enrollees will incur no greater out-of-pocket costs than they would have incurred with a participating provider when emergency services are received from an out of network “non-participating” provider. As a result, insurers are essentially required to pay the unilaterally determined charges billed by non-participating hospitals for emergency services to ensure that members are not balance billed. Unfortunately, non-participating hospital charges for emergency services can be just as excessive as non-participating physician charges. By subjecting these charges to the IDR process, this Bill will ensure that non-participating hospital charges for emergency services are based on independent

third party experts. Absent this amendment to the “surprise bill” law, non-participating hospitals will continue to charge exorbitant fees for emergency services that must be paid by insurers, ultimately driving up the cost of health insurance in New York.

This Bill importantly builds upon the original “surprise bill” law and strengthens consumer protections against out-of-network medical bills by preventing non-participating hospitals from taking advantage of this provision of the Insurance Law by charging exorbitant fees, which increase the cost of health insurance for consumers. For out of network hospital charges, consumers currently receive a bill for services which is forwarded to their insurer; the insurer then forwards what it believes is appropriate payment to the consumer. The hospital then may forward a bill to the consumer for additional amounts owed. The consumer must then seek additional payments from the insurer. In adding non-participating hospital charges to the IDR process, consumers will be taken “out of the middle” of this process and hospitals will be discouraged from charging exorbitant fees while also being assured that health insurers will pay fees that are reasonable, as determined by an independent third party.

Including out of network hospitals in the IDR process protects consumers, will become a critical tool at controlling health care costs, and is good public policy. For this reason, the Department of Financial Services Workgroup on the Out of Network law recommended this change in its recent report on the status and effectiveness of the new law.

For the foregoing reasons, the Blue Cross and Blue Shield Plans support this Bill and urge that it be enacted.

Respectfully submitted,

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