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February 8, 2019

RE: AN ACT to amend the social services law, in relation to coverage for certain prescription drugs; and to repeal certain provisions of such law relating thereto

A2799 (Gottfried)

**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 strongly oppose enactment of this legislation as it will undermine Medicaid Managed Care Plans' ability to protect the health and safety of Medicaid recipients, fight fraud and abuse, and control costs to ensure that taxpayer dollars are managed appropriately.

As part of Medicaid Redesign efforts, the Medicaid prescription drug benefit was "carved in" to the Medicaid Managed Care ("MMC") benefit package. The logic behind this change was that Medicaid Managed Care plans could more effectively manage the benefit in conjunction with the medical benefit, both from a quality and a cost perspective. This legislation would significantly inhibit a plan's ability to achieve that goal in a number of ways.

This Bill would impose sweeping "prescriber prevails" language on all drug classes, undermining plans' ability to ensure quality and control costs through preferred drug lists and clinical edits. Prescriber prevails already exists in the MMC context for a number of drug classes (including atypical anti-psychotics, anti-depressant, antiretroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic) and, while touted as a patient protection, has proven itself to undermine the goals of the prescription benefit carve-in.

Not only does this legislation expand the classes of drugs subject to 'prescriber prevails' under managed care to the fee-for service approach which applies prescriber prevails to every single drug class, but it completely eliminates any requirement for the prescriber to demonstrate that, in the prescriber's reasonable professional judgment, the drug is medically necessary and warranted for certain classes (i.e. those classes currently subject to prescriber prevails in MMC). By eliminating any prior authorization for this drug classes, this Bill would prohibit any oversight by managed care plans for these classes. This is especially concerning because New York's

Medicaid program is not permitted to reimburse for prescription drugs for uses that are not included in FDA labeling or listed as an acceptable use in certain compendia.

Currently, the “prescriber prevails” provision applies upon demonstration by the prescriber, after consulting with the managed care provider, that such drugs, in the prescriber's reasonable professional judgment, are medically necessary and warranted. This consultation permits confirmation that the drug is being prescribed for an accepted use and is therefore reimbursable under Medicaid. This Bill removes any requirement for prescribers to justify the use of a particular non-preferred drug over another preferred product, such as the patient has tried and failed on a preferred product or the patient is already stabilized on the non-preferred product.

Under this Bill, even if the prescriber does not supply necessary clinical or demographic information to identify an accepted use, the prescriber’s determination would be final, forcing the Medicaid program to reimburse for the drug in violation of its State Plan. Removing the critical step that the prescriber provide justification for the need of a specific prescription drug will eradicate the sole safeguard remaining under the “prescriber prevails” system, leading to fraud and abuse, while preventing MMC plans from appropriately controlling costs to ensure that taxpayer dollars are managed appropriately.

This legislation unjustifiably will completely undermine MMC plans’ ability to properly manage the prescription drug benefit in Medicaid, resulting in potentially dangerous health outcomes, increased fraud and abuse and increased costs in an already strained Medicaid budget.

For the foregoing reasons, the New York State Conference of Blue Cross and Blue Shield Plans strongly opposes this legislation and urges that it not be enacted.

Respectfully submitted,

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