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April 12, 2019

RE: AN ACT to amend the insurance law and the public health law, in relation to providing for dispensing emergency contraception under certain conditions

A487 (Paulin)

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 opposes enactment of this legislation, which would mandate that health insurers cover the cost of over-the-counter emergency contraception. Specifically, the bill would require insurers to reimburse policyholders for the costs for contraceptive drugs when provided over-the-counter to individuals over the age of eighteen. The proposed legislation is unnecessary as emergency contraception is already covered as an essential health benefit under New York's benchmark plan, thus already covered by all New York State health insurers. The proposed legislation also sets a dangerous precedent for health plans, requiring them to cover drugs available over-the-counter and without a prescription.

Emergency contraception (EC) can prevent pregnancy when taken shortly after unprotected sex. Currently, there are four FDA-approved products on the market. Three of these products are approved for preventing pregnancy when taken within 72 to 120 hours after unprotected sex. In 2006, FDA approved the sale of emergency contraception over the counter (OTC). One of these products, Plan B One-Step, was approved for OTC sale by the FDA in 2011. In 2010, the FDA approved the prescription-only product ella™ (ulipristal acetate), which prevents pregnancy when taken orally within 120 hours (five days).

The Affordable Care Act (ACA) requires all health insurance plans in the individual and small group markets, including qualified health plans sold through health insurance exchanges, to provide at least the Essential Health Benefits (EHB) package. A significant component of the EHB package was the federal contraceptive coverage guarantee, which was part of a broader requirement for private health plans to cover dozens of key preventive care services without out-of-pocket costs for patients. The ACA requires all health insurance plans to cover the full range of FDA-approved contraceptive methods, including emergency contraceptives, and to cover them without imposing extra charges. While most health insurance plans covered EC prior to

enactment of the ACA, the federal mandate prohibited the use of copayments, deductibles or other forms of patient cost-sharing for EC.

Notably, coverage under all health insurance plans in New York includes coverage for OTC EC, including Plan B One-Step. New York's benchmark plan includes doctor prescribed EC. Thus, there is no limitation to access to OTC EC in New York. As permitted, the majority of health insurance programs require a prescription to obtain OTC EC, as with many other OTC drugs that previously required prescriptions. Examples of OTC drugs include allergy drugs such as Zyrtec and Claritin, as well as heartburn medications such as Prilosec.

While not addressed in the sponsor's memorandum, the purpose of the bill is to reduce out of pocket costs and make the availability of OTC EC more convenient. For individuals that are concerned with the out-of-pocket costs, such costs would be covered simply by obtaining a prescription. While obtaining a prescription may be an inconvenience for some individuals, it is a necessary process to ensure that the drug is medically necessary and effective. The insurance industry has relied on the prescription process for medical drugs to ensure that such drugs are provided effectively, while also preventing unnecessary utilization. Removing such protections for a specific subset of OTC drugs would result in increased utilization and costs in scenario where requiring a prescription is not a barrier to access, but rather simply an inconvenience.

The proposed legislation would also set a very dangerous precedent by forcing health insurers to provide reimbursement for OTC drugs without a prescription. In almost no other scenario is a health insurer required to reimburse individuals for drugs that fall into this category. Enacting a bill with unprecedented provisions such as those contained in this legislation has significant potential to create a slippery slope for requiring coverage of other OTC products without a prescription, or simply OTC products in general that have a tangential relation to health. This legislation will pave the way for additional and more expensive mandates that require coverage for other over-the-counter drugs.

In addition, the bill represents one of many mandates on health insurers introduced each year in New York, which ultimately results in higher premiums for all New York residents. For this bill, the increased costs would only have a minimal impact on improving access. Any proposed increase in benefits that has potential to increase costs should be judiciously reviewed and enacted only if deemed entirely necessary.

For these reasons, the New York State Conference of Blue Cross and Blue Shield Plans strongly opposes enactment of this legislation

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans

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