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RE: AN ACT to amend the social services law, the public health law and the insurance law, in relation to prohibiting a provider of health care coverage from requiring providers of behavioral health services to offer all products offered by the provider of health care coverage

A1316 (Cahill)
S1573 (Rivera)

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, which would prohibit health plans from requiring behavioral health providers to participate "in-network" for multiple product lines, effectively prohibiting the use of an "all products" clause for contracts and requiring the execution of separate contracts for each insurance product offered. This Bill would be detrimental to consumers who rely on their health insurers to maintain an adequate and easily accessible network of providers. Additionally, the Bill would create a cumbersome and inefficient process for both health plans and behavioral health providers alike, requiring both sides to spend time and resources negotiating new agreements when agreements are already in place.

Currently, health insurers offer members a wide variety of products which differ in cost and services, but rely on a single network of providers. This allows consumers to choose whichever level of coverage is right for them and their families, while also providing comprehensive choice of providers from their vast network. Significantly, many plans offer the same network to all consumers, regardless of their income status. Thus, a Medicaid or Medicare recipient is afforded the same comprehensive network as a large group commercial policy. Many providers will, if given the choice, not provide services to Medicaid recipients or seniors eligible for Medicare. An "all products" clause restricts the ability of providers to exercise that discriminatory practice.

Enacting this legislation would make an already complex healthcare system vastly more difficult to navigate for consumers. Consumers would be forced to not only check if their provider is in their insurer's network, but also determine if that provider also accepts their particular product,

whether it be individual coverage, group coverage, Medicaid, Medicare, Essential Health Plan or some other coverage. Many plans desire to simplify this process by offering the same network to all members and providers. Otherwise, this process would be unduly burdensome for all patients, and detrimental to those who face high out-of-network charges due to an inability to navigate the complex requirements. Moreover, consumers who change insurance products for any reason may be forced to also switch behavioral health providers, even while remaining with the same insurer. Given the unique nature of the physician-patient relationship in the behavioral health field, such a switch could be detrimental to a patient's progress and well-being.

When providers participate across multiple lines of insurance products time and money is saved for insurers and providers alike, which ultimately leads to significant savings for all New Yorkers. This Bill would eliminate these efficiencies and require both sides to renegotiate their contracts every time an insurer adds to or changes their product offerings. Currently, physician practices participating in a health plan network are typically added to a new network, with a simple notice and an option for the provider to opt or elect out of that new network. This process is a considered a "win-win" by both providers and plans alike, as it allows for seamless participation, yet provides the choice not to participate for any reason at all, without impacting the provider's ability to participate in any other plan offerings.

The sponsor of this legislation claims that the providers of behavioral health services will be forced to accept lower rates of reimbursement under Medicaid Managed Care, which is the true impetus of this bill. Every contract between a healthcare provider and insurer is the result of a fair and arm's length negotiation, even in the context of Medicaid Managed Care. All providers, including behavioral health providers, have the ability to negotiate reimbursement and network participation rates at a level each party is comfortable with. Insurers, likewise, have a significant interest in achieving an amicable agreement with behavioral health providers since they must meet stringent network adequacy requirements imposed by New York State. However, this bill would allow behavioral health providers to "opt out" of participating in Medicaid Managed Care as the benefit is being carved-in, in order to force Medicaid Managed Care plans to increase rates paid to such providers as the plan must include such providers under the program.

Indeed, the only beneficiary of this legislation would be the portion of the behavioral health provider population who believe they can take advantage of a prohibition of all products offerings and negotiate more favorable terms and conditions for themselves in the context of managed care. The desire for more favorable terms and conditions will result in either providers being dropped from the network (resulting in less choice for consumers) or an increase in provider reimbursement (resulting in higher premiums and costs to the Medicaid program). Either scenario is bad for individuals, small businesses, and the State.

For all the foregoing reasons, the New York Conference of Blue Cross and Blue Shield Plans opposes the enactment of this bill.

Respectfully submitted,

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