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January 20, 2021

RE: AN ACT to amend the public health law and social services law, in relation to health coverage for medical marihuana

A242 (Gottfried)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York oppose enactment of this Bill as it would require health insurers and Medicaid managed care plans to cover medical marihuana, which remains a schedule I drug under the Controlled Substances Act (CSA) and has not been approved by the Food and Drug Administration (FDA) as a medicine. Health insurers, even those participating in publicly funded health care programs, should not be required to cover a drug that the FDA has not approved as safe and effective. Requiring coverage of medical marihuana is inappropriate until the federal law regarding marihuana is changed and the FDA approves its use.

Generally, health insurers will not cover a drug that has not received FDA approval. Currently, the FDA has not approved medical marihuana for any indication. Achieving FDA approval requires significant clinical trials in order to determine the benefits and risks of a possible medication. While studies have demonstrated medical marihuana can provide significant medicinal benefits, reduce the use of opioids for the treatment of chronic pain, and deliver cost savings to the health care system, it is vitally important that the development and expanded coverage of such products be the result of the careful scientific research and drug development required through the FDA approval process. In fact, this Bill establishes a dangerous precedent of requiring insurance coverage of medical products that have not been subject to the FDA approval process.

In addition, this Bill poses an unknown threat to New York's publicly funded health care programs, including Medicaid and the Essential Plan. As marihuana, including medical marihuana, is classified as a schedule I drug under the CSA, the federal government does not allow states to cover marihuana with Medicaid funding. Under the best case scenario, Medicaid spending on medical marihuana would be required to be covered by state-only funds, meaning New York would be funding in its entirety the Medicaid spend associated with this Bill. Even under this scenario, New York would be in violation of its agreements with the federal

government regarding the administration of their Medicaid program, potentially exposing the State to the loss of federal funding for their public health care programs.

Unless clear guidance is provided from the federal government regarding the coverage of medical marijuana in programs that rely on federal funding, adopting a bill that has the potential to eliminate the funding New York receives for Medicaid and the Essential Plan would be irresponsible and threaten the ability of New York to provide health insurance coverage for over a third of its population.

For all the foregoing reasons, we oppose enactment of this legislation.

Respectfully submitted,

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