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January 25, 2021

RE: AN ACT to amend the public health law, in
relation to the definition of clinical peer
reviewer

A879 (Gottfried)
S599 (Benjamin)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York strongly oppose the enactment of this legislation, which would change the definition of "clinical peer reviewer" to require a board certified specialist to render opinions of medical necessity for the initial review of a claim. Under the proposed legislation, every claim that is submitted must be reviewed by a board certified specialist in the relevant specialty. This Bill would dramatically increase the expenses to insurers and is unworkable in light of the volume of claims received by insurers on a daily basis.

This Bill would require the initial determination of medical necessity on a claim to be made by a board certified specialist in the same or similar specialty as the physician who recommended the treatment under review. Essentially, it would require health plans to have a myriad of specialists on staff to make initial claim determinations. This is unnecessary in light of current law, which adequately protects consumers by requiring that board certified specialists review the claim at the highest level of appeal, external review. Currently, first level medical necessity determinations are made by licensed physicians who consult with specialist physicians when the need arises. This is a fair, effective and efficient method to review the large number of claims submitted. In contrast, the proposed legislation presents an unwieldy and expensive process that would only serve to substantially increase costs to insurers and thereby contribute to the already escalating cost of providing health insurance.

Moreover, for the first level of appeal (i.e., where the initial review of the claim determines that the service is not medically necessary and is then challenged) many insurers **already use specialists** to assist in the decision-making process even though they are not required to do so by law. The National Center for Quality Analysis ("NCQA") requires that the "organization has procedures for using board-certified physicians from appropriate specialty areas to assist in

making determinations of medical necessity.” (NCQA UM 4). Thus to be accredited, utilization managers are already required to use specialists in making medical necessity determinations.

The key impact of this Bill is that it would require specialists to make initial claims determinations as opposed to appeal determinations. To expand the use of specialists for medical necessity determinations at the initial stages (e.g., pre-certifications and initial review) is unnecessary and would be extremely burdensome and costly for health plans. Each year, health plans receive millions of claims, and thousands of pre-certifications. Under the proposed legislation, health plans would be forced to either have specialists on staff from the variety of specialties on the chance that a claim may be submitted on which they are qualified to pass, or in the alternative, health plans would have to contract with these specialists for the same purpose. In either case, a health plan would likely have to find a physician from nearly every specialty to cover the myriad of issues that arise. Moreover, if the initial review showed that the claim was not medically necessary; enrollees still would have access to a specialist’s review before a service could ultimately be shown not to be medically necessary. This is unnecessary, over-burdensome to health plans and would serve to further raise insurance premiums, as the additional costs would be passed on to consumers.

For these reasons, the Blue Cross and Blue Shield Plans of New York oppose the enactment of this legislation

Respectfully submitted,

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