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March 1, 2021

RE: AN ACT to amend the public health  
law, in relation to payment of claims  
submitted by health care agencies

A5185 (Abinanti)  
S2533 (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 opposes enactment of this legislation, which would establish different prompt payment requirements for licensed home care services agencies (LHCSAs), certified home health agencies (CHHAs), and fiscal intermediaries (FIs) (collectively, “home care providers”) from all other health care providers.

Specifically, the Insurance Law currently provides for a comprehensive provider payment system to ensure for the prompt and fair payment of claims (“Prompt Pay Law”). Insurers pay all health care providers within 30 days of receipt of a claim submitted electronically, or 45 days for the submission of a paper claim. This requirement applies to all claims, unless the claim is not reasonably clear or where there is a reasonable basis that such claim was submitted fraudulently. This Bill unnecessarily creates a separate process applicable only to home care providers, and while the Bill is nearly identical to those provisions in current law, it deviates from the Prompt Pay Law in two significant areas.

First, it reduces the period insurers have to notify the home care provider of the defects of a claim to within 15 days, when the current law requires notification within 30 days. The need for insurers to review a claim and prepare a response identifying all of the errors with the claim submission within the shorter period is unnecessary and has no reasonable justification, considering that insurers are already required to pay any undisputed portion of the claim within 30 days (or 45 days if paper claim submitted). There is no rational basis to require insurers to review home care claims differently from claims from all other providers, especially when the current time frames provide an appropriate period for insurers to review claims and prepare a response to the provider while ensuring that all providers are promptly paid any undisputed portions of the claim.

Second, the Bill defines a “clean claim” for purposes of claims submitted by home care providers. Again, this provision is unnecessary as insurers are currently only permitted to withhold payment

for claims where the obligation of the insurers is not reasonably clear due to a good faith dispute regarding the claim. For example, insurers are currently permitted to withhold payment for claims in which there is a good faith dispute regarding the eligibility of a person for coverage. The Prompt Pay Law has proven to be a fair and reasonable balance to ensure the prompt payment of legitimate claims. This Bill, however, would require insurers to pay such claims so long as the home care provider identifies the covered person, the services provided, and the date and place of services, regardless of whether such information is accurate. As a result of these changes, insurers would be required to make payment to home care providers in situations in which the service is not covered, and then be forced to try to recoup these payments from home care providers. This will not only result in the payment of frivolous claims, but also perpetuate the potential for the fraudulent submission of claims.

For the foregoing reasons, the Blue Cross and Blue Shield Plans urge that this bill not be enacted.

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans of New York

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