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June 10, 2021

RE: AN ACT to amend the insurance law, in relation to providing insurance coverage for colorectal cancer early detection

A.2085-A (Dinowitz)
S.906-B (Sanders)

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 bill because it is unnecessary and could create mandates that conflict with existing federal requirements. While the goal of the bill – encouraging regular colorectal cancer screenings – is laudable, because the Patient Protection and Affordable Care Act ("ACA") already requires coverage of tests recommended by independent medical experts who regularly review guidelines, it is redundant and potentially confusing. Further, as the bill does not restrict its coverage mandate to "essential health benefits" under the ACA, it would result in significant costs to the State.

Since 2010, the ACA has required health plans to cover all screening tests for colorectal cancer that are designated as "A and B Recommendations" by the United States Preventive Services Task Force ("USPSTF"). The USPSTF is an independent panel of national experts in prevention and evidence-based medicine that promulgates standards in accordance with processes that "align with the National Academy of Medicine's (formerly the Institute of Medicine) recommendations for guideline development."[1] Pursuant to the ACA, insurers must cover such services with A or B Recommendations, which are considered "essential health benefits" and are not subject to copays or deductibles.[2] These recommendations were just updated on May 18, 2021, to lower the age for

1 U.S. Preventative Services Task Force, *Standards for Guideline Development*, *available at* https://www.uspreventiveservicestaskforce.org/uspstf/about-uspstf/methods-and-processes/standards-guideline-development.

2 American Cancer Society, *Insurance Coverage for Colorectal Cancer Screening*, *available at* https://www.cancer.org/cancer/colon-rectal-cancer/detection-diagnosis-staging/screening-coverage-laws.html#:~:text=The%20Affordable%20Care%20Act%20(ACA,Services%20Task%20Force%20(USPSTF).

suggested colorectal cancer screenings from 50 to 45 and make cost-free testing available to more individuals.[3] One of the purposes behind utilizing USPSTF recommendations for determining coverage of all preventive screenings and tests is to premise such coverage on empirical, clinically based, and peer-reviewed independent guidelines. Since inception, it has proven to be the benchmark for determining appropriate coverage and has directly reduced legislative mandates based on political convenience or activism.

Enrollees may, pursuant to the ACA and based on their specific needs and clinician guidance, select from a variety of screening strategies recommended by the USPSTF, including: High-sensitivity guaiac fecal occult blood test (HSgFOBT) or fecal immunochemical test (FIT) every year; stool DNA-FIT every one to three years; computed tomography colonography every five years; flexible sigmoidoscopy every five years; flexible sigmoidoscopy every 10 years and an annual FIT; or colonoscopy screening every 10 years. However, in place of USPSTF recommendations, this bill would require coverage of "all colorectal cancer examinations and laboratory tests in accordance with American Cancer Society Guidelines" ("ACS Guidelines"). Notably, while the ACS Guidelines currently align with USPSTF recommendations regarding who, based on age and risk, should be tested, it does *not* provide recommended screening strategies.[4] Instead, the ACS delineates "testing options" – and identifies *fewer* screening strategies than those covered per USPSTF recommendations.[5] By codifying such incongruent and less-comprehensive standards, this bill would create confusion for all stakeholders – most importantly patients – without providing any measurable benefit to the public health.

Further, since this bill does not restrict coverage mandates to screenings as recommended by the USPSTF, this bill could result in significant costs to the State. The Affordable Care Act provides that, while states may require coverage of benefits in addition to essential health benefits, a "State shall make payments (I) to an individual enrolled in a qualified health plan offered in such State; or (II) on behalf of an individual described in subclause (I) directly to the qualified health plan in which such individual is enrolled; to defray the cost of any additional benefits."[6] Therefore, pursuant to this section, the State would be responsible for the cost of any such screenings to individual and small group commercial insurance products.

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

Respectfully submitted,

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3 U.S. Preventative Services Task Force, *Colorectal Cancer: Screening* (May 18. 2021), *available at* https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/colorectal-cancer-screening.

4 American Cancer Society, *American Cancer Society Guideline for Colorectal Cancer Screening*, *available at* https://www.cancer.org/cancer/colon-rectal-cancer/detection-diagnosis-staging/acs-recommendations.html.

5 The USPSTF recommended screening strategies include stool DNA tests every one to three years, while ACS Guidelines include such tests only every three years; and only the former identifies "Flexible sigmoidoscopy every 10 years + annual FIT."

6 42 USC §18031(d)(3)(b).

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