



121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751

June 10, 2021

RE: AN ACT to amend the social services law  
and the public health law, in relation to  
protecting access to pharmacy services.

S.6603 (Skoufis)  
A.7598 (Gottfried)

### **MEMORANDUM IN OPPOSITION**

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shields Plans strongly oppose enactment of this bill, which advances provisions directly contrary to the fundamental nature of managed care. Specifically, this bill would statutorily prescribe minimum reimbursement rates paid by managed care organizations (“MCOs”) and pharmacy benefit managers (“PBMs”) to pharmacies, and revoke the ability of MCOs to negotiate terms with pharmacies seeking to be included in preferred networks.

#### **1. THIS BILL WOULD ESTABLISH MINIMUM RATES FOR PHARMACY REIMBURSEMENTS, CONTRARY TO STATE AND FEDERAL POLICY**

Federal law allows states to choose whether to include or exclude outpatient prescription drug benefits in/from managed care contracts, and the vast majority – including New York – opt for the former to maximize cost-reduction benefits. Those jurisdictions that carve-in the benefit then estimate expected utilization and the associated costs, and factor them into the rate paid to plans pursuant to contracts. While MCOs then negotiate payment terms with pharmacies directly or through PBMs, this bill would statutorily increase payments issued to pharmacies to include minimum dispensing fees and acquisition costs that apply to fee-for-service reimbursements – thus stripping MCOs of their ability to negotiate and achieve the savings already accounted for in agreements with the State. Implementation of such requirements would directly interfere with the core principles of managed care, pursuant to which “CMS and the states allow MCOs the flexibility to reimburse for [drug acquisition costs] and professional dispensing fees at the levels necessary to achieve a network of providers to ensure access to care for each MCO’s Medicaid enrollees.”<sup>1</sup>

---

<sup>1</sup> 81 *Federal Register* 5169-5357, (February 1, 2016).

## **2. THIS BILL WOULD EXCEPT RETAIL PHARMACIES FROM NETWORK PARTICIPATION REQUIREMENTS**

As a tool to address unnecessary increases in health care costs and as the steward for its members' premium dollar, health plans utilize networks at negotiated rates in exchange for the reimbursing providers for care provided to its enrollees. This Bill essentially excepts retail pharmacies from having to join a network and abide by a plan's contract terms – including price, quality, and access criteria. These are fundamental requirements that *every participating provider* must meet in order to contract with any health plan, and such unprecedented preferential treatment sets a dangerous precedent for exempting other providers from health plan participation requirements.

In this time of continued efforts to provide New Yorkers with more affordable coverage, health plans have a responsibility to require providers to offer high quality services at low costs; and if retail pharmacies wish to join these networks, they should adhere to the same terms and conditions. **Dictating to plans that they must increase reimbursement rates above those negotiated with pharmacies and diminish their own provider requirements to reimburse non-par pharmacies will effectively reduce the savings achieved through these programs, unnecessarily leading to further increases in premiums.**

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

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC.

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