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April 19, 2021

RE: AN ACT to amend the public health law and the insurance law, in relation to certain contracts or agreements by health maintenance organizations

A832-A (Gottfried)  
S3231-A (Sanders)

**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 prevent insurers from requiring that in-network providers refer only to other in-network providers. Specifically, this Bill would prohibit insurers from restricting a health care provider from referring an insured to another provider based solely on the provider's participation status in the insured's health plan network.

1. **PROHIBITING INSURERS FROM RESTRICTING OUT OF NETWORK REFERRALS BY PROVIDERS WOULD DESTROY HEALTH PLAN NETWORKS AND RAISE INSURANCE RATES TO A PRE-MANAGED CARE LEVEL.**

One of the main goals of a health plan network is to reduce the cost of health insurance while at the same time increasing the quality of care for patients. This is achieved by a health plan's ability to contract with a limited number of providers at an agreed upon rate in exchange for the plan's directly reimbursing providers for care provided to its enrollees. This Bill would destroy this construct in two ways: 1) serve as a disincentive for participation in the insurer's network because providers would no longer need to participate in the insurer's network in order to be reimbursed for their services; and 2) since many providers would choose not to participate so as to avoid the credentialing requirements of proving their qualifications, etc., health plans would lose their ability to ensure that only the best, most qualified physicians provided services to their members.

Ultimately, the loss of the efficiencies described above would force insurers to raise rates, as they could no longer contract with providers for reduced reimbursement. New Yorkers are

already struggling to maintain their health insurance in the face of premium increases; this bill would exacerbate the situation by driving rates up to pre-managed care levels.

**2. EXISTING LAW PROVIDES CONSUMER PROTECTIONS FOR WHEN PROVIDERS MUST REFER PATIENTS OUT OF THE INSURERS NETWORK.**

Despite the sponsor's assertion that "an outright ban on out-of-network referrals is tantamount to a ban on the provision of sound medical advice", the Insurance Law and the Public Health Law already require referrals to out-of-network providers in certain circumstances. Specifically, if the insurer's network does not participate with a provider who has the appropriate training and experience to treat the member's condition, the member must be referred to a qualified out-of-network provider. Moreover, the services provided by an out-of-network provider must be provided at no additional cost to the member.

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

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans

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