



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

May 25, 2021

RE: AN ACT to amend the public health law and the insurance law, in relation to enhancing coverage and care for medically fragile children

S.2121-B (Rivera)  
A.289-B (Gottfried)

**MEMORANDUM IN OPPOSITION**

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York oppose enactment of this Bill, which would mandate enhanced payments to providers, and present significant implementation challenges and administrative expenses related to the treatment of medically fragile children – the large majority of whom are covered under Medicaid and already receive the care required by the Bill.

The Blue Cross and Blue Shield plans are committed to ensuring high-quality care for its members and are especially sensitive to the unique needs and challenges faced by medically fragile children. In large measure, however, the bill is less about providing clinically appropriate services and more targeted toward increasing provider payments.

If the goal of the bill is to “ensure that medically fragile children receive appropriate care and treatment” (per the Sponsor’s Memorandum), this Bill fails to address any quality of care issues, such as establishing minimum standards of care for providers. Moreover, from a health coverage perspective, this Bill is unnecessary. Specifically, medically fragile children may be considered “families-of-one” under Medicaid. Therefore, parents’ incomes and assets are not considered in determining whether such children are eligible for Medicaid; and neither are the children’s resources. As a result, the significant majority of this small population is eligible for Medicaid; and the Managed Care program has issued principles for providing coverage identical to those this Bill would require. Further, the Medicaid program also provides expanded services to these children, including home and community-based services. Therefore, because nearly all medically fragile children are eligible for Medicaid, and because the Medicaid Managed Care Program already provides these children with all the benefits provided for in the Bill, the Bill is unnecessary.

However, despite its limited application, the bill mandates that each health plan retains pediatric specialists to review each claim, imposes detailed and limited criteria for the review of claims, requires the expansion of provider networks, and guarantees payments to hospitals and other providers who fail to identify appropriate providers after discharge. Further, the bill mandates a minimum payment to all providers, including rates based on those for acute care for specialty hospitals, for services that are much less intensive than would be indicated by the payment structure.

As a technical, but practical issue of concern, the drafting of the bill is flawed as the majority of the provisions in the Bill have no relation to utilization review and are beyond the scope of expertise of utilization review agents. While the provisions relating to clinical peer reviewers and clinical review criteria are utilization review issues and would be appropriately included in Article 49, the remaining provisions deal with covered services, payment, and network adequacy – none of which relate to utilization review or are within the purview of utilization review agents.

Lastly, it is necessary to highlight the increased costs that this Bill will impose on all New Yorkers. In mandating that Plans contract with certain providers and, more importantly, establishing minimum reimbursement levels for such providers, there is no doubt that this Bill will contribute to the rising cost of insurance premiums that all New Yorkers face. Unfortunately, this Bill fails to oblige that providers control cost or tie reimbursement to the quality of care provided, which will ultimately result in increased costs without a corresponding increase in quality of care.

For all the foregoing reasons, we oppose enactment of this legislation.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC  
Legislative Counsel for the Blue Cross and Blue Shield Plans