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RE: AN ACT AN ACT to amend the insurance law, in relation to prohibiting the application of fail-first or step therapy protocols to coverage for the diagnosis and treatment of mental health conditions

A.3276 (Gunther)
S.5909 (Kaminsky)

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 strongly opposes enactment of this Bill, which would severely diminish a health insurer's ability to use step therapy policies to ensure patients are taking appropriate medications, manage prescription drug costs, and provide affordable coverage to members. Specifically, this bill would prevent insurers from implementing fail-first or step therapy protocols for the treatment of mental health conditions – despite the fulsome range of options for clinically appropriate overrides available under existing law.

"Step therapy" describes the process by which an insurer or pharmacy benefit manager ("PBM") encourages the use of a lower cost, yet equally effective, drug therapies before covering more expensive equivalents. In fact, such drugs are often generic versions of brand-name drugs that cost significantly less than their novel counterparts. Under all step therapy policies, if the covered drug is tried and does not work for the patient, the insurer will cover the more expensive option – regardless of the cost. Further, **existing law already allows a prescriber to obtain an override when the required drugs (1) are "contraindicated or will likely cause an adverse reaction"; (2) are "expected to be ineffective based on the known clinical history and conditions of the insured"; or (3) were unsuccessfully tried by the insured, or "or another prescription drug or drugs in the same pharmacologic class or with the same mechanism of action … was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event."**[1]

[1] N.Y. Ins. Law § 4903 (McKinney).

This statute provides the proper balance between allowing a health plan to appropriately manage care, and providing flexibility and deference to providers under certain circumstances.

Step therapy policies have been implemented by Medicare, Medicaid, and the vast majority of commercial health insurance plans across the country. They are designed by physicians and pharmacology experts who regularly review the most current peer-reviewed medical literature. Such policies are typically applied to limited drug classes, where difference in cost between equally effective alternatives can be hundreds of dollars *per day, per member*. In fact, an independent study of health maintenance organizations ("HMOs") found that generic antidepressant dispensing rates increased by 20 points (32.5 percent to 52.5 percent) once step therapy was implemented – resulting in $1,880,560 in savings for that class in one year.[2]

Furthermore, step therapy drugs have lower copays than expensive brand-name drugs, which decreases the likelihood that a patient will discontinue treatment due to financial constraints. Finally, precluding "step therapy" would have a significant impact on individuals' health insurance premiums as it has been estimated that, in the absence of common care management practices, premiums for plans would be 5 to 10 percent higher than they presently are.[3]

In addition to cost savings, step therapy also plays an important role in consumer safety. The prescription drug market is constantly inundated with the next "hot" brand name offering, for which there is significantly less safety and efficacy information. As drug manufacturers continue to aggressively promote their offerings in order to recoup investments in research and development, and bolster profits, step therapy protocols play a critical watchdog function by ensuring that only clinically appropriate regimens are covered.

Thus, with the cost of healthcare and prescription drugs rising, step therapy strikes the balance needed to control health insurance premiums and cost sharing for enrollees, while facilitating access to more expensive alternatives when clinically appropriate. By attempting to allow providers, who are frequently incentivized by pharmaceutical manufacturers, to have sole discretion over the exact drug prescribed, this bill would upset a critical equilibrium.

For all the foregoing reasons, we strongly oppose the passage of this bill.

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans

4824-0203-7481, v. 4

[2] Dunn JD, Cannon E, Mitchell MP, Curtiss FR. *Utilization and drug cost outcomes of a step-therapy edit for generic antidepressants in an HMO in an integrated health system*, J MANAG CARE PHARM. 2006;12(4): 294-302.
[3] Congress of the United States Congressional Budget Office, "Key Issues in Analyzing Major Health Insurance Proposals," 2008. Available online at http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/99xx/doc9924/12-18-keyissues.pdf