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May 19, 2023

RE: AN ACT to amend the insurance law and the public health law, in relation to exempting health care professionals from preauthorization requirements in certain circumstances

A.859 (McDonald)
S.2680 (Breslin)

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 this legislation, which would ultimately: (1) increase costs to patients; (2) result in reduced compliance providers, leading to a decline in the quality of patient care; and (3) have a negative impact on health outcomes by mitigating the important functions of utilization review. Specifically, this bill would exempt a provider from prior authorization requirements with regard to a particular service if such provider meets certain performance measures (a practice known as "Gold Carding") – including, during the past six months, having at least 90 percent of preauthorization requests for such service approved by an insurer.

Prior authorization programs are designed to ensure patients receive the appropriate level of medical care in the appropriate setting and at the appropriate time – as determined by current evidence-based guidelines. This process can help protect patients from unnecessary medical costs when equally effective and more affordable testing/treatment options are available. **In fact, it is estimated that 21 percent of medical care provided in the United States is not supported by available medical literature, and results in over $210 billion of excess spending annually across all specialties.**[1] Such gratuitous tests, procedures, and therapies not only increase costs for both consumers and the health care system, but can also adversely impact the quality of care patients receive by resulting in: missed diagnoses and false-positive test results, ineffective

[1] Heather Lyu, et. al, "Overtreatment in the United States," Sept. 2017, *available at* https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0181970.

procedures and treatments, avoidable complications, and needless exposure to and potentially cancer-causing radiation.

Proponents of Gold Carding cite concerns about administrative burdens associated with prior authorization requirements, and argue that only providers with a proven record of ordering appropriate and medically necessary care would be able to take advantage of such measures. **<u>However, as Gold Carding removes incentives for practitioner compliance with evidence-based guidelines, such practices have repeatedly been shown to reduce patients' quality of care provided</u>**. A study published in *The New England Journal of Medicine* found that, when compliance incentives were removed for physicians in primary care practices in the United Kingdom, there was an immediate decline across 12 quality-of-care indicators.[2] In contrast, there was little change in performance regarding six quality measures for which incentives were maintained.[3] This study indicates that practices such as Gold Carding may obviate benefits to patients that result from utilization review practices by removing incentives and requirements for practitioners.

Indeed, plans have implemented Gold Carding programs with mixed success: frequently providers will game the process, move in and out of the privileges, and, without significant oversight, flexibility and monitoring, the programs end up costing customers in the form of increased premiums or retroactive denials. In fact, a recent study conducted by AHIP found that, while more than half of health insurers use Gold Carding, approximately one quarter of respondents had discontinued such programs. The most commonly cited reasons for ending Gold Carding programs were: higher costs without improvement in quality of care/patient safety (25%); reduction in care quality/patient safety (50%); and administrative difficulties re. implementation (75%).

Finally, this bill would interfere with several other important benefits derived from current prior authorization requirements, including: (1) providing patients with alternative recommendations; and (2) filling gaps in clinical competency. With regard to the former, during the prior authorization process, health plans follow evidence-based guidelines and provide alternative recommendations when available – even when it means recommending an appropriate alternative that may be more expensive. If Gold Carding became law in New York, the opportunity to offer these alternative recommendations is lost, potentially resulting in the provision of lower-quality, unsafe, or unnecessarily costly care for patients. Similarly, with regard to clinical competency, prior authorization practices help improve health outcomes by ensuring the latest evidence-based clinical information serves as the foundation of decisions regarding patient care. Providers with a deep knowledge and extensive experience in one clinical area may not necessarily have such expertise in other specialties, as needed to holistically treat a patient. With Gold Carding, there is no opportunity to fill in these gaps in knowledge during a review process because qualifying providers are automatically approved for all service requests – even if the request falls outside of their specialty. For example, a neurologist who is highly skilled in using brain magnetic resonance imaging ("MRI") procedures to assess patients with headaches may not be as experienced in using a joint MRI to assess a patient with knee pain, but both procedures would be automatically approved if the practitioner qualified for Gold Carding.

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[2] Mark Michen, M.B.A. et. al., "Quality of Care in the United Kingdom after Removal of Financial Incentives," Sept. 2018, *available at* https://www.nejm.org/doi/full/10.1056/NEJMsa1801495.
[3] *Id.*

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

Respectfully submitted,

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