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January 19, 2024

RE: AN ACT to amend the social services law
and the insurance law, in relation to coverage
for the treatment of asthma

S.4889 (Rivera)

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 opposes the enactment of this legislation, which would mandate insurance coverage of a wide range of treatments and services related to asthma. Despite extensive coverage of asthma medications, equipment and education under Medicaid – and New York’s Essential Health Benefits (“EHB”) package already requiring insurance policies in the individual and small group markets to provide coverage for prescription drugs and durable medical equipment (“DME”) – this legislation seeks to expand the coverage already required to include counseling and additional drugs and supplies for use by children in schools. While this bill is well intentioned, it imposes yet another costly insurance mandate that will require significant premium increases for all New York residents and include a cost to New York State under the Affordable Care Act (“ACA”).

Currently, according to the Department of Health (“DOH”), “[m]edicaid recipients have access to a benefit package covering services necessary to manage asthma, including medications/prescription drugs, spacers, peak flow meters, nebulizers, pulmonary diagnostic tests, doctor visits and hospital care.”¹ This policy ensures that individuals and families most in need of financial assistance are able to access asthma medications and devices. Prescription drugs are a category of EHB, which means that all individual and small group health insurance plans are required to cover the greater of at least one (1) drug in every United State Pharmacopeia category and class or the same number of prescription drugs in every category and class as the EHB benchmark plan.² In addition, all individual and small group health insurance plans, both on and off the New York State of Health, cover *all* standard DME – which is defined as equipment that is: (1) designed and intended for repeated use; (2) primarily and customarily used to serve a medical purpose, (3) generally not useful to a person in the absence of a disease or injury and (4)

¹ N.Y. Department of Health, Health Care Initiatives, *available at* https://www.health.ny.gov/diseases/asthma/health_care.htm.

² 45 C.F.R. § 156.122(a).

is appropriate for use in the home, as part of New York’s EHB package.³ As such, the “rescue inhaler treatments and nebulizers, spacers, valved holding chambers, masks and/or other such devices” explicitly delineated by this bill are currently covered when medically appropriate.

Since such drugs and devices are clearly covered under commercial health insurance policies, this bill is ostensibly an attempt to expand insurance coverage to include a second set of equipment and medications for use by children in schools, and to mandate coverage for asthma self-management education “including information on proper use of devices and triggers in the environment which should be avoided or managed.” Under the ACA, the cost of any benefits that the State mandates that are in addition to EHB must be paid for in full by the State for all individual and small group health insurance coverage. Because the bill would provide coverage for additional equipment and education, this mandate would lead to increased premiums across all lines of health insurance.

Finally, while the Sponsor’s Memorandum analogizes the proposed educational requirements to existing law requiring the provision of self-management education with regard to diabetes, there are stark differences between the provisions. Notably, due to the nature of diabetes management, the current statute focuses on proper dietary practices and nutrition and mandates coverage of services provided (pursuant to a referral) by certified diabetes nurse educators, certified nutritionists, certified dietitians or registered dietitians. In contrast, this legislation specifically requires the education regarding the proper use of devices and environmental triggers during “visits medically necessary upon the diagnosis of asthma, where a physician diagnoses a significant change in the patient’s symptoms or conditions which necessitate changes in a patient’s self-management, or where reeducation or refresher education is necessary.” Unlike diabetes management, where a dietician or nutritionist might be best equipped to counsel a patient regarding management of their condition, a physician treating an individual for asthma would properly educate the patient on the use of recommended drugs and devices and explain environmental triggers without the need for a separate visit or referral – and without imposing additional costs on the State’s already strained health care system.

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

Respectfully submitted,

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4875-7249-6542, v. 1

³ Centers for Medicare and Medicaid Services, New York EHB Benchmark Plan, *available at* <https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/Updated-New-York-Benchmark-Summary.pdf>.