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March 17, 2025

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

A.5255 (Reyes)
S.3100 (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 existing coverage of asthma medications and devices under Medicaid and commercial health insurance, this legislation seeks to expand that coverage to include counseling. While this bill is well intentioned, it imposes yet another costly insurance mandate that will require significant premium increases for all New Yorkers and includes a cost to New York State under the Affordable Care Act ("ACA").

Currently, according to the Department of Health ("DOH"), "Medicaid 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, meaning the changes this bill makes to Medicaid coverage are unnecessary.

Prescription drugs are a category of essential health benefits ("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] Although drugs to treat asthma are clearly covered under commercial health insurance policies, this bill would expand insurance

[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).

coverage by mandating 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 State must pay the full cost of any State mandates that are in addition to EHB for all individual and small group health insurance coverage, meaning the cost of this additional benefit for asthma self-management education would be entirely funded by New York taxpayer dollars.

Finally, while the Sponsor’s Memorandum analogizes the proposed educational requirements to existing law requiring self-management education with regard to diabetes, there are differences between these benefits. 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 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, the physician treating the individual with 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 New York State Conference of Blue Cross and Blue Shield Plans opposes this bill and urges that it not be enacted.

Respectfully submitted,

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