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RE: AN ACT to amend the insurance law, in relation to requiring health insurance policies include coverage for the duration of a medical procedure

A.7562-A (Reyes)
S.3820-B (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 strongly opposes enactment of this bill, which is unnecessary in light of current coverage requirements and would restrict the ability of health plans to make policies ensuring accurate provider billing. Specifically, this bill would require coverage for the entire duration of anesthesia time and would prohibit a limit on the time of anesthesia. "Anesthesia time" would begin when the anesthesia provider begins to prepare the patient for anesthesia services in the operating room or equivalent area and ends when the anesthesia provider is no longer furnishing anesthesia services to the patient. In addition to mandating duplicative coverage requirements, this bill will restrict health plans from implementing reasonable policies to discourage overbilling, unnecessarily restricting health plans' ability to prevent premium increases. Importantly, such cost control policies would not cost plan members, instead, these policies would target health services commonly overbilled.

Healthcare costs are significant, with anesthesia services being no exception. Health expenditures per person in the United States were $13,432 in 2023, which was over $3,700 more than any other high-income nation, particularly in Europe.[1] This spending difference is largely attributable to European governments imposing more cost controls on medical providers.[2] Such cost controls may be analogous to the proposed anesthesia reimbursement policy targeted by this bill. The 2024

[1] "How does health spending in the U.S. compare to other countries?" Peterson-KFF Health System Tracker, available at: https://www.healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries/#GDP%20per%20capita%20and%20health%20consumption%20spending%20per%20capita,%20U.S.%20dollars,%202023%20(current%20prices%20and%20PPP%20adjusted)%C2%A0

[2] "The Healthcare Divide: Privatized US vs. Public European Models," Nashville Biosciences, *available at*: https://nashbio.com/blog/healthcare/the-healthcare-divide-privatized-us-vs-public-european-models/

Medscape Anesthesiologist Compensation Report cited anesthesiologist salaries as growing by about 3% since 2023, with an average salary of $472,000.

While anesthesia for medically necessary procedures that require such anesthesia services should undoubtedly be covered by health insurance, the total cost of anesthesia expands well beyond its provision. Inpatient anesthesia bills typically include professional fees, facility fees, monitoring costs, and pre/post-anesthesia care.[3] Excessive billing by anesthesia providers is also commonplace,[4] leading to increased costs for health plans which are passed to employers and consumers through higher insurance premiums.

The Sponsor's Memorandum erroneously states that previously proposed policies to impose anesthesia time caps by insurers would "shift the cost of care from insurance plans to working families," despite blatantly ignoring the egregious overbilling by providers such policies were targeting and disregarding the protections for health plan members already enacted. In addition to giving anesthesia providers the "green light" to continue potentially fraudulent billing practices,[5] the coverage proposed by this bill is already covered for health plan members for inpatient and outpatient care, as anesthesia services are part of New York's Essential Health Benefits ("EHB"). As such, as it requires coverage of anesthesia services, this bill is redundant and duplicative.

Additionally, to put the fears expressed in the Sponsor's Memorandum at ease, health plan members would not be given a lofty bill following a medical procedure if anesthesia services went over the time capped limit. Consumers are protected under New York's surprise billing law,[6] which ensures consumers are only responsible for their in-network cost-sharing for surprise bills when treated by an out-of-network provider, such as an out-of-network anesthesiologist, at a participating hospital or ambulatory surgical center in their health plan's network.[7] To put this plainly, any discrepancies in billing would be decided using independent dispute resolution process between the health plan and the provider, taking the member completely out of this process.

Health plans implement reasonable medical management policies, such as time limits on billed services, to ensure that the care received by a member is not excessive in its cost. As increased health care costs are necessarily passed on to consumers and employers via increased premiums, such cost lowering policies are proposed or implemented due to a health plan's vital role in managing health care costs. Instead of ensuring healthcare affordability, this bill would restrict Plans from implementing policies aimed at lowering premiums for members. To cover these excessive and ever-growing costs, health insurance premiums will undoubtedly rise without the

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[3] "How Much Does Anesthesia Cost? A Complete Breakdown for Patients," Mira Health, *available at*: https://www.talktomira.com/post/how-much-anesthesia-costs-without-insurance.

[4] "Claim Audit Reveals 720 Minutes of Overbilled Anesthesia Time," ClaimDOC, *available at*: https://claim-doc.com/resources/2022/09/claim-audit-reveals-10-hours-of-overbilled-anesthesia-time/#:~:text=The%20place%20of%20service%20code,on%20the%20above%20anesthesia%20claim; *see also* Eric C. Sun et al., "Comparison of Anesthesia Times and Billing Patterns by Anesthesia Practitioners," JAMA Network, *available at*: https://pmc.ncbi.nlm.nih.gov/articles/PMC6324364/.

[5] Albert Coutasse et al., "Is Upcoding Anesthesia Time the Tip of the Iceberg in Insurance Fraud?" *available at*: https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2713030

[6] *See* N.Y. Financial Services Law Article 6.

[7] 45 CFR Part 149; *see also* "Surprise Medical Bills and Emergency Services," New York State Department of Financial Services, *available at*: https://www.dfs.ny.gov/consumers/health_insurance/surprise_medical_bills

implementation of cost control measures, causing consumers and employers to feel the brunt of this bill's restrictions.

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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