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RE: AN ACT to amend the insurance law, in relation to requiring certain health insurance policies to include coverage for the cost of certain infant and baby formulas

A.2449 (Cruz)
S.868 (Bailey)

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 enactment of this bill, which would add yet another costly New York insurance coverage mandate and ultimately increase health insurance premiums for New Yorkers. More specifically, this legislation broadly requires health plans to cover all infant and baby formulas prescribed by a physician for home use for certain health conditions. This bill may shift costs currently covered by the Federal government to New Yorkers and employers through premium increases.

Under current law, health plans are required to provide coverage for enteral formulas, whether administered orally or via tube feeding, pursuant to a written order by a healthcare professional.[1] As long as a provider has issued a written order for an enteral formula which indicates that the provider believes the formula was "clearly medically necessary" and has been "proven effective as a disease-specific treatment regimen," and the condition is one which would otherwise cause the individual to "become malnourished or suffer from disorders, which left untreated, cause chronic physical disability, mental retardation or death," coverage must be provided, even if the disease is not expressly listed in the law. The law provides for coverage of enteral formulas for several diseases or disorders, including inherited diseases of amino-acid or organic acid metabolism, Crohn's Disease, multiple, severe food allergies, severe food protein induced enterocolitis syndrome, and eosinophilic disorders and impaired absorption of nutrients caused by digestive tract disorders. The law already addresses the feeding needs of infants with these severe disorders or diseases. As drafted, this bill expands coverage to include infant and baby formulas

[1] N.Y. Insurance Law §§ 3216(i)(21), 3221(k)(11), and 4303(y).

that are available in stores, and not just the specialized enteral formulas for which coverage is already provided. To expand this scope to include infant and baby formulas would constitute a significant increase in mandatory coverage and therefore result in increased health insurance premiums for New Yorkers.

Additionally, infant formula is covered by existing state and federal programs, such as the Supplemental Nutrition Assistance Program ("SNAP") and the Women, Infants, and Children Program ("WIC"). By mandating insurance coverage for infant formula New York would be, in many cases, replacing coverage of infant formula by the Federal government with coverage by New York's private insurance plans and, ultimately, New York employers and consumers.

While providing infants and babies with adequate nutrition is laudable, this bill contains coverage outside of New York's essential health benefits ("EHB") and will therefore cause costs for the State. Under the Patient Protection and Affordable Care Act ("ACA"), the State must pay the full cost of any State mandates that are in addition to EHB enacted on or after January 1, 2012, for all individual and small group health insurance coverage, unless the benefit is added due to federal requirements.[2] Thus, this legislation would require the State to incur the cost in full of providing this benefit.

Further, this bill sets a minimum level of coverage of at least $3,000 for any calendar year or plan year. EHBs are not permitted to have annual dollar limits. If the State mandated this benefit and then determined it is somehow not a new benefit in addition to EHB, the annual dollar limit would need to be removed, meaning that coverage would be unlimited. During the infant formula shortage starting in 2021, an illegal market for infant formula flourished, allowing some parents to access formula sold from outside the United States.[3] With an already active illegal market for infant and baby formula, insurance coverage may cause the illegal market to grow, as it contributed to the growth of the market for resale of unused diabetes test strips.[4] This illegal and/or resale market only makes it more difficult for families in need to find the infant formula that they need.

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,

HINMAN STRAUB ADVISORS, LLC
Legislative Counsel for the Blue Cross and Blue Shield Plans

[2] 42 U.S.C. §18031(d)(3)(B) and 45 C.F.R. § 155.170(a).
[3] Christina Szalinski, *A Very Expensive, Technically Illegal Workaround to the Formula Shortage*, THE ATL., May 19, 2022, https://www.theatlantic.com/health/archive/2022/05/infant-formula-black-market/629912/.
[4] Ted Alcorn, *The Strange Marketplace for Diabetes Test Strips*, N.Y. TIMES, Jan. 14, 2019, https://www.nytimes.com/2019/01/14/health/diabetes-test-strips-resale.html.