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RE: AN ACT to amend the insurance law, in relation to providing that coverage for outpatient diagnosis and treatment of substance use disorder shall not be subject to preauthorization

S.5263 (Ashby)

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 bill, which would severely diminish a health plan's ability to appropriately manage a patient's care. Specifically, this bill would prohibit a health plan from requiring preauthorization for inpatient and outpatient substance use disorder treatment.

Preauthorization is designed to ensure patients receive the appropriate medical care, as determined by current evidence-based guidelines. This process can help protect patients from unnecessary costs when equally effective and more affordable medications 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.

This bill presumes that preauthorization acts as excessive delay to receive care. In fact, health plans must respond to requests for preauthorization within the earlier of three (3) business days of receipt of the necessary information from the health care provider or 15 days of receipt of the request.[1] Further, for requests or appeals related to inpatient substance use disorder treatment, determinations must be made even quicker, in 24 hours of receipt of the request or appeal if submitted at least 24 hours prior to discharge from an inpatient admission.[2] An insured may also request an internal and external appeal to dispute a health plan's determination that a service is not medically necessary. Under current law, expedited appeals must be completed within 72

[1] N.Y. Insurance Law § 4903(b)(1), N.Y. Public Health Law § 4903(2)(a), and 29 C.F.R. § 2560.503-1(f)(2)(iii)(A).
[2] N.Y. Insurance Law §§ 4903(c) and 4904(b) and N.Y. Public Health Law §§ 4903(3) and 4904(2).

hours of the request.[3] These short timeframes, particularly for inpatient substance use disorder treatment, ensure that consumers can quickly appeal any denials of care.

This bill also fails to take into consideration that preauthorization requirements that are applied to substance use disorder treatment are already subject to review under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA").[4] Under MHPAEA, health plans must perform a comparative analysis of non-quantitative treatment limitations ("NQTLs") to determine whether they are permitted.[5] This additional protection applicable to substance use disorder treatment ensures that any requirements applied to substance use disorder treatment are comparable to those applied to medical or surgical conditions.

The ability of health plans to apply preauthorization requirements to substance use disorder treatment is already limited. Under current law, a health plan is prohibited from applying preauthorization to inpatient and outpatient substance use treatment provided by participating facilities licensed by the Office of Addiction Services and Supports ("OASAS").[6] This bill would further restrict a health plan's ability to require preauthorization in the few instances it is still permitted under state and federal law.

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

[3] N.Y. Insurance Law § 4904(b) and N.Y. Public Health Law § 4904(2).
[4] Pub. L. No. 110-315.
[5] Under 29 C.F.R. § 2590.712-1, NQTLs may not imposed on mental health or substance use disorder ("MH/SUD") benefits in any classification unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to MH/SUD benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical surgical/benefits in the classification.
[6] N.Y. Insurance Law §§ 3216(i)(30)(D) and (i)(31)(E); 3221(l)(6)(D) and (l)(7)(E); and 4303(k)(4) and (l)(5).