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RE: AN ACT to amend the social services law, in relation to providing parity to durable medical equipment providers by requiring Medicaid managed care organizations to reimburse such providers at no less than one hundred percent of the medical assistance durable medical equipment fee schedule for the same services or item.

A.10576 (Lucas)
S.8838-A (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 Shields Plans opposes enactment of this bill, which would establish a permanent, minimum reimbursement level for durable medical equipment ("DME") under Medicaid managed care. The goal of this bill is to increase reimbursement under the Medicaid managed care plans for individually configured devices and mandate the payment of such increased reimbursement rates without the ability to negotiate. This bill would require premium rates for managed care organizations to be increased in order to ensure the actuarial soundness of rates and account for the increased costs that must be paid for devices as a result of this bill.

In the absence of a premium increase for Medicaid managed care plans, this legislation would negatively impact the financial viability of many Plans. In authorizing the Department of Health ("DOH") to set a "benchmark" rate that Medicaid managed care plans would be required to pay for a particular Medicaid service or product indefinitely, this legislation will undoubtedly increase the reimbursement rate for these products and require managed care plans to bear this cost. More importantly, this language deviates from previous DOH practice in relation to setting benchmark rates for products or services under the Medicaid managed care program. In instances where DOH has set a fee-for-service rate as the benchmark rate for a new product or service being carved-in to managed care, it has always been accompanied with an expiration date for the purpose of encouraging Plans and providers to negotiate an appropriate reimbursement rate. By not containing an expiration date on the use of the benchmark rate, this legislation provides no incentive for suppliers to contract at a lower rate with Medicaid managed care plans.

Medicaid and Medicare extensively cover the DME referenced in this bill. In fact, they allow individuals to obtain individually customized equipment when standard devices cannot meet the individual's needs. However, individually configured devices are seldom covered, not just because of their prohibitive expense, but because they are hardly ever medically necessary given the abundance of standard alternatives that are available to meet an individual's needs.

Importantly, Medicare guidelines evidence that the sort of individual configurations and adaptations this bill would attempt to increase Medicaid reimbursement for do not receive special reimbursement treatment under Medicare currently, meaning it would be up to the State to fund this cost entirely. Specifically, Medicare does not consider items that are measured, fitted, or adopted to a patient's individual body profile or need to meet the definition of "customized items" and do not require separate reimbursement and billing codes.

Indeed, these concerns are completely ignored as this legislation is part of a larger, national supplier movement that is focused solely on expanding Medicaid and Medicare coverage for customized technologies. Similar to New York, Medicare rarely reimburses for "customized item" providing through coverage criteria guidance that these items are "so rarely necessary" and "rarely furnished" that "wheelchair-confined, conjoined twins facing each other" is the standard for when customized DME would actually be covered. Yet, this bill would seek to impose this mandate on New York.

At its core, this bill is seeking to establish higher, DME reimbursement rates for certain "customized" equipment by providing that DOH will set benchmark. This legislation would greatly increase Medicaid spending in New York to the direct benefit of medical device suppliers and is unnecessary in light of the fact that the "customization" the State is paying does not necessitate increased reimbursement.

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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