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RE: AN ACT to amend the insurance law, in relation to prohibiting the retrospective denial of payment for substance use disorder treatment services

A.3767 (Weprin)
S.2644 (Addabbo)

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 would prohibit health plans from retrospectively denying payment for substance use disorder ("SUD") treatment if the healthcare provider verified eligibility at the time treatment was initiated. Health plans are entirely reliant on employers to update an employee's eligibility for coverage, and this bill would force health plans to cover services when coverage no longer exists, which would be ultimately paid by all New Yorkers and employers through higher insurance premiums.

Under this bill, if a healthcare provider verified eligibility for insurance coverage for SUD services at the start of treatment, the health plan would be prohibited from retrospectively denying payment due to eligibility once the claim is received. Further, this bill would require plans to immediately notify the treating provider when the insured has lost coverage based on termination of the insured's employment. The bill further requires that the denial based on termination of employment cannot be based on suspension of employment. Failure to notify the provider immediately would preclude the plan from retrospectively denying coverage due eligibility. This bill also provides that it would apply to the New York State Health Insurance Program for state employees ("NYSHIP"). This prohibition would apply to all SUD services, meaning both inpatient and outpatient services.

Health plans are entirely reliant on employers to inform them when an employee has been terminated and is no longer eligible for health insurance coverage. As an employee's eligibility for health insurance is tied to their employment, when their employment is terminated, coverage must end. When employers fail to notify health plans in a timely manner, the employee's coverage still appears to be in place when it otherwise should not. Further, due to the nature of the event,

employers usually notify health plans after the termination of employment has already occurred. This notification after the fact means that health plans do not have the most up-to-date information when a healthcare provider calls to verify insurance eligibility.

In 2021, the Administrative Simplification Workgroup studied the issue regarding insurance eligibility. However, that Workgroup noted that the issue involves more than just the health plan, as the employer ultimately the source of eligibility information. To address this issue, the Workgroup recommended engaging employers in further discussions on measures to reduce the time period to notify health plans of changes to an employee's coverage and meaningful consequences for the failure of employers to provide accurate and timely information to health plans. This bill places this burden entirely on health plans, instead of requiring employers to timely notify a health plan of an employee's termination of employment.

Upon termination, the employer would no longer be required to pay premiums for that employee's coverage. This means that this bill would require health plans to cover claims during a period of time for which they received no premium payments. These added costs will ultimately be borne by New Yorkers and employers through increases to insurance premiums.

Further, the Sponsor's Memorandum notes that when the healthcare provider follows the preauthorization process, the health plan should have no ability to take back payments. However, most SUD services are not subject to preauthorization due to state law or the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"). Further, concurrent review (meaning while the insured is undergoing the course of treatment) is also prohibited under state law for the first 28 days of an inpatient admission at a participating facility that is licensed, certified, or otherwise authorized by the Office of Addiction Services and Supports ("OASAS"). Concurrent review is also prohibited for the first four weeks of continuous outpatient services received at participating OASAS-licensed, certified, or otherwise authorized facilities. These prohibitions on preauthorization and concurrent review mean that the health plan's only review for medical necessity occurs once the claim is received (i.e., retrospective review).

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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Legislative Counsel for the Blue Cross and Blue Shield Plans of New York