HINMAN STRAUB PC
ATTORNEYS AT LAW

121 State Street
Albany, New York 12207-1693
Tel: 518-436-0751
Fax: 518-436-4751

June 2, 2026

RE: AN ACT to amend the insurance law and the public health law, in relation to utilization review determinations

A.6648 (Hunter)
S.5241 (Fernandez)

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 the enactment of this bill, which places onerous and unreasonable burdens on the health plan utilization review determination process that would increase costs, which would be paid by New York employers and consumers. Specifically, the bill unnecessarily seeks to add a definition of medical necessity that would restrict the Plan from denying a service as not medically necessary when a less costly, equally therapeutic treatment exists. The bill would also make changes related to the review of mental health and substance use disorder ("MH/SUD") services which are entirely unnecessary in light of the significant existing protections that apply to those services.

This bill seeks to codify a definition of medical necessity that is inconsistent with the current definition used in New York. Plans are required to use the Department of Financial Services ("DFS") medical model language in their comprehensive health insurance policy forms. The definition in the DFS model language states that a Plan may determine that a service is not medically necessary if the service is more costly than an alternative service that is at least as likely to produce equivalent therapeutic or diagnostic results. As currently drafted, this bill states that the service may not be primarily for the economic benefit of the Plan, which would mean that the Plan may not deny a service as not medically necessary even if a less costly, alternative service that would produce the same results exists. This would allow providers to seek coverage of more costly services, leading to increased costs for the Plan and, in turn, the employers and consumers who pay health insurance premiums.

The bill memo states that Plans make medical necessity determinations that are inconsistent with medical and scientific evidence, in particular for MH/SUD services. This statement is wholly inaccurate, as Plans develop evidence-based clinical review criteria by reviewing the available medical and scientific evidence, as required by existing law. Current law provides that, for mental

health services, Plans must use an evidence-based and peer reviewed clinical review criteria that is appropriate to the age of the patient and reviewed and approved by the Office of Mental Health ("OMH").[1] For substance use disorder services, Plans must use an evidence-based and peer reviewed clinical review criteria that is appropriate to the age of the patient and designated by the Office of Addiction Services and Supports ("OASAS").[2] Under these provisions, the clinical review criteria are reviewed and approved by OMH or designated by OASAS as the clinical review criteria that must be used. To allege that the Plans are using clinical review criteria that are inconsistent with medical and scientific evidence would mean that OMH and OASAS have approved or designated clinical review criteria that are inconsistent with medical and scientific evidence.

This bill would also add unnecessary provisions that are not entirely consistent with other existing statutory provisions, creating inconsistencies and compliance issues. For example, the bill would add a definition of the MH/SUD based on the most recent edition of the International Statistical Classification of Diseases and Related Health Problems ("ICD") or listed in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"). That portion of the definition is consistent with existing Insurance Law provisions, which tie definitions of mental health and substance use disorders to the most recent version of the ICD or DSM.[3] However, this bill also provides that changes in future versions of the ICD or DSM would not affect the conditions included in the definition if the "condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties." Besides being inconsistent with current Insurance Law provisions, this provision regarding future changes would take an objective definition (e.g., in the most recent version of the ICD or DSM) and replace it with a subjective definition, which would lead to disputes about what conditions are included in it.

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 of New York

[1] N.Y. Insurance Law § 4902(a)(12) and Public Health Law § 4902(1)(j).
[2] N.Y. Insurance Law § 4902(a)(9) and Public Health Law § 4902(1)(i).
[3] N.Y. Insurance Law §§ 3216(i)(30) and (31), 3221(l)(5) and (6), and 4303(g) and (h).