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June 2, 2026

RE: AN ACT to amend the insurance law, in relation to preventing discrimination by insurers based on an individual's mental health or substance use disorder

A.8839 (Simon)
S.8426-A (Brouk)

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 codify certain portions of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") and its implementing regulations. In particular, this bill is aimed at codify the non-enforced Final Rule issued by the Biden Administration in September 2024 (the "2024 Rule").[1] While efforts to ensure parity for mental health and substance use disorder ("MH/SUD") benefits are laudable and supported by Plans, this bill would create compliance and enforcement issues for both Health Plans and New York State, as well as result in significant administrative costs which will ultimately be felt by New Yorkers through increased health insurance premiums. Codifying the 2024 Rule fails to address the underlying issues with access to MH/SUD care due to workforce shortages or geographic barriers.

MHPAEA is a federal law that requires group health plans and health insurance issuers that provide MH/SUD benefits to treat MH/SUD benefit no more restrictively than medical/surgical ("Med/Surg") benefits. For example, this means that cost-sharing applied to MH/SUD benefits must be no greater than that applied to comparable Med/Surg benefits. MHPAEA also ensures that non-quantitative treatment limitations, for example prior authorization, are applied no more strictly to MH/SUD benefits as compared to Med/Surg benefits.

[1] *Fact Sheet: Final Rules under the Mental Health Parity and Addiction Equity Act*, DOL.gov, *available at:* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rules-under-the-mental-health-parity-and-addiction-equity-act-mhpaea.

New York has existing, robust state laws that require insurance coverage of inpatient and outpatient MH/SUD benefits and require that such coverage must comply with MHPAEA. Before health insurance products are approved, Plans must demonstrate that the cost-sharing applied to MH/SUD benefits complies with MHPAEA. New York has also enacted laws and regulations to ensure that Plans are complying with MHPAEA, through annual and biennial reporting,[2] and to ensure network adequacy and access to MH/SUD services.[3] These state level protections already guarantee that insureds have MH/SUD benefits, and that the cost-sharing is not greater than the cost-sharing for Med/Surg benefits.

The 2024 Rule that this bill seeks to codify enacted substantial changes to the prior MHPAEA rule. Those changes include revisions to the definitions of MH/SUD benefits, additional new requirements regarding the provision of "meaningful benefits," and additional complexities to the existing requirements for comparative analyses of non-quantitative treatment limitations. The 2024 Rule left many of these new requirements ambiguous and unclear, which would have required the issuance of sub-regulatory guidance. Following a lawsuit filed by the ERISA Industry Committee ("ERIC"), on May 15, 2025, the federal Departments of Labor, Health and Human Services, and the Treasury (collectively, "Federal Agencies") announced they will not be enforcing the 2024 Rule or otherwise pursue enforcement actions for the duration of the litigation, plus an additional 18 months.[4] In March 2026, the Federal Agencies indicated in a status report on the lawsuit that they will issue a new proposed rule by December 31, 2026 that will make "significant revisions" to the 2024 Rule.[5]

Although MHPAEA sets a standard for parity, states are may enact additional "state parity laws" exceeding federal requirements; however, these additional laws cannot conflict with federal statute or regulations.[6] This bill would inflexibly codify aspects of the 2024 Rule and direct the New York State Office of Mental Health ("OMH") to promulgate rules and regulations related to MHPAEA. As MHPAEA regulations continue to evolve, this stagnation in State law may render State law in conflict with federal MHPAEA regulations. In addition to creating impossible compliance challenges, if in conflict with federal law, State laws relating to MHPAEA would be preempted by federal law, rendering this legislation meaningless. As the Federal Agencies have indicated they will issue a new rule with "substantial revisions," it is very likely that a codification of the 2024 Rule will result in conflicts with the new federal rule.

Compliance confusion notwithstanding, this legislation would come at considerable cost to New York State and Plans, further increasing premiums for fully insured coverage. For New York State, this legislation would exacerbate the costs of compliance oversight through the Mental

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[2] Insurance Law § 343, 11 NYCRR Part 230, and 10 NYCRR Part 98-4.
[3] 11 NYCRR Part 38 and 10 NYCRR Part 98-5.
[4] Statement of U.S. Departments of Labor, Health and Human Services, and the Treasury Regarding Enforcement of the Final Rule on Requirements Related to the Mental Health Parity and Addiction Equity Act, *available at*: https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/statement-regarding-enforcement-of-the-final-rule-on-requirements-related-to-mhpaea.
[5] The ERISA Industry Committee v. United States Department of Health and Human Services et al., Case No. 1:25-cv-00136, Document 18, *available at:* https://litigationtracker.law.georgetown.edu/wp-content/uploads/2025/01/ERISA-INDUSTRY-COMMITTEE-v.-DEPARTMENT-OF-HEALTH-AND-HUMAN-SERVICES-et-al_2026.03.30_JOINT-STATUS-REPORT.pdf.
[6] U.S. Const. art. VI, cl. 2 (Supremacy Clause).

Health and Substance Use Disorder Parity Reports under section 343 of the New York Insurance Law. As mental health parity enforcement is already complex and resource intensive, increasing the skills and knowledge required by examiners will only result in greater costs to the State.[7] As indicated by a 2022 letter from the National Association of Insurance Commissioners ("NAIC") to Congress seeking federal grants related to MHPAEA enforcement efforts, "[States] have limited staff resources to devote to parity and may use contractors to assist in parity reviews while they also work to build staff capabilities." These limited State resources will be further stretched by the requirements of this bill.

This legislation will also come at a significant cost to Plans and employers throughout New York State. In response to the 2023 proposed version of the 2024 Rule, the Blue Cross Blue Shield Association ("BCBSA") estimated that the cost of issuers of fully insured plans to conduct the comparative analyses required by the 2024 Rule would range between $200,000 and $300,000.[8] These additional administrative costs, coupled with the rising cost of healthcare and inflation, will only cause healthcare premiums in the fully insured market to rise. More large employers may seek self-insure and be removed from State oversight, while small businesses may cease offering health insurance to their employees, which means this bill would have the opposite impact - a reduction in access to MH/SUD services.

Of most concern, this bill would do nothing to address the underlying issues with access to MH/SUD services. New York and the United States face a significant workforce shortage of MH/SUD providers. As of 2025, approximately 3.7 million New Yorkers live in a mental health care professional shortage area with only 15.2% of the need for psychiatrists met in this State.[9] These shortages are also felt in New York's rural counties, as all 16 of them designated as mental health professional shortage areas.[10] Enacting a state law that codifies burdensome paperwork for State Regulators and Plans alike would prioritize "form over substance" instead of addressing the real issues New Yorkers face regarding access to mental health and substance use services.

For the foregoing reasons, the New York State Conference of Blue Cross and Blue Shield Plans strongly 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

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[7] Letter from Dean L. Cameron, President, NAIC, to Members of Congress re: State Funding for Mental Health Parity and Addiction Equity Act Enforcement, (June 9, 2022) *available at*: https://content.naic.org/sites/default/files/NAiIC%20Letter%20on%20MHPAEA%20Enforcement%20Grants.pdf.

[8] Requirements Related to the Mental Health Parity and Addiction Equity Act, 89 FR 77586, Table 4, *available at*: https://www.federalregister.gov/documents/2024/09/23/2024-20612/requirements-related-to-the-mental-health-parity-and-addiction-equity-act#p-922.

[9] KFF, Mental Health Care Professional Shortage Areas as of December 31, 2025, *available at:* https://www.kff.org/other-health/state-indicator/mental-health-care-health-professional-shortage-areas-hpsas/.

[10] NY Office of the State Comptroller, *The Doctor is … Out: Shortages of Health Professionals in Rural Areas*, August 2025, available at: https://www.osc.ny.gov/files/reports/pdf/rural-health-shortages.pdf.