A BILL THAT IS NOTHING MORE THAN A GIFT TO INSURANCE COMPANIES

Empire Blue Cross Blue Shield and other insurers are pushing legislation (A.264-B/S.3171-A) that would let them submit hospital out-of-network emergency bills to an independent dispute resolution (IDR) process. During the IDR process, insurers could pay hospitals whatever they deem "reasonable" for emergency out-of-network care.

Empire's parent company, Anthem, Inc. (market cap: $64 billion), wants to pad its profits and compromise the care hospitals provide by bullying them into accepting inadequate payments. And the claim by insurers that the bill will protect insured patients from out-of-network emergency bills is false, because they're already protected. Under existing New York State law, insurers cannot charge their enrollees more out of pocket for out-of-network emergency treatment than what they would pay at an in-network hospital.

The bill also doesn't address skyrocketing insurance premiums. Instead, it will harm New York State's financially struggling hospitals—28 of which have less than 15 days cash on hand and are on a State "watch list."

Anthem's first-quarter net income this year rose to $1.55 billion ($6.2 billion annualized)—an increase of more than 18%.[1] Yet the Indianapolis-based insurer relentlessly punishes providers that don't submit to its contract demands: Anthem regularly sends payment for out-of-network care to patients rather than the hospitals that deliver it, with sometimes tragic consequences. In 2017, Blue Cross Blue Shield of North Carolina sent a $33,000 check directly to a patient it knew was struggling with addiction. The individual used the money to buy drugs and, within days, died of an overdose.[2]

A.264-B/S.3171-A is a solution in search of a problem. Here are the facts:

- **Patients with insurance are already protected.** This point is worth repeating. New York State law includes this consumer safeguard to ensure patients aren't hit with huge bills. And when patients can't afford to pay, hospitals must offer a sliding fee scale.
- **The bill gives behemoth insurers even more power.** A 2019 RAND Corporation study found that the rates private insurers in New York State pay hospitals are the third lowest in the country.[3] This bill would give insurers an even bigger

1. A.W. Mathews and K. Chin, "Anthem Raises Outlook Amid Concerns Over Political Environment," April 24, 2019. Available at https://www.wsj.com/articles/anthem-raises-outlook-despite-concerns-over-political-environment-11556125302.
2. W. Drash, "Insurer sent $33,000 to a man struggling with addiction. He used the cash to go on a binge -- and died," CNN, April 23, 2019. Available at https://www.cnn.com/2019/04/23/health/anthem-blue-cross-payments-patient-overdose/index.html. Also see Idem., "Insurer skips doctors and sends massive checks to patients, prompting million-dollar lawsuit," March 1, 2019. Available at https://www.cnn.com/2019/03/01/health/anthem-insurance-payments-patients-eprise/index.html.
3. W. Chapin and C. Whaley, "Prices Paid to Hospitals by Private Health Plans Are High Relative to Medicare and Vary Widely: Findings from an Employer-Led Transparency Initiative," RAND Corporation, p. 20. Available at https://www.rand.org/pubs/research_reports/RR3033.html.

advantage in negotiations with hospitals. In emergency out-of-network situations, hospitals would be forced to accept whatever the insurer wants to pay or resort to the IDR process—making it much easier for Empire to drop not-for-profit and public hospitals from their networks. That would strengthen insurance companies in contract negotiations with hospitals and hurt consumers by letting plans narrow their networks.

- **Insurance companies don't have to pay what hospitals bill.** Empire would have you believe they are required to pay exactly what hospitals charge in emergency out-of-network situations.[4] In fact, they're free to negotiate a settlement and usually do.
- **Insurance companies are engaged in a wide pattern of bad behavior.** Insurers are all about the bottom line. They regularly refuse to cover necessary medical care, burden consumers with ever-higher premiums, copays, and deductibles, and delay payments to providers. Independent analyses found that insurers on the national health exchange rejected one out of every five claims in 2017[5] and that private Medicare insurers "overturned 75 percent of their own denials during 2014–16."[6] This bill would further embolden insurance companies by eroding their incentive to negotiate reasonable payments and enabling them to more easily narrow provider networks and limit consumer choice.
- **There are better ways to help consumers.** The argument that this bill will lower premiums rests on the assumption that insurers will get a leg up in negotiations, pay hospitals less for care, and make more money. Does anyone really think that they will pass those savings on to consumers rather than their shareholders? The New York State Health Foundation has recommended a variety of policies to enhance New York's surprise bill law—among the most successful in the nation—and this bill wasn't even on the list.[7]

The Legislature can fight back against insurance industry abuses by passing bills that would prevent the denial of medically necessary care, limit absurd prior authorization requirements, require plans to pay interest on overturned denials, and simplify overly complex administrative procedures. GNYHA supports legislation that would ban hospitals from sending out-of-network bills to consumers—other than the amounts they would owe if they had been treated by an in-network hospital—if they assign benefits to providers (S.9077 of 2018). The bill would also ban "balance billing" of the patient by the hospital.

Don't give multi-billion dollar insurance companies a windfall. Reject A.264-B/S.3171-A.

4. See A.264-B/S.3171-A bill memo, which falsely states "hospitals are assured of receiving their billed charges, notwithstanding how excessive the charges might be."
5. Henry J. Kaiser Family Foundation, "Analysis: Marketplace Plans Denied an Average of Nearly One in Five Claims in 2017 with Wide Variations across Insurers," February 25, 2019. Available at https://www.kff.org/private-insurance/press-release/analysis-marketplace-plans-denied-average-of-nearly-one-in-five-claims-in-2017-with-wide-variations-across-insurers/.
6. U.S. Department of Health and Human Services Office of Inspector General, "Medicare Advantage Appeal Outcomes and Audit Findings Raise Concerns About Service and Payment Denials," September 2018. Available at https://oig.hhs.gov/oei/reports/oei-09-16-00410.asp.
7. New York State Health Foundation, "Issue Brief: New York's Efforts to Reform Surprise Medical Billing," February 2019. Available at https://nyshealthfoundation.org/resource/new-yorks-efforts-to-reform-surprise-medical-billing-2/.