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NEIL D. BRESLIN
SENATOR, 46TH DISTRICT

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December 20, 2023

Adrienne A. Harris
Superintendent
NYS Department of Financial Services
1 Commerce Plaza
Albany, NY 12257

Dear Superintendent Harris:

I write to urge that the Department of Financial Services (DFS) exercise authority to resolve the many physician complaints that have been made regarding health plans regularly making unreasonable demands for medical records that delay claim payment in violation of New York's Prompt Payment Law (Insurance Law § 3224-a). I have been informed that DFS has been actively reviewing physician complaints (that involve thousands of excessive health plan medical record requests) which have been made to DFS regarding this problem. I urge you to see to it that these complaints be resolved expeditiously.

Along with other Senators, I have received complaints from various medical providers across the State regarding health plan requests for medical records that appear to go far beyond investigating claims that are not "reasonably clear" (as permitted by the statute). Instead, these requests raise serious concerns that health plans are engaged in a tactic to delay and avoid paying legitimate claims. Based on discussions with medical societies, these pervasive medical record demands are occurring in a number of contexts including:

- Medical record requests even though health care services were already pre-authorized by the health plan.
- Duplicate medical record requests, sometimes repeatedly, even after the requested records were previously mailed or uploaded through the health plan portal.
- Medical record requests sent in a claim denial advising that there were no dates of service listed despite each page in the medical records clearly listing such requested date.
- Medical record requests without advising the physician as to the reason for the medical record request.
- Medical records requests advising that there is no signature even when a signature is clearly evident in the submitted claim.

While I certainly understand the importance of health insurers' thoroughly investigating claims to ensure they are medical necessary and properly billed, the frequency by which they are

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occurring, based upon the sheer volume of complaints regarding delayed claims, suggest a potentially more pernicious purpose for these requests.

I applaud DFS for imposing $80 million in recoveries for violations of the State's Prompt Payment law in 2022, particularly given the staff shortages you are facing. However, the fact that these problems of unjustifiable delays continue to persist suggests that even stronger enforcement is needed. As you know, transactional costs for any health care provider entity are often immense, and far worse for smaller physician groups with insufficient resources to spend replying to repeated and unnecessary requests for records. Physicians, hospitals, and other care providers must often spend several hours in a day on unnecessary phone calls and in e-mails to health insurers to ensure they are reimbursed for the patient care the insurers are legally obligated to cover.

I also remain concerned that the existing Prompt Payment Law, enacted 25 years ago, is no longer providing an adequate deterrent to health insurers inappropriately delaying payment. While we want insurers to be on guard against fraud and abuse, we must also guard against insurers using vague or unsupported concerns to allow them to delay obligations under the Prompt Payment Law by using pretextual medical record requests. Therefore, I am also considering a number of legislative initiatives to better ensure health plan compliance, such as increasing the penalties and interest that can be imposed on health insurers to more meaningful levels, providing authority to DFS to exponentially increase penalties for patterns of inappropriate conduct, and provide DFS authority to impose penalties on the various subcontractors that health insurers rely upon for claim review (such as Optum). In addition, I am considering whether it might be helpful to develop language specifying that, for a health plan to delay prompt payment of a claim with a request for medical records, the health plan must be able to articulate to the regulator and physician or other healthcare provider a specific and reasonable ground that is supported by actual evidence of potential fraud and abuse. I would welcome a conversation with you or your team on drafting such language.

Thank you again for all your efforts to address this problem. I know you share the belief that existing laws regulating insurance company practices must be vigorously enforced, as failure to do so may signal to the industry that there will be minimal consequences for failing to follow the consumer and provider protections of which we are so proud.

I look forward to hearing your response.

Sincerely,

Neil D. Breslin
Member of Senate