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FILE NO.: 90021.1002

March 15, 2022

By E-Mail [Tracy.Goodman@exec.ny.gov]

The Honorable Kathy Hochul
Governor of New York State
NYS Capitol Building
Albany, New York 12224

Re: New York State Health Insurance Plan (“NYSHIP” or “Empire Plan”)

Dear Governor Hochul:

It has come to our attention that, effective January 1, 2022, NYSHIP, acting through its administrator UnitedHealthcare, Inc. (“United”), has dramatically and improperly reduced the rate at which the Empire Plan reimburses out-of-network physician services. We are reaching out to you on behalf of a coalition of stakeholders who have been, or will be, adversely impacted by this unauthorized reduction in NYSHIP member benefits. The coalition we represent includes the Medical Society of the State of New York - representing over 20,000 New York State licensed physicians and individual physicians and physician groups who care for NYSHIP members through the Empire Plan. These stakeholders ask you to intercede and require NYSHIP and United to abide by the terms of the Empire Plan’s Certificate of Insurance describing the health care coverage provided by New York State (the “Certificate”),¹ and restore payment of out-of-network physician services to pre-January 2022 levels as provided in the Certificate.

Prior to January 1, 2022, the Empire Plan generally reimbursed out-of-network services at 80% of usual and customary charges, as provided in the Certificate. Members were responsible to initially satisfy their deductible, and once the deductible was met members were required only to pay the remainder.² If a service qualified as a surprise bill under New York State law, the Empire Plan paid 100% of usual and customary charges and the member’s out of pocket expense was limited solely to the member’s in-network copayment for the same service.³ These out-of-network benefits were negotiated for NYSHIP members by their unions, and the benefits afforded NYSHIP members broad access to doctors of their choosing across the State. As a result, we are at a loss to understand what

¹ See <https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/certificate/2021/paep-certificate-2021.pdf>

² See Certificate at 52.

³ See Certificate at 89.

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authority the Empire Plan or United has, as January 1, 2022, to pay out-of-network claims at a different and lower rate - their "median in-network rate," a rate that turns out to be about 15% of what is required under the Empire Plan's Certificate.

In communication with providers United has claimed its unilateral benefit reduction is a result of the federal No Surprises Act ("NSA"). However, the NSA does not address the responsibility of health plans to continue to provide out-of-network benefits that have been contractually agreed to. Rather, the purpose of the NSA is to protect consumers from being responsible for certain "surprise bills," resulting from out-of-network providers who "balance bill" patients when the patient's plan pays less than the provider's billed charges. Under the NSA the patient's responsibility for such amounts is capped at what their responsibility would have been had they obtained the same services from an in-network provider. This protection applies without regard to what reimbursement rate for out-of-network services an insurer has agreed to under its contract with its members. There is simply nothing in the NSA that requires or authorizes health plans to obtain a windfall by allowing them to unilaterally decide that they will reduce their out-of-network benefit below the level they are contractually obligated to provide.

Notably, United made this benefit change without notice of any kind to Empire Plan members or to the unions that had negotiated to secure these out-of-network benefits. It is our understanding that, when confronted about the lack of notice, United claimed no notice was required because Empire Plan members would not be harmed by United's unilateral reduction of reimbursement rates for out-of-network physicians. But United is wrong.

Dramatically slashing reimbursement to out-of-network providers puts Empire Plan members at a serious risk of losing the very benefit their unions bargained for – broad access to doctors of their choosing across the State, at reasonable cost to the member. Put simply, United's drastically reduced reimbursement rate for out-of-network physicians creates an enormous disincentive for these physicians to continue to treat Empire Plan members, and the result will be that Empire Plan members will no longer have access to many of these physicians. This is not speculation. We represent and have spoken to groups of out-of-network physicians, and many have told us that if United's unilateral reduction in reimbursement is not addressed they will have no choice but to cease providing services to Empire Plan members. Other physicians have advised us that, before providing services to Empire Plan members, they will require that the members waive their rights to be protected from balance bills under the NSA by signing a document consenting to be balance billed for the cost of services. Under either of these scenarios members will be harmed. Members will either simply lose access to their out-of-network physicians, or they will be forced to agree to a dramatic increase in their exposure to balance bills in order to receive the care they seek.

We understand that the State stands to save money if the Empire Plan is permitted to unilaterally reduce reimbursement for out-of-network services. But that savings comes at a substantial cost to state employees, and it violates the terms of the agreement that unions negotiated for their members.

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We urge to you to take whatever steps are necessary to require NYSHIP to continue to abide by the terms of the Empire Plan Certificate and the out-of-network benefits that had been negotiated with and agreed to by their unions.

Sincerely yours,

A handwritten signature in black ink that reads "Debra Silverman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Debra A. Silverman

cc's by e-mail: Rebecca Wood (*Rebecca.Wood@exec.ny.gov*)
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