nystateofhealth
The Official Health Plan Marketplace

May 13, 2015

Hon. Kevin A. Cahill
Chair, Assembly Standing Committee
on Insurance
New York State Assembly
Legislative Office Building, Room 716
Albany, New York 12247

Dear Assemblyman Cahill:

I am writing in response to your letter in which you express concerns about insurance coverage under New York's benchmark plan for external prosthetic devices. As you know, the federal Affordable Care Act (ACA) established that the Secretary of the U.S. Department of Health and Human Services (HHS) define the Essential Health Benefits (EHB) to be used by insurance plans in 2014 and later in the non-grandfathered individual and small group markets both on and off Exchanges. Federal law required that each state's EHB include ten categories of service. Regulations issued by HHS (45 CFR 156.100) also required that each state select a benchmark plan from the following ten choices: any one of the three largest state employee health insurance plan options; any one of the three largest small group insurance products in the state; any one of the three largest plans in the Federal Employees Health Benefit Program; and the largest insured commercial non-Medicaid Health Maintenance Organization operating in the state. In all cases, the largest plan was to be determined based on enrollment. Following an independent actuarial analysis conducted by Milliman and vetting of the advantages and disadvantages of each of the ten available options with interested stakeholders, New York selected the small group insurance product with the largest enrollment as its benchmark plan effective January 1, 2014. The benchmark included coverage for one external prosthesis per limb per lifetime, although insurers could opt to provide additional benefits above EHB.

Under federal EHB requirements, non-grandfathered individual and small group market products must provide coverage for rehabilitative and habilitative services. New York's selected benchmark plan already included coverage for rehabilitative services; however, under federal regulation (45 CFR 156.110(f)), the benchmark plan needed to be augmented starting in 2014 to add coverage for habilitative services. Federal regulations at that time did not define "habilitative services". Subsequently, in its Notice of Benefit and Payment Parameters for 2016 (Final Rule, 80 Fed. Reg. 10750 (February 27, 2015), HHS provided new direction with regard to the definition of rehabilitative and habilitative services and devices. Specific to this issue, HHS added a uniform definition of habilitative services, which includes "devices" and the preamble to the regulation clarified that the federal statute requires coverage of devices for both rehabilitative and habilitative services. In accordance

with this new federal directive, New York's benchmark plan will be modified starting on January 1, 2016 to include coverage for the cost of repair and replacement of external prosthetic devices for both adults and children. The NY State of Health 2016 Health Plan Invitation will be amended to include this coverage requirement for the individual and small group marketplaces starting with benefit year 2016.

Please contact me or Amy Nickson, Acting Assistant Commissioner, at 518-473-1124 if you have any questions.

Sincerely,

Donna Frescatore

Donna Frescatore
Executive Director
NY State of Health

cc: Richard N. Gottfried
Chair, Assembly Standing Committee on Health

Mr. Benjamin M. Lawsky, Superintendent
NYS Department of Financial Services

Mr. Troy Oechsner, Executive Deputy Superintendent
NYS Department of Financial Services

Ms. Lisa Sbrana, Counsel, NY State of Health
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