



May 15, 2009

Re: An act to amend the public health law and the insurance law, in relation to cost-sharing, deductible or co-insurance for tier IV prescription drugs; and to amend the executive law, in relation to unlawful discriminatory practice in relation to tier IV prescription drugs.

A. 8287 (Kellner)
S. 5000 (Duane)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the
Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York oppose enactment of this legislation which attempts to protect New Yorkers with certain medical conditions from being singled out by prescription drug plans for increased cost-sharing responsibilities. However, such protections are already in place in New York. Legislating a solution in search of a problem will at best have no impact on the current regulation of prescription drug programs in New York and, at worst, may limit future options for developing creative solutions to control the cost of prescription drugs and health care generally.

Regulation 62 prohibits coverage limitations which are based on type of condition or treatment. The Insurance Department, therefore, would look very skeptically at a prescription drug program that singles out medications such as those described in the Sponsor's memo for increased co-insurance or co-payments as such programs appear to single out a particular treatment or condition for increased cost-sharing. Any change to a policy in New York to include such a program would be reviewed by the Insurance Department, which has the power to modify or reject the proposed change.

While the concerns expressed by the Sponsor may have basis in other States, Regulation 62 and the Insurance Department's oversight have avoided such issues in New York. The fact that no such policy has been approved in New York is a testament to the Insurance Department's

regulatory oversight in this area. In fact, upon one plan's attempt to implement a 4-tier prescription drug program, the Department reacted quickly to force retraction of the plan and make any injured members whole.

While the stated intention of this legislation, to protect those with expensive and debilitating conditions from facing increased financial hardship, is laudable, the broad prohibitory approach it takes is potentially problematic, especially in light of current regulatory protections. This legislation is drafted in a manner that allows for multiple interpretations of its applicability and could easily be interpreted to reach prescription drug program constructs well beyond its stated target. For example, the bill's current language could be read as requiring a plan to cover a "lifestyle" or elective prescription drug with no medical utility for which it would not typically provide coverage at all, and cost-sharing responsibilities for such drug could not exceed those imposed on non-preferred brand drugs. As policymakers and health plans work to develop solutions to the burgeoning cost of health care, this legislation could undermine the development of creative solutions to controlling prescription drug costs.

For all of these reasons, we oppose the enactment of this legislation.

Respectfully submitted,

HINMAN STRAUB P.C.
Legislative Counsel for the
Blue Cross and Blue Shield Plans.