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March 5, 2009

RE: AN ACT to prohibit insurers from requiring that the insured purchase prescribed drugs from a mail order pharmacy.

A.1267 (Colton)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York strongly oppose enactment of this bill, which would severely limit insurers' flexibility in providing cost-effective prescription drug benefits. This bill would prohibit policies covering prescription drugs from requiring that the drugs be purchased through a mail-order pharmacy. Restrictions on mail-service pharmacies unfairly limit the ability of employers to design cost-effective prescription drug benefits and ultimately harms consumers by raising the costs of prescriptions.

1. **MAIL ORDER PROGRAMS ALLOW INSUREDS TO OBTAIN PRESCRIPTION MAINTENANCE DRUGS CONVENIENTLY, SAFELY AND AT A CHEAPER COST.**

Mail-order prescription drug programs allow participants to order sufficient supplies of the prescription drugs they need on a continuing basis to control conditions such as high blood pressure, arthritis, heart conditions and diabetes. Mail-order pharmacies dispense countless prescriptions each year with a high degree of accuracy and cost efficiency.

Mail order pharmacies can provide drugs at reduced prices because these pharmacies have significantly lower overhead and fulfillment costs than retail pharmacies. A recent report in Fortune magazine found that it costs major retail pharmacies between \$4.95 and \$5.89 to fill a prescription-whereas a mail-service pharmacy can fill and mail a prescription for as little as \$2.50. (Boyle, M., "Walgreen's Drug Wars," Fortune, June 1, 2005). According to a 2003 study

by the U.S. Government Accountability Office (GAO), the average price for prescriptions through mail-service pharmacies was 27 percent below the average cash price consumers would pay at a retail pharmacy. It is projected that prescription drug spending will be \$249.3 billion in 2006 and that the use of mail service pharmacies will save roughly \$5 billion healthcare dollars (The Lewin Group, "Mail-Service Pharmacy Savings: A Ten-Year Outlook for Public and Private Purchasers, August 2005. See attached chart entitled "Potential Ten-Year Savings from Using Mail-Service Pharmacies.") The savings achieved by using mail-order pharmacies are an effective tool in limiting drug costs and essential in the ongoing struggle to keep health insurance affordable and available to consumers.

Additionally, mail-order pharmacies offer vastly superior safety for consumer protection. Mail-order pharmacies use the technology of largely automated systems to focus on counting and dispensing medications, while their pharmacists focus largely on clinical issues such as drug interaction and counseling. A highly automated mail service pharmacy achieved dispensing accuracy rates 23 times better than those reported in a benchmark of retail community pharmacies, including a dramatic reduction in many serious errors common across retail pharmacy settings, as detailed in a 2004 Pricewaterhouse Coopers, "The Value of Pharmacy Benefit Management and National Cost Impact of Proposed PBM Legislation" study. In contrast, retail pharmacies had an average error rate of nearly one in 50 prescriptions filled. The mail-order error rate was zero in several of the most critical areas including dispensing the correct drug, dosage, and dosage form.

In this time of an affordability crisis in the health care system, innovative cost containment strategies such as these mail-order prescription programs should be embraced, rather than discouraged. Eliminating the employer's choice of selecting "mail order only" will effectively reduce the savings achieved through these programs.

2. THIS BILL WILL RESTRICT CONSUMER CHOICE.

Mail-order programs are usually offered as an option to traditional prescription drug programs. They are considered by many consumers to be more attractive and more convenient than traditional programs, primarily because of ease of home delivery and reduced costs. In fact, local pharmacies are not always able to meet the pricing, convenience, quality or service aspects of mail-order pharmacies which specialize in meeting the needs of individuals who are on maintenance drugs. Removing the ability of insurers to direct consumers to pharmacies that are offering the best value from a pricing, service, and quality perspective will have a significant impact on the affordability of prescription drug coverage. This rise in costs will result in increasing numbers of consumers who will no longer have access to drug coverage or will simply be unable to afford the increased prescription costs. Destroying the cost-effectiveness of mail-order pharmacy programs, as this bill threatens to do, would eliminate this type of plan as an option for consumers. Plans would cease to offer the option, or would be unable to deliver the reduced costs currently made possible by the use of a mail-order program. As a result, this bill will unnecessarily restrict consumer choice, without any corresponding benefit to health care consumers.

3. **THIS BILL MERELY ADVANCES THE INTERESTS OF LOCAL PHARMACIES WITHOUT PROVIDING ANY ADDITIONAL CONSUMER BENEFIT.**

This proposed legislation is merely a thinly veiled attempt by retail pharmacies to seek legislative action to protect their market share and profitability. In recent years the competitive pricing and service offered from mail-order pharmacies has put pressure on retail pharmacies who have been unable to match these savings. Creating government support for the business interests of retail pharmacies and their shareholders reduces the negotiating power of health plans to obtain affordable rates with these pharmacies. According to the Federal Trade Commission, restrictions on mail-order pharmacies “would almost surely reduce consumer welfare, because mail-order pharmacies often offer lower prices than other retail outlets.” And while the bill establishes a “consumer pharmaceutical insurance coverage panel” the membership composition of the panel offers little consumer protection. Rather the advisory board has significant representation from the retail pharmacy community who are seeking to promote their own business interests.

Finally, the sponsor’s espoused justification for this legislation is to comport state rules to those rules established for Medicare Part D policies. The Federal rules for Medicare Part D do require that enrollees have access to local pharmacies. However, the Medicare Part D program permits plans to require an enrollee to pay any higher cost sharing because of an enrollee’s choice to fill their prescription at a retail pharmacy. (42 CFR 423.120). There is no such language contained in this proposed legislation. Rather, the panel is specifically charged with seeking to prohibit any consumer cost sharing disparities between mail-order and retail pharmacies. This is clearly inconsistent with the Medicare Part D provisions.

Mail order pharmacies are an increasingly important tool used by employers, unions, and other plan sponsors to make prescriptions safer and more affordable. For all of the foregoing reasons we urge your opposition to this bill.

Respectfully submitted,

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Legislative Counsel for the Blue Cross and Blue Shield Plans

Potential Ten-Year Savings from Using Mail-Service Pharmacies

