



121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751

March 5, 2009

RE: AN ACT to amend the insurance  
law, in relation to health insurance  
benefits for domestic partners

A.2368 (O'Donnell)

**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 the enactment of this legislation, which would set forth an unclear and overly broad mandate for health insurance coverage for domestic partners. This bill would alter the definition of family in the insurance law to include domestic partners thus requiring insurers to provide health insurance to an insured's domestic partner.

**1. THE DEFINITION OF DOMESTIC PARTNERS IS AMBIGUOUS AND OPEN TO FRAUD AND ABUSE.**

This bill's definition of domestic partner is ambiguous, which could lead to fraudulent use of the statute. The bill defines a domestic partner as an individual who entered into a domestic partnership or similar relationship pursuant to the laws of any state, local or foreign jurisdiction. The unclear definition will create confusion as to who qualifies as a domestic partner and will cause administrative difficulties due to the inconsistencies in the documentation necessary to prove the relationship.

The bill does not provide any guidance on what relationships are "similar relationships" to domestic partnerships. This would allow those that were not intended to be covered by this law to benefit from its provisions. Moreover, the definition of domestic partnership provides that people that are not parties to any formal agreement can still be domestic partners if they can show dependence or mutual interdependence, according to a "totality of circumstances" test. These circumstances include, but are not limited to common ownership or joint leasing of real or

personal property, sharing a household, shared income or expenses, children in common, signs of intent to marry or become domestic partners and the length of the personal relationship. However, nothing in the test indicates how many factors must be satisfied to establish a domestic partnership, leaving plans with the impossible task of weighing these unclear factors on a case by case basis.

Finally, those that cannot prove a formal relationship or a showing of dependence would be permitted to establish a domestic partnership by "other means . . . including, but not limited to, an affidavit." On its face, this provision allows couples to simply submit an affidavit that they are in a domestic partnership to obtain the rights provided by this law.

2. **EMPLOYER REGISTRIES, WHICH ARE NOT SUBJECT TO ANY LAW OR REGULATION, ARE OPEN TO FRAUD AND ABUSE.**

The bill would allow couples to establish a domestic partnership by registering with either partner's employer. This method is overly permissive and should not be accepted as evidence of the relationship without other proof. It would allow employers that do not contribute to insurance premiums to maintain a registry that would bind other employers with respect to whether a domestic partnership exists, but would have no effect on their own costs.

3. **DOMESTIC PARTNERSHIPS SHOULD INCLUDE ONLY SAME SEX COUPLES BECAUSE OPPOSITE SEX COUPLES ARE ALREADY AFFORDED THESE RIGHTS BY THEIR RIGHT TO BE MARRIED.**

The bill's definition of domestic partnerships should be limited to same sex couples, as these couples are not permitted to obtain these rights through marriage serves. In contrast, in every state in the nation, and in foreign nations, opposite sex couples can be married and, therefore, enjoy the benefits of marriage, including their spouse's family health insurance policy. For opposite sex couples, this bill creates an unnecessary remedy. Consequently, the definition of domestic partnership should be limited to same sex couples.

In light of the potential for fraud and abuse, the Blue Cross and Blue Shield Plans oppose the enactment of this legislation.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC  
Legislative Counsel for the Blue Cross and Blue Shield Plans