HINMAN STRAUB PC
ATTORNEYS AT LAW

121 State Street
Albany, New York 12207-1693
Tel: 518-436-0751
Fax: 518-436-4751

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RE: AN ACT to amend the insurance law, in relation to prohibiting accident and health insurers from offering incentives to health care providers to prescribe a specific drug or medical product.

A. 5448 (Perry)
S. 2836 (Klein)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York Blue Cross and Blue Shield Plans oppose enactment of this bill, which would prohibit insurers from including in their contracts with health care providers any cost saving mechanisms or "any other incentive" which involve medical products or prescription drugs. This bill is overly broad and ignores the fact that incentive programs surrounding medical products and the prescribing of appropriate generic and lower cost drugs have long been recognized. In addition, this bill is unnecessary and is predicated on the unfounded presumption that providers will be swayed by an incentive and ignore their own sound medical judgment.

1. THIS BILL IS OVERLY BROAD AND IGNORES THE FACT THAT INCENTIVE PROGRAMS HAVE LONG BEEN RECOGNIZED AS A VITAL TOOL USED TO CONTROL THE COSTS ASSOCIATED WITH MEDICAL PRODUCTS AND PRESCRIPTION DRUGS.

The provisions of this bill are overly broad as they would prohibit "any other incentive" from a health care plan to a health care provider which seeks to appropriately control the cost of care. Specifically, under this bill, a health plan would be prohibited from providing any incentives to

health care providers to utilize programs that appropriately manage the cost of care, thereby rendering such programs essentially meaningless.

Importantly, this bill overlooks the fact that the practice of substituting medically appropriate generic and lower cost medications for higher cost medications is commonplace in New York State. In fact, under the Medicaid program if a provider wants to order a non-preferred brand-name drug for a patient, he or she must call and answer a set of questions about why the patient requires the not-preferred product, including identifying information and a clinical reason why the patient requires the drug in question. A prior authorization number is then assigned which must be written on the prescription. This approach is considered a critical cost-savings element of New York's Medicaid program, yet under this bill, a similar approach employed by a private insurer would be prohibited.

Contrary to these cumbersome administrative rules, insurers try to obtain the same cost savings while preserving a provider's right to prescribe the most medically appropriate drugs. Targeted incentive programs allow providers to operate without barriers while encouraging the most cost-effective and medically appropriate decisions. This bill seeks to deprive an insurer's ability to allow a provider to make his or her own medical decisions regarding prescription drugs or medical products in favor of what would undoubtedly lead to the institution of necessary administrative procedures by insurers similar to Medicaid.

2. THIS BILL WOULD INCREASE HEALTH INSURANCE PREMIUMS.

By disallowing any provider incentives, this bill would effectively prohibit the use of formularies and other prescribing guidelines used to control prescription drug costs. Although such costs are a relatively small portion of overall health care costs, when compared to hospital or physician services, they represent a significant area of cost growth. Formularies and other prescribing guidelines are rational and appropriate tools for managing prescription drug costs that are not only employed by private health insurers but are routinely used by government programs. For example, in administering the Federal Employees Health Benefits Program (FEHBP) – a plan which has been highlighted as a "gold standard" during recent health reform negotiations – the Office of Personnel Management (OPM) "encouraged proposals from plan to continue to explore the appropriate substitution for higher cost drugs with lower cost therapeutics alternatives, such as generic drugs, and the **use of tiered formularies or prescription drug lists**" (emphasis added).[1]

According to the Kaiser Family Foundation, the growth of prescription drug spending has slowed over the past decade, largely due to the management programs this bill would undermine.[2] By threatening the very programs that create these savings, this bill would undoubtedly increase health insurance premiums.

[1] Government Accountability Office, "Prescription Drugs: Overview of Approaches to Control Prescription Drug Spending in Federal Programs", GAO-09-819T.
[2] Kaiser Family Foundation "Prescription Drug Trends", September 2008

3. THIS BILL IS UNNECESSARY AS IT IS BASED ON AN UNFOUNDED PRESUMPTION AND IGNORES THE FACT THAT HEALTH CARE PROVIDERS ARE THE ULTIMATE AUTHORITY IN DETERMINING A PATIENT'S TREATMENT REGIME.

This bill ignores the fundamental fact that a patient's health care provider is the ultimate authority in determining a patient's treatment. Moreover, this bill operates on the premise that a trained medical professional that has been instructed to use clinical judgment, taking into account the patient's diagnosis, symptoms, risk of complications, medication profile and prior clinical history would be swayed by so called "switching payments" and prescribe a drug or medical product that would pose an unacceptable risk to his or her patient. This is simply not reality. Targeted incentive programs operate only to encourage the use of medically appropriate less expensive drugs and medical products in situations where the provider in his or her own expert medical judgment determines that there would be no adverse risk to the patient.

For all of these reasons, we urge that this bill not be enacted into law.

Respectfully submitted,

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