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RE: AN ACT to amend the insurance law, in relation to the purchase of prescription drugs

S.3566 (Breslin)
A.5854-A (Joyner)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shield Plans strongly oppose enactment of this Bill, which would impose network restrictions on health insurance plans and pharmacy benefit managers (PBMs) that would limit the ability of employers to design cost-effective prescription drug benefits, harming consumers by raising the costs of prescriptions. Specifically, the Bill would prevent plans from requiring retail pharmacies to: (1) meet the same terms and conditions as mail order pharmacies, and (2) join a plan's provider network.

1. **THIS BILL WOULD EXCEPT RETAIL PHARMACIES FROM NETWORK PARTICIPATION REQUIREMENTS**

When the original "mail order" legislation was enacted, its purpose was to provide consumers with added flexibility, and the fundamental agreement reached amongst stakeholders involved was that consumers should have the option to fill prescriptions at a retail pharmacy that otherwise met all of the same plan requirements as a mail order pharmacy—including price, terms and conditions, and network participation. Now, this Bill seeks to undo this compromise and essentially except retail pharmacies from having to join a network and abide by a plan's contract terms, including price, quality, and access criteria. These are essential requirements that *every participating provider* must meet in order to contract with a health plan. This sort of preferential treatment is unprecedented in a managed care context, and sets a dangerous precedent for exempting other providers from health plan participation requirements—the ramifications of which would extend far beyond this Bill.

2. **THE LEGISLATURE SHOULD NOT REQUIRE THAT PLANS WAIVE TERMS, CONDITIONS, AND NETWORK REQUIREMENTS THAT PROVIDE SIGNIFICANT QUALITY AND VALUE FOR MEMBERS**

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 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. Savings achieved by using mail-order pharmacies are essential to limiting drug costs and critical in the ongoing struggle to keep health insurance affordable and available to consumers.

More significantly, mail-order pharmacies offer enhanced safeguards for consumer protections. Mail-order pharmacies use the technology of largely automated systems to ensure the accuracy of 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. Health plans should have the right to insist that its specialty pharmacies provide high quality services at low costs, and if retail pharmacies wish to join these networks, they should have to adhere to the same terms and conditions to ensure similarly high quality service, without special exception. **Dictating to plans that they must diminish their own provider requirements and reimburse non-par pharmacies who do not meet the same high-level standards for quality and efficiency will effectively reduce the savings achieved through these programs.** Indeed, such a measure will unquestionably hurt consumers and only benefit retail pharmacies.

3. PROHIBITING INSURERS FROM IMPOSING TERMS AND CONDITIONS AND REQUIRING NETWORK PARTICIPATION WOULD DESTROY THE NETWORK CONCEPT AND RAISE INSURANCE RATES TO A PRE-MANAGED CARE LEVEL.

One of the main goals of an insurer is to reduce the cost of health insurance while at the same time increasing the quality of care for patients. This is achieved by a health plan's ability to contract with a limited number of providers at an agreed upon rate in exchange for the plan's directly reimbursing providers for care provided to its enrollees. This bill would destroy this balance and serve as a disincentive for participation by both retail *and* mail order pharmacies, who would no longer need to participate in the insurer's network in order to be reimbursed for their services; and 2) since many pharmacists would choose not to participate so as to avoid the credentialing requirements of proving their qualifications, etc., health plans would lose their ability to ensure that only the best, most qualified pharmacists provided services to their members.

Ultimately, the loss of the efficiencies described above would force insurers to raise premiums, as they could no longer contract with providers for affordable and reasonable reimbursement rates.

For all the foregoing reasons, we strongly oppose the passage of this bill.

Respectfully submitted,

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