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April 22, 2022

RE: AN ACT to amend the insurance law, in relation to calculating an insured individual's overall contribution to any out-of-pocket maximum or any cost-sharing requirement

S.5299 (Rivera)
A.1741 (Gottfried)

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 legislation, which would require health plans to apply any third-party payment for out-of-pocket expenses when calculating any out-of-pocket maximum or cost-sharing requirement; and by design, would prohibit the use of "copay accumulators" by health plans. Health plans have been forced to implement "anti-coupon" policies in order to combat the rapidly increasing prices of prescription drugs – which, in this case, is caused by drug manufacturers offering "coupons" to cover the out-of-pocket costs of consumers and incentivize use of more expensive brand name medications. This bill will perpetuate the use of such unscrupulous marketing and data mining practices by big PhRMA to steer consumers to more costly drugs, which unnecessarily results in higher prescription costs that all New Yorkers will be forced to pay for through increased premiums.

In order to control health care premiums for members, health plans encourage the use of cost efficient, but equally effective medication by establishing lower co-payments for generic and biosimilar equivalents. To counter this rational cost efficiency, drug manufacturers have expanded the use of "couponing," which provides financial incentives to patients to seek higher costing drugs by reducing their out-of-pocket costs (i.e. copays). While coupons initially help patients afford more expensive medications that have a high copayment, they also encourage members to use needlessly utilize high-priced brand name drugs, which then must be paid for by the health plan.[1]

[1] Coupons increase branded sales by 60%, entirely by reducing the sales of lower cost generics. Dafny, *When Discounts Raise Costs: The Effect of Copay Coupons on Generic Utilization*, UCLA Anderson School of Management (October 4, 2016) *available at:*

When consumers are relieved of copayment obligations, manufacturers are relieved of a market constraint on drug prices. This ultimately translates to higher premiums for all New Yorkers.

While copay coupons may provide an immediate financial benefit to patients, they are systematically used by manufacturers in concert with price increases to cover up their own pricing behavior. Coupons facilitate continual and aggressive price increases by holding the patient harmless at the point-of-sale (pharmacy) and creating the illusion that patients are not paying for medication.[2] However, the cost of the prescription drugs are simply being transferred to the patient's health plan, which in turn requires higher premiums in order to cover the increased costs.

It is important to note that federal law prohibits pharmaceutical manufacturers from providing or offering consumers discounts to purchase prescription drugs that are paid for by Medicare or Medicaid.[3] In fact, CMS recently finalized a rule that will allow health plans to implement copay accumulator programs to prevent drug manufacturer coupons from applying to a patient's annual limit on out-of-pocket costs in situations where a generic drug is available. CMS specifically allows this practice because it will encourage patients to use generic drugs, and therefore lower drug spending. The rule, which went into effect in 2020, is applicable to individual market, small group, large group and self-insured group health plans. Similarly, California and Massachusetts prohibit the use of copay coupons for medications that have a lower-cost generic equivalent.

Thus, it is clear that copay coupons unnecessarily increase prescription drug costs and only provide an immediate, illusory benefit to patients. Any legislation seeking to prohibit the use of copay accumulators should similarly prohibit the use of copay coupons, thereby entirely eliminating a questionable marketing practice by drug manufacturers, as well as the inequitable application of copayments by health plans – neither of which are in the best interest of the consumer. Prohibiting one of these practices, but not the other, is also not in the best interest of patients across New York State.

For all of the forgoing reasons, the New York State Conference of Blue Cross and Blue Shield Plans strongly opposes the enactment of this legislation.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC
Legislative Counsel for the Blue Cross and Blue Shield Plans
4819-9562-6720, v. 3

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http://www.hbs.edu/faculty/Publication%20Files/DafnyOdySchmitt_CopayCoupons_32601e45-849b-4280-9992-2c3e03bc8cc4.pdf

[2] Drugs without coupons experience real price growth of 7–8 percent per year, while drugs with coupons experience price growth of 12–13 percent per year. *Id.*

[3] The OIG has determined that "coupons constitute remuneration offered to consumers to induce the purchase of specific items." Where remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated.