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RE: AN ACT to amend the public health law and the insurance law, in relation to payments by a pharmacy benefit manager to participating pharmacies

A.5882-B (McDonald)
S.5939-B (Skoufis)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shields Plans strongly opposes enactment of this bill, which would require pharmacy benefit managers ("PBMs") to reimburse participating pharmacies at minimum at the national average drug acquisition cost ("NADAC") rate or at the pharmacy acquisition cost rate if there is not a NADAC rate, plus a professional dispensing fee that is at a minimum the professional dispensing fee under Medicaid for these additional costs. For drugs or products which require unique handling, distribution or administration, in-depth patient teaching, coordination of care, or frequent or special monitoring, special packaging, shipping or other costs incurred by the pharmacy as part of the dispensing process, participating pharmacies would be required to be reimbursed a professional dispensing fee that is at minimum the professional dispensing fee under Medicaid for these additional costs. This requirement would affect the majority of health plans, including self-funded plans, other than collectively bargained plans, meaning its impact would be significant. PBMs would also be restricted from paying a participating pharmacy below its pharmacy acquisition cost but would be permitted to require demonstration of this cost through pharmacy invoices.

The Sponsor's Memorandum for this bill alleges a cost savings associated with these provisions; however, if enacted, this legislation would regrettably result in the opposite. By setting minimum reimbursement and payment amounts, it will substantially increase costs for consumers. Medicaid currently has a professional dispensing fee for covered outpatient drugs of $10.18, and this bill would require the Medicaid professional dispensing fee to be the floor for commercial health insurers' reimbursement. Currently, these fees paid to pharmacies by commercial insurers can be less than $1.00. If enacted, this bill would increase cost tenfold, with the impact easily and credibly calculated based on claims volume. For example, a health plan that processes 8,800,000 claims over a 12-month period (an average amount for a mid-size health plan) while paying a dispensing

fee of $1.00 per claim will incur an additional cost of $80.9 million, purely as a result of increasing the dispensing fee to $10.18.

Additionally, mandating the use of NADAC undermines the Request for Proposal ("RFP") process that plans undertake in selecting a PBM to provide prescription drug benefits to their members. One of the main goals in selecting a PBM is affordability. Mandating the use of a NADAC eliminates a tool utilized to distinguish between PBMs and a choice for less expensive coverage.

The Sponsor's Memorandum indicates that the goal of this bill is to lower prescription drug costs; however, it will have the exact opposite effect. Although this bill would impose requirements to increase payments by PBMs to participating pharmacies, the PBMs will pass on their increased costs to the Plans for which they are administering claims. Plans, in turn, will be forced to pass on these increased costs to employers and consumers in the form of higher premiums. New Yorker employers and consumers would essentially be paying higher premiums for the same prescription drug benefits they already have today.

Further, this bill does nothing to address the underlying issues that increase the cost of prescription drugs, namely the lack of any sort of regulation of the prices set by drug manufacturers and the use of drug patents to limit competition and delay the development of more affordable generic drugs.[1]

Increased costs will also occur for consumers when they fill their prescriptions at the retail pharmacy. When a member's copayment for a drug is higher than the cost the Plan pays the pharmacy for the drug, the member is only responsible for the cost the Plan actually pays the pharmacy. Many consumers see this in action, typically when they fill generic prescriptions. Over forty percent of one Plan's prescription drug claims over a 12-month period had a total cost (ingredient cost plus dispensing fee) of less than $10, with the average cost of such drugs being $6.15. Thus, for members with a $10 copayment, increasing the dispensing fee to $10.18 will automatically increase the cost-sharing amount members pay at the pharmacy to full copayment amount of $10.00.

For the foregoing reasons, the New York State Conference of Blue Cross and Blue Shield Plans opposes this bill and urges that it not be enacted.

Respectfully submitted,

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

[1] Rebecca Robbins and Christina Jewett, "*Six Reasons Drug Prices Are So High in the U.S.*," N.Y. Times, (Jan. 17, 2024), https://www.nytimes.com/2024/01/17/health/us-drug-prices.html.