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RE: AN ACT to amend the insurance law, in relation to substituting brand name prescription drugs in the case of a drug shortage

A.1428 (Forrest)
S.9497 (Fernandez)

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 opposes enactment of this bill, which would require policies providing coverage for prescription drugs to provide coverage of a brand name eligible prescription drug to a member when the equivalent generic drug is unavailable. Specifically, the bill requires brand name drug coverage when a member who is either already receiving a generic version of that drug, or has been diagnosed with or presented with a condition that is treated by such generic drug or included in the treatment regimen for that condition in the event the generic drug equivalent is unavailable due to a supply issue recognized by the federal Food and Drug Administration ("FDA"). In these cases, the brand name drug would be required to be covered at the same level of coverage as the generic drug in the Plan's formulary until such time as the supply issue is resolved and the drug has been removed from the federal FDA's shortage list.

While this bill correctly recognizes that drug shortages pose a public health concern, this bill's attempt to only charge the member the cost share they would be responsible for the generic version of the drug poses logistical challenges. Cost sharing for member prescription drug benefits are correlated to the tiers set by a Plan's formulary – often with generic and low-cost drugs at Tier 1 and brand name and specialty medications at the higher tiers. Current law only permits three tiers of drugs. As drafted, this legislation would arguably create a forth tier, which would be contrary to current law.

Moreover, current practices address coverage issues when there is a generic drug shortage. The National Council for Prescription Drug Programs ("NCPDP") is a not-for-profit, multi-stakeholder forum for developing and promoting industry standards and business solutions that improve patient

safety and health outcomes, while also decreasing costs.[1] When drug shortages arise, the NCPDP requires pharmacists to input a Dispense as Written ("DAW") code indicating that a brand name drug was dispensed because a generic drug was unavailable.[2] However, the cost sharing for this drug would be at the brand name level, not the generic level. In addition, this code does not indicate whether or not the drug was unavailable due to an FDA-declared shortage. Implementing this bill would require great administrative overhaul by plans to ensure that that this generic cost sharing requirement occurs when the drug is available due to an FDA-declared shortage.

As that brand name drug is already on a Plan's formulary at a higher tier, and was dispensed by the pharmacy, members will automatically pay the brand name cost-share associated with the dispensed drug, as these codes are correlated with the Plan formulary tiers, which are associated with member cost-share. Logistically managing to separate this correlation for times of drug shortages will require significant overhaul of current systems.

This bill also would result in significant costs to Plans. If brand name drugs are distributed to members, a pharmacy will not accept reimbursement that is below their acquisition cost of the drug. As such, Plans will be forced to pay the difference in both price of the generic versus brand name drug, in addition to member cost share of the brand name drug. As the cumulative effect of these increased costs are felt by the Plan, premiums will naturally rise to compensate for these costs.

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] *Who We Are*, NCPDP.org, *available at*: https://www.ncpdp.org/Who-We-Are.aspx
[2] National Council for Prescription Drug Programs White Paper, "The Proper Use of the NCPDP Telecommunication Standard Version D.0 as it applies to the Implementation of Medicaid Reimbursement Methodologies Based on Actual Acquisition Cost (AAC) Plus a Professional Dispensing Fee," *available at*: https://www.ncpdp.org/NCPDP/media/pdf/WhitePaper/Proper-Use-of-NCPDP-Telecommunication-Standard-in-Implementation-of-Medicaid-Reimbursement-Methodologies-v1-2.pdf?ext=.pdf%27);