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LEGISLATIVE MEMORANDUM

FOR IMMEDIATE RELEASE: MAY 28, 2008

Re: A.11187 (Gottfried)

An act to amend the public health law and education law, in relation to prohibiting certain payments to prescribers and requiring the disclosure of other payments; prohibiting the presentation of information at continuing professional education programs that is false or misleading and requiring disclosure of certain potential conflicts of interest in connection with such programs; providing for transparency in the business relationships between pharmacy benefit managers and health plans; and requiring pharmacy benefit managers to provide certain information to health plan participants and their prescribers.

The New York Health Plan Association (HPA) supports the \$50 per year limit and disclosure of financial conflicts of interest between pharmaceutical manufacturers and health care providers, but opposes the pharmacy benefit managers (PBMs) cost and data transparency provisions.

This legislation, A.1187, has two distinct parts with two key provisions each. The first part seeks to address the relationship between pharmaceutical manufacturers and physicians by placing limits on gifts and disclosing potential financial conflicts of interest in connection with continuing medical education events. The second part relates to the relationship between PBMs and health plans in contract negotiations as well as the relationship of PBMs with patients and physicians when filling prescriptions.

HPA opposes the second part of the legislation because it seeks to unnecessarily interfere in the contract negotiations between PBMs and health plans, and have the unintended consequence of increasing the overall cost of prescription drugs for all New Yorkers.

Limiting pharmaceutical manufacturers influence on physicians

The legislation includes a provision to prohibit pharmaceutical manufacturers from giving a physician, and the physician from accepting gifts in excess of \$50 per year. The bill provides numerous exceptions to this \$50 per year prohibition as long as the physician and pharmaceutical manufacturer disclose the payment. HPA supports the goal of this provision by requiring the disclosure of payments from pharmaceutical manufacturers to physicians.

Another provision would require practitioners who present at educational events to disclose any financial relationship they have with pharmaceutical manufacturers. Specifically, the legislation would require

presenters at continuing medical education programs conducted in New York to disclose to the health care attendees any financial relationships with the pharmaceutical manufacturer or distributor as well as disclose any materials to be used by the presenter being disseminated on behalf of a manufacturer.

HPA supports this provision as it eliminates potential financial conflicts of interest that may exist between pharmaceutical manufacturers and health care providers. New York should be encouraging an atmosphere in which practitioners can be educated on the latest medical advances in a fair and unbiased manner.

Increased transparency between PBMs, health plans, providers and consumers

The second part of the legislation seeks to promote increased transparency in PBM contracting. One provision requires that PBMs provide certain data and information to the health plan including a description of PBM services it offers as well as the net cost of those services; the methodology for determining those costs; a description of the formulary that the PBM recommends the health plan to adopt; and both an initial as well as periodic disclosures of its contracts with pharmaceutical manufacturers.

HPA opposes this provision as the data and information to be disclosed in this legislation is part of the current contract negotiations between the parties. This provision appears to be a solution in search of a problem that may have the unintended consequence of minimizing competition and increasing drug costs. The potential liability for disclosure of proprietary PBM information is also a reason for opposition.

Another provision would require PBMs to notify patients and provide information to physicians when switching a drug while filling the prescription. The legislation would require PBMs to notify patients two days before the prescriber is contacted, and once the prescriber is contacted the PBM must disclose all financial and clinical information necessary to determine if the switch was warranted.

HPA opposes this provision as well in that it is not exactly clear what the legislation seeks to fix. PBMs are already precluded under New York law from switching drugs without first contacting the physician. This legislation appears to increase the burden on the patient by creating a notice requirement that will only add unnecessary time delays in accessing prescription drugs.

For all these reasons and more, the New York HPA supports this legislation's goal of addressing potential financial conflicts of interest between physicians and pharmaceutical manufacturers, and opposes the provisions that concern PBMs as the unintended consequences of these measures will only increase the cost of prescription drugs for consumers, employers and health plans.