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An act to amend the labor and insurance laws in relation to organ donation and providing insurance coverage to employers who give a paid leave of absence.

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MEMO IN OPPOSITION

This legislation, A.149/S.185 has two key provisions. The first provision requires employers to offer their employees 30 days unpaid leave for medical absences related to bone marrow or organ donation. The second provision takes the unprecedented step of directing a portion of health insurance premiums to reimburse employers for wages paid to employees granted a paid leave of absence. The New York Health Plan Association (HPA) opposes the latter provision as it distorts the purpose of health insurance and because community rating rules would require the unequal administration of this benefit to the detriment of those who could least afford it – sole proprietors and small businesses.

**BAD POLICY: HEALTH INSURANCE POLICIES PAYING WAGES**  
Health plans in New York strongly advocate for increasing donor opportunities. Currently, health insurers pay for the medical care of enrollees who require organ donation and for their donors (even though donors are rarely enrollees of the plan). This legislation takes the extraordinary step of requiring insurers to reimburse an employer for the wages (up to 30 days) paid to any donor on a paid leave. HPA supports health plan reimbursement for appropriate health related services pursuant to contract, however, reimbursing for salaries and wages of donors severely alters the purpose of health insurance.

Additionally, such a provision is not necessary as currently there are numerous established programs available to organ donors to assist them medically and often financially through the period of convalescence. For instance, many donor programs provide a safety net of protection in the form of life, disability and medical insurance for complications that might arise from being a donor. For others, private insurance products may provide recompense for lost wages in these situations.

**BIG HIT ON SMALL BUSINESSES**  
Health insurance costs are the number one concern for small businesses in New York. This proposal will increase the cost of health insurance as it will trigger employers to offer paid leave benefits with the understanding they will be compensated for that leave through a third party. Unfortunately the costs of implementing this legislation will fall disproportionately on small employers who will be asked to underwrite – through higher insurance premiums - the wages of donors in other companies.

Poor drafting compounds the unequal application of this mandate. In an effort to mitigate the impact of this legislation on New York’s smallest businesses, sponsors limited its provisions to

companies with more than 20 employees. However, New York's community rating law requires plans to underwrite its small group market product for companies with up to 50 employees. As a result, the cost of this legislation will be spread across all the businesses in the small group market – including those with less than 20 employees (who will derive *no* benefit). Under the provisions of this legislation, New York's smallest businesses would be asked to subsidize this program – presumably contrary to the sponsor's intent.

Finally, to address the concerns of mandates that add to premium inflation on businesses that buy fully insured health policies, the Legislature approved a commission to study mandates prior to approval in the recently adopted budget. Clearly, the genesis of this law is proposals like A.149/S.185. In the spirit of the law, this proposal should be forwarded for additional review by the commission.

For all these reasons, the New York Health Plan Association strongly opposes this proposal.

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*The New York Health Plan Association represents 30 managed care health plans that provide comprehensive health care services to nearly 6 million New Yorkers.*