



MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: FEBRUARY 23, 2009

Re: A.726 (Gottfried) – AN ACT to amend the public health law and insurance law, in relation to certain contracts or agreements by health maintenance organizations

90 State Street • Suite 825
Albany, NY 12207-1717
518.462.2293
Fax: 518.462.2150
www.nyhpa.org

This one-house proposal, A.726, is anti-consumer as well as encourages off label prescriptions. Moreover this legislation is duplicative of existing law. Accordingly, the New York Health Plan Association (HPA) opposes this bill.

Subdivision 7 of this legislation promotes out-of-network referrals that will cause patients to incur additional and unnecessary out-of-pocket expenses for health care without requiring providers to inform patients that they will be liable for those costs. A more balanced approach would require those providers that make an out-of-network referral to inform the patient that they are being referred outside the network. Ideally, the patient should also be notified that they could incur additional charges for those services. This provision of the bill is decidedly anti-consumer.

Section 8 prohibits disclosure of a patient's diagnosis on a prescription. However, plans may require this information for two purposes. A diagnosis provides the pharmacist an opportunity to pursue collaborative therapy, thereby seeking to improve the quality of care the patient receives. In other cases the request is made to ensure the drug is not being utilized for off-label or cosmetic purposes (i.e.: Retin-A). Disclosure of an enrollee's diagnosis is deemed appropriate under HIPAA. A flat prohibition on disclosure may require health plans to establish prior authorization processes for certain agents. This will result in a more cumbersome prescribing process requiring greater paper work and lost time for providers and patients alike.

Subdivision 9 of the bill unnecessarily requires the approval of prescribing providers for all pharmaceutical substitutions, except for generic drugs. This duplicates New York's prescribing laws, which already requires that alterations in drug therapy may only be executed under the authority of the patient's provider. Pharmacists can be sanctioned if they are found to be "substituting without authorization [of] one or more drugs in the place of the drug or drugs specified in a prescription."

We believe A.726 is an unnecessary and, more importantly, anti-consumer and burdensome proposal. For all these reasons, the New York Health Plan Association urges your opposition to this proposal.

The New York Health Plan Association represents 25 managed care health plans that provide comprehensive health care services to nearly 7 million New Yorkers.