



FOR IMMEDIATE RELEASE: March 9, 2007

Re: S.2106-A/A.4306-A

An act to amend the civil practice law and rules, in relation to subrogation for collateral source payments made in the context of a settlement.

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MEMO IN OPPOSITION

The New York Health Plan Association (HPA) opposes the provision of S.2106-A/A.4306-A (the Public Protection and General Government Article VII bill) which amends the civil practice law and rules (CPLR) in relation to subrogation for collateral source payments made in the context of a settlement. This legislation will increase the cost of health insurance by denying health plans the opportunity to recoup payments for medical expenses that should be paid for by a different party.

Under current law, health plans occasionally intervene in lawsuits in an effort to recoup costs paid for by the health insurer when other insurance coverage is not only available but is the primary coverage. This insures that small group health insurance premiums are not subsidizing inappropriate settlements that occur when plaintiffs or their lawyers wrongly characterize such settlements as not including payment of medical costs.

HPA estimates that the cost of this provision to employers and consumers is in excess of \$50 million per year. This is based on actual plan recoveries as well as estimates that subrogation recoveries can amount to as much as .5% of premiums paid. It is worth noting that employee benefit plans, such as the Empire Plan, routinely pursue subrogation to offset costs. Moreover, self-insured entities will still be entitled to pursue such claims as the law is likely preempted by ERISA. Thus, the impact of the proposal will fall most heavily on small groups and individuals, the part of the market least able to afford it. It also should be noted that the provision will actually increase costs for the state and local governments even though the measure is included in a budget section that is intended to reduce mandates and lower costs.

In addition, the provision is inconsistent with the Governor's initiative to control health care fraud as it encourages settlements that arguably defraud health care consumers. Finally, this provision is on top of \$200 million in other proposed budget actions that adversely affect health plans (e.g., rate freezes, increase in the covered life assessments, etc.).

Accordingly, HPA opposes this legislation because it will result in higher health insurance costs and new burdens on consumers and employers at a time when the state should be seeking to reduce such costs.

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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.