



MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: APRIL 28, 2009

Re: S.4080-A (Schneiderman)/A.7504-A (Weinstein) AN ACT to amend the civil practice law and rules, in relation to treating public and private defendants equally when considering the impact of collateral source payments in tort claims for personal injury, property damage or wrongful death; to amend the general obligations law, in relation to protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims; and to repeal certain provisions of the civil practice law and rules relating to collateral source payments.

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The New York Health Plan Association (HPA) opposes S.4080-A/A.7504-A, which, among other things, 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 third party responsible for the injury. In addition, the legislation is directly contrary to State law, to the extent that it limits certain recoupment by health plans in the Medicaid managed care program, and would result in an immediate increase in costs to the State and municipalities.

Under current law, when an individual is injured and needs medical care, the individual's health insurance company pays the costs associated with the health care provider's bills. However, if the injury is due to the fault of some third party, and the injured party receives a settlement award to compensate for the injury and related medical expenses, the individual's health insurance company has the right to recoup the medical costs. Health insurance companies have an obligation to their members to try to limit the insureds' expenses and to make health care as affordable as possible. The right of subrogation furthers this goal by enabling insurance companies to recover medical costs, prevent double recoveries by plaintiffs, and thus make health insurance premiums more affordable.

Furthermore, just last year the Legislature acknowledged the significant cost savings that can result from subrogation. Pursuant to the 2008-09 Health Budget Article VII legislation, the Medicaid program is now authorized to commence actions to recoup medical costs incurred by Medicaid beneficiaries who enter into settlement agreements with a third party. In some cases, health plans in Medicaid managed care may also be authorized to recover third party dollars to offset the cost of Medicaid. Nevertheless, this legislation would preclude private insurers from pursuing the very same recoveries that the State is now authorized to pursue.

Moreover, the cost of this change would be substantial. It is estimated that eliminating this right of subrogation will cost the City of New York over \$6 million, and the cost to the State and to other municipalities across the State is millions more.

Accordingly, HPA opposes S.4080-A/A.7504-A because it will result in higher health insurance costs and new burdens on taxpayers at a time when the State should be seeking to reduce such costs.

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