



MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: MAY 17, 2011

Re: S.5110 (Young)/A.6049 (Bing) – An act to amend the insurance law, in relation to the prohibition on first fail policies.

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This legislation, S.5110/A.6049, would prohibit fail first health insurance policies that require patients to try less costly medications (generics) before patients try more expensive brand name medications. If enacted, this proposal will diminish quality of care and exacerbate the increasing cost of drugs - one of the fastest rising components of health care costs. Accordingly, the New York Health Plan Association (HPA) opposes S.5110/ A.6049.

So called step therapy programs that utilize lower-cost, clinically proven medications before expensive brand name drugs were developed to ensure that high-quality, evidence based decisions are made by prescribers. These programs respect the physician's authority while promoting the use of more affordable pharmacy options when clinically appropriate. The growing availability of generic medications has created a greater opportunity to deliver an affordable and quality drug benefit for consumers. Step therapy programs benefit consumers by lowering their out of pocket drug costs, which leads to better drug compliance and improved health outcomes. Greater use of generic drugs keeps pharmacy benefits accessible and affordable.

The blanket prohibition in this bill will prevent individuals from receiving those drugs that best meet their needs at the best prices. New York's carefully crafted pharmacy prescribing laws keeps the prescriber at the center of this process. By simply endorsing the "Dispense As Written" box on the prescription, the provider ensures that the named drug on the prescription must be filled by the pharmacy. While it may not require the plan to cover the agent, it does ensure that the best agent as determined by the prescriber and the patient is made available.

A drug formulary is a continually updated list of prescription medications, which represent the current clinical judgment of providers who are experts in the diagnosis and treatment of disease. Formularies have existed for decades and are most commonly used by hospitals, health plans, prescription benefit management companies (PBMs), self-insured employers, and government programs. The formulary process provides enrollees access to effective drugs in every therapeutic class to ensure efficacious treatment. The formulary process also allows for an appeal process that may provide an avenue for non-formulary drug to in certain circumstances be covered by the plan.

This legislation also establishes duties and prohibits certain actions taken by PBMs that function as an administrator in connection with pharmacy benefits. Health plan professionals currently negotiate their PBM contracts within this market. Plans are sophisticated buyer, using outside consultants and rigorous bidding processes to negotiate the best deals possible for their particular needs. This legislation reduces these options by tying the hands of all parties by prohibiting contract terms that suit the interests and goals of all the entities. New York should not handicap this contracting dynamic, nor interfere with a vital marketplace that is meeting the needs of all parties.

This legislation undermines a plan's ability to harness enrollee purchasing power, leading to increased pharmacy costs and reduced access to drug coverage and quality care. Increased costs for premium payers and patients alike, coupled with the administrative burdens associated with implementing this proposal and the diminishment in quality outcomes, outweigh any benefit this legislation hopes to achieve.

Other concerns that it appears have not been taken into consideration in this proposal are the impact it will have on the implementation of the Medicaid pharmacy carve-in provisions included in the 2011-2012 State Budget or to the cost of the State's Empire Plan. The Medicaid Redesign Team's pharmacy carve-in plan is expected to save the state \$50 million, with much of that savings the result of a significant increase in the use of generic drugs. Prohibiting step therapy programs will greatly undercut these anticipated savings. Similarly, prohibiting the use of fail first policies for the State's employee health program will raise the Empire Plan's drug costs. This will further raise the overall costs for the \$3 billion program that, earlier this month, projecting double digit premium increases for next year.

For all these reasons, HPA opposes S.5110/A.6049.