



**FOR IMMEDIATE RELEASE: MAY 21, 2007**

Re: S.5128 (DeFrancisco)/A.8364 (Weinstein)

An act to amend to amend the civil practice law and rules in relation to the impact of collateral source payments upon tort claims for personal injury, property damage or wrongful death.

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# MEMO IN OPPOSITION

The New York Health Plan Association (“HPA”) opposes the provisions of this proposal that amends the civil practice law and rules (“CPLR”) in relation to subrogation rights for collateral source payments made in the context of a settlement. This legislation will increase the cost of health insurance by denying a health plan the opportunity to fulfill its fiduciary responsibility to premium payers by recouping payments for medical expenses that should be paid 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 buying commercial insurance 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 state’s own Empire Plan, routinely pursue subrogation to offset costs. Moreover, existing state law requires that health plans providing coverage through Medicaid Managed Care, Child Health Plus and Family Health Plus MUST recoup the cost of medical expenses from third parties who caused the patient’s injury. The bill is contrary to this state mandate and, if enacted, will result in taxpayers having to pay millions of dollars for the negligent acts of third parties.

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.*