



FOR IMMEDIATE RELEASE: JUNE 10, 2008
Re: S.5861 (DeFrancisco)/A.9327-A (Zebrowski)

An act 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 and upon related subrogation claims.

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OPPOSITION MEMORANDUM

The New York Health Plan Association (HPA) opposes S.5861/A.9327-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 as it relates to 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, preventing double recoveries by plaintiffs, and thus make health insurance premiums more affordable.

In addition, existing contracting provisions require that health plans providing coverage to Medicaid managed care and Family Health Plus individuals MUST seek to recoup the cost of medical expenses from third parties who caused the patient's injury. This amounts to millions of dollars that State and local taxpayers would otherwise have to pay. This proposal is directly contrary to this existing mandate and, if enacted, will result in taxpayers having to pay more due to the negligent acts of third parties. Furthermore, just this 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. Nevertheless, this legislation would preclude private insurers from pursuing the very same recoveries that the State is now authorized to pursue for Medicaid.

The cost of this change would be substantial. It is estimated that eliminating this right of subrogation will cost the City of New York more than \$6 million in lost subrogation recoveries. The costs to other municipalities across the State are millions more.

Accordingly, HPA opposes S.5861/A.9327-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.