



FOR IMMEDIATE RELEASE: May 28, 2008

Re: S. 5016/A.9303 - An act to amend the public health law and the education law in relation to anti-epileptic drugs.

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MEMO IN OPPOSITION

This legislation, S.5016/A.9303 proposes to exempt anti-epileptic drugs from New York's successful generic substitution law by requiring a pharmacist to secure additional approvals from prescribers and patients prior to making an appropriate therapeutic substitution. This proposal undermines public confidence in FDA approved generics, which, in turn, will lead to higher pharmacy costs without a demonstrable commensurate improvement in outcomes. The New York Health Plan Association (HPA) strongly opposes this legislation.

Prescription drug costs have skyrocketed, contributing to increasing health insurance premiums over the past several years. According to the Kaiser Family Foundation, prescription drugs in New York comprise more than 12.5% of the premium – rising above the national average. Health plans and pharmacy benefit managers have utilized a variety of innovative tools to help dampen the increase in drug costs. Increasing appropriate utilization of generic drugs is at the foundation of every plan's pharmacy benefit design. The reasons are obvious – in 2005 the average retail price of a generic drug was just under \$30 while the average retail price of a brand name drug was more than \$100.

The FDA is unequivocal on the safety and efficacy of generic drugs. When approving generic drugs, the FDA requires many rigorous tests and procedures to assure that the generic is interchangeable with the brand-name drug under all approved indications and conditions for use. According to the FDA, "to date, there are no documented examples of a generic product manufactured to meet its approved specifications that could not be used interchangeably with the corresponding brand-name drug." This includes anti-epilepsy agents, obviating the need for this proposal.

This legislation takes us in the wrong direction by establishing a unique and additional step in making a therapeutic interchange for a single therapeutic class. The result will be higher costs for employers purchasing health care and increased out-of-pocket costs for patients. Likewise, taxpayers will be asked to cover the additional costs this proposal will generate in public programs such as Medicaid, Child Health Plus and Family Health Plus.

Moreover, if such a change can be made to this therapeutic class it will establish a precedent for carving out other therapeutic classes from New York's generic drug law. The result will be a substantial reduction in prescribed generics that will increase overall pharmacy costs and force

premium payers to make serious decisions about keeping a pharmacy benefit, which is an optional coverage.

New York's carefully crafted generic drug law provides that if an attending physician believes a generic or therapeutic substitution would not be in the best interest of the patient, the prescription can specify "dispense as written" ("DAW"). This is not a new protocol and prescribers in this state are well versed in New York's generic substitution law in which the prescriber is the ultimate authority in determining their patient's pharmacological regimen. By not marking the prescription DAW, prescribers have already expressed permission to substitute an available generic. The additional administrative layer envisioned under this proposal seemingly only serves certain pharmaceutical manufacturers who will enjoy greater utilization of their high cost branded agents while undermining the generic drug law to the detriment of all New Yorkers.

New York's landmark generic drug bill has saved New Yorkers billions of dollars. Over the decades since its enactment, there is no evidence that the law needs to be changed to address manufacturers' concerns that FDA approved generics for epilepsy - or any other condition - are not meeting equivalent therapeutic results.

For all these reasons and more, HPA opposes S.5016/A.9303.

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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.