

# MEMO IN OPPOSITION

**FOR IMMEDIATE RELEASE:** May 19, 2006

Re: S.7506 (Golden) – An act to amend the elder law, in relation to creating the state pharmaceutical local choice program.

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This legislation, S.7506, seeks to limit pharmacy mail order options for health insurance purchasers. This legislation enriches community pharmacists at the expense of patients and will result in increased pharmaceutical costs. The New York Health Plan Association (HPA) opposes its passage.

## **HIGHER PHARMACY COSTS FOR ALL**

Rapid growth in drug spending has encouraged health plans and other payers to adopt strategies to better harness economies of scale to help dampen rising pharmaceutical costs. Payers have incorporated several approaches to increase mail order pharmacy utilization including lowering co-payments for 90-day prescriptions filled by mail or instituting a policy that requires all maintenance medications (after being filled at a retail pharmacy) to be filled by a mail order facility. This legislation would expressly prohibit use of a mandatory mail order benefit even if it leads to a favorable cost sharing arrangement for all parties. This prohibition will result in increased costs for insurers and in turn, employers and employees.

The pharmacy savings lost by this legislation are significant. At the end of 2005, the Maryland Health Care Commission examined legislation that similar to S.7506 and concluded that eliminating mandatory mail order program reduce drug savings that could be achieved by Maryland consumers by as much as 6%. At a time when pharmacy expenditures are rising at two to three times the rate of inflation, legislation that will add to the cost of drugs is a bad prescription for New York's health care system.

## **COMMUNITY PHARMACIES SUFFERING? NOT SO!**

Despite cries to contrary, community pharmacies continue to flourish in New York and nationwide. Independent pharmacies constitute a \$78 billion industry dispensing 44% of the prescriptions in the retail market. While the popularity of mail service has risen in recent years, it is not a threat to the independent retail market because the pharmaceutical "pie" continues to grow. According to Pfizer's 2006 NCPA-Pfizer Digest, the number of prescription dispensed annually per pharmacy has risen from 190 per day in 2004 to 204 per day in 2005. Mail services have not put independent pharmacies at risk – they have shared in the overall growth of pharmacy expenditures. The Chief Executive Officer of Walgreen's, David Bernauer, recently said:

*"There is a prevailing notion out there that mail service is going to put drug stores out of business, that's simply not true. Yes mail service is growing and it will continue to grow at least for a while longer. But the reality is, there's plenty of business coming for us both to grow."*

According to the independent pharmacist own Website, average independent pharmacy sales are \$3.98 million annually, up more than 10% since 2004. These data hardly suggests these entities are in need of special economic

protections. Perhaps the most compelling statistic as to the status of retail pharmacies in New York is that since 2000, the number of licensed pharmacies has actually increased to more than 4,500 statewide.

#### **LABOR UNIONS TURNING TO MANDATORY AND OTHER MAIL SERVICE PROGRAMS**

As health care costs have skyrocketed, health insurance issues have rivaled wages as the most contentious collective bargaining issues. To protect member income and in recognition of the effectiveness of mail service programs, several large unions in New York have adopted mail service (including mandatory) programs. United Federation of Teachers (modified mandatory), District Council 37 (mandatory), SEIU 1199 (mandatory for retirees) and the United Auto Workers (mandatory) are examples of unions that have negotiated mail service programs that would be prohibited under this measure. The passage of this legislation would require these unions to re-open their negotiations on these issues – likely leading to additional, unwelcome out-of-pocket costs to their members.

#### **CONFERS BROAD POWERS TO THE EPIC PANEL OVER COMMERCIAL PLANS**

S.7506 inappropriately makes significant changes to commercial pharmacy insurance benefits by amending the Elder Law. This odd drafting scheme bypasses insurance law to expand the powers of the Consumer Pharmaceutical Insurance Coverage Panel whose members are the same as the EPIC panel who are charged with overseeing New York's extensive State Pharmaceutical Assistance Program (SPAP). This legislation would empower the EPIC panel to have oversight of commercial plans to protect the economic interests of community pharmacists. This includes an annual examination of community pharmacy access provided by health plans and oversight of plan notification to enrollees that they can purchase prescription drugs at a retail pharmacy rather than through a mail order facility. These powers overlap in part with the charge of the Department of Health, which is required to certify the network adequacy of every plan's pharmacy benefit. This represents a significant increase in powers for an entity that has little knowledge or expertise in pharmacy markets in the commercial arena.

S.7506 is protectionist legislation of the worse kind. It will engender higher costs for consumers and payers to subsidize community pharmacists who, by their own admission, are experiencing increased sales and rising revenues. It will increase the state's bureaucracy to further fragment health plan oversight while abrogating several labor contracts. For New York, the cost of this legislation is too high.

For all these reasons, HPA opposes S.7506.

*The New York Health Plan Association represents 31 managed care health plans that provide comprehensive health care services to nearly 6 million New Yorkers.*