

MEMO IN OPPOSITION

FOR IMMEDIATE RELEASE: June 5, 2006

Re: A. 1350 (Morelle)

An act to amend the workers' compensation law, in relation to payment of medical expenses of claimants by their health insurance carrier.

This proposal, A.1350, would shift workers' compensation claims to an employer's health insurance carrier. This shift will ultimately increase the cost of health insurance in the state. Accordingly, the New York Health Plan Association (HPA) opposes this legislation.

The proposal requires health plans to assume initial responsibility for reimbursements to workers' compensation providers for treatments and services for enrollees prior to a final determination by the Workers' Compensation Board of the worker's compensation claim. In affect, insurers would be placed in a new role - that of banker and creditor for the workers' compensation program. The magnitude of this role should not be underestimated. According to sources at the Workers' Compensation Board, on any given day there are 150,000 open claims (pending a "final determination"). The most recent data available estimates the average cost of a workers' compensation claim in the state at about \$16,000. Based on this data, plans would be asked to make advance payments of more than \$1.5 billion annually on behalf of the workers' compensation system. Underwriting an outlay of this magnitude will require a significant increase in premiums.

Equally troubling will be the added costs related to having plans "chase" the appropriate workers' compensation payers to recoup this significant outlay. Health plans would need entire units solely dedicated to the effort of recouping payments from the workers compensation carriers and others. Complicating matters, plans will be required to reimburse network - and, more problematic, non-network providers - at the plan's usual and customary rates, which are above workers' compensation rates. If the Board ultimately approves the employee's claim, plans will only be reimbursed at the historically lower workers' compensation rates. The difference in these rates will further exacerbate high health care premiums.

In addition, A.1350 has several technical flaws. For instance, it fails to define what constitutes a "final determination" of a workers' compensation claim, leaving open the possibility that a health plan would have to await the outcome of a claim's review by an appellate court without any legal standing to present evidence supporting its position or to receive notice of any proceedings related to the claim.

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Furthermore, with limited exceptions, health plans are prohibited by law from receiving information on workers' compensation claims or proceedings, creating a significant opportunity for fraud and abuse. For example, claimants are authorized to enter into section 32 settlement agreements with their workers' compensation carrier, settling their entire claim including the cost of medical care for a lump sum amount payable directly to the claimant. Under current law, there is no requirement that the health provider or health plan be notified of any settlement between the claimant and the workers' compensation carrier. In fact WCL Section 110-a would prevent these parties from being notified. The proposal also fails to make any requirement that the claimant reimburse the plan for payments the health plan has made to the provider that have, in turn, been reimbursed directly to the claimant in a settlement. The proposal provides no mechanism for the Board to assist in the health plan's effort to process workers' compensation claims or recover payments following a direct settlement between the injured worker and the workers' compensation carrier or employer.

Expediting determinations in workers' compensation cases is a worthy goal that HPA supports. However, requiring health plans to be the "bank" for an unwieldy workers' compensation system is not the answer. In fact, while cost-shifting workers' compensation claims to health insurance may relieve pressure to review and adjudicate claims in a timely fashion, this legislation will only make the Board *less* responsive to the needs of employees and employers.

The cost of health insurance is continuing to climb above the rate of inflation. This legislation compounds the problem by increasing premiums without providing any additional benefits. For all these reasons, the New York Health Plan Association opposes S.1350.

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