

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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NEW YORK INSURANCE ASSOCIATION, INC.,
AMERICAN TRANSIT INSURANCE COMPANY,
EVEREADY INSURANCE COMPANY, GREATER NEW
YORK MUTUAL INSURANCE COMPANY, KINGSTONE
INSURANCE COMPANY, MERCHANTS INSURANCE
GROUP and UTICA MUTUAL INSURANCE COMPANY,

**AFFIDAVIT OF
EDWARD M. CAHILL**

Index No. 264-10

Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, Governor of
the State of New York, BENJAMIN M. LAWSKY,
Superintendent of the New York State
Department of Financial Services, and ROBERT
L. MEGNA, as Director of Budget,

Defendants.

THE NEW YORK HEALTH PLAN ASSOCIATION, INC.;
AETNA HEALTH INC.; AETNA HEALTH INSURANCE COMPANY
OF NEW YORK; CDPHP UNIVERSAL BENEFITS, INC.;
CAPITAL DISTRICT PHYSICIANS' HEALTH PLAN, INC.;
HEALTH NET OF NEW YORK, INC.; HEALTH NET
INSURANCE OF NEW YORK, INC.; HEALTHNOW NEW YORK
INC.; INDEPENDENT HEALTH ASSOCIATION, INC.;
INDEPENDENT HEALTH BENEFITS CORPORATION; MVP
HEALTH PLAN, INC.; MVP HEALTH INSURANCE COMPANY;
MVP HEALTH SERVICES CORP.; PREFERRED ASSURANCE
COMPANY; OXFORD HEALTH INSURANCE, INC.; OXFORD
HEALTH PLANS (NY), INC.; UNITEDHEALTHCARE
INSURANCE COMPANY OF NEW YORK; and UNITEDHEALTHCARE
OF NEW YORK, INC.,

Intervenor-Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, in his
official capacity as Governor of the State of
New York, BENJAMIN M. LAWSKY, in his official
capacity as Superintendent of the New York
State Department of Financial Services, and
ROBERT L. MEGNA, in his official capacity as
Budget Director of the State of New York,

Defendants.

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STATE OF NEW YORK)

COUNTY OF ALBANY)

EDWARD M. CAHILL, being duly sworn, deposes and says:

1. I have been employed by the New York State Department of Health for 35 years. From 1985 to April 2012, I was the Director of the Department of Health's Bureau of Budget Management. Since April 2012, I have served as the Director of the Department of Health's Fiscal Management Group. As the Director of the Bureau of Budget Management and the Director of the Fiscal Management Group, I have overseen the fiscal administration of the Department of Health's programs in connection with their compliance with all applicable rules, regulations, and statutes.

2. This affidavit is based on my personal knowledge as well as a review of records maintained by the Department of Health.

3. For fiscal years 2008-09 through 2010-11, the following Department of Health programs were financed through a sub-allocation from the budget of the Insurance Department (now the Department of Financial Services) (hereinafter "the Insurance Department"): (1) the development of inpatient hospital rates for insurance payments; (2) the certification of managed care programs; (3) the approval of managed care implementation plans; (4) the center for community health program; (5) the

implementation of a forge-proof pharmaceutical prescription program; (6) the enhanced newborn screening program; (7) the cervical cancer vaccine program; (8) the lead poisoning prevention program; (9) the childhood lead poisoning primary prevention program; (10) the lead prevention program; (11) the childhood obesity program; and (12) the immunization program. For fiscal year 2011-12, eleven of these sub-allocations appeared in the Insurance Department's budget; however, the sub-allocation for the cervical vaccine program was replaced with a sub-allocation to the Department of Health for family planning services which may include cervical cancer vaccine.

4. Each of these programs relates to the regulation of insurance rates and/or insurance companies and/or serves to keep insurance available and affordable.

(1) The Development of Inpatient Hospital Rates for Insurance Payments

5. In accordance with Public Health Law §2807-c(1)(b-1), the Department of Health sets the rates at which insurance companies reimburse hospitals for inpatient services rendered to patients covered under, *inter alia*, no-fault automobile and workers' compensation insurance.¹

¹The Department of Health has performed this function since 1986. Prior thereto, this function was carried out by the Insurance Department.

6. Accordingly, this program relates to the regulation of insurance rates.

7. In addition, by placing a cap on the rate at which insurance companies reimburse hospitals for inpatient services, the development of inpatient hospital rates for insurance payments program results in a reduction in insurance premiums paid by insureds.

(2) The Certification of Managed Care Programs

8. Managed care organizations are insurance companies certified pursuant to Public Health Law Article 44, which provide approximately one third of New York State's residents with health insurance coverage. In administering the certification of managed care programs program, the Department of Health, working in conjunction with the Insurance Department, certifies new entities seeking operating certificates under Public Health Law Article 44 and service area expansions for those agencies, performs provider contract reviews, monitors managed care organizations, and investigates complaints made against such entities. Accordingly, this program relates to the regulation of insurance companies.

(3) The Approval of Managed Care Implementation Plans

9. In administering the approval of managed care implementation plans program, the Department of Health qualifies managed care organizations which have received an Article 44

certificate of operation and wish to participate in the Medicaid Managed Care Program. Accordingly, this program relates to the regulation of insurance companies.

(4) The Center for Community Health Program

10. The Center for Community Health assists local agencies with public health issues; conducts public health surveillance to identify and respond to emerging health threats; plans, implements, and monitors public health programs to respond to such threats; and shows New Yorkers how to minimize health risks through programs such as communicable disease control, zoonotic disease prevention, arboviral disease control, cancer prevention, heart disease prevention, infection control, diabetes control and prevention, prevention of tobacco use by youths, influenza vaccinations, and family health. Therefore, the center for community health program has a positive effect on the wellbeing of the residents of this State and, accordingly, serves to keep insurance available and affordable by reducing the number and magnitude of health insurance claims.

(5) The Implementation of a Forge-Proof Pharmaceutical Prescription Program

11. Through its administration of the forge-proof pharmaceutical prescription program, the Department of Health combats the ever-growing illegal use and trafficking of prescription controlled substances.

12. This is accomplished through the use of official prescription forms by over 100,000 New York practitioners and healthcare facilities. These tamper-resistant forms contain state-of-the-art security features designed to prevent forgeries, copying, and alterations. The official prescription forms also contain unique serial numbers used for tracking purposes.

13. The forge-proof pharmaceutical prescription program has the potential to substantially impact the amounts of insurance premiums paid by insureds since the program saves insurance companies millions of dollars through a reduction in fraudulent prescriptions.

14. This program also serves to keep insurance available and affordable by reducing the number and magnitude of health insurance claims resulting from prescription drug abuse.

15. Finally, the forge-proof pharmaceutical prescription program is designed to increase electronic prescribing. This saves insurance companies millions of dollars by decreasing medication errors caused by pharmacists misinterpreting handwritten prescriptions.

(6) The Enhanced Newborn Screening Program

16. The enhanced newborn screening program tests, detects, and refers infants with serious but treatable medical conditions

for immediate medical intervention. The program conducts tests for 44 congenital disorders and exposure to HIV on samples taken from approximately 250,000 babies born each year in New York State.

17. Early detection and treatment limits the adverse outcomes of neonatal abnormalities and avoids the necessity of lifelong care.

18. Thus, the enhanced newborn screening program has a positive effect on the wellbeing of the residents of this State and, accordingly, serves to keep insurance available and affordable by reducing the number and magnitude of health insurance claims.

(7) The Cervical Cancer Vaccine/Family Planning Services Programs

19. The cervical cancer vaccine program supports outreach and education to promote the availability of the vaccine and funds vaccination to prevent the occurrence of several types of cervical cancer.

20. The family planning services program provides accessible reproductive health services to over 350,000 women and men per year in 197 sites throughout New York State. Such services include education and counseling concerning contraception, reduction of unintended pregnancies, improvement

of birth spacing and outcomes, and sexually transmitted diseases; pregnancy testing; and preventive health services such as basic health screening, screening for sexually transmitted diseases, and breast and cervical cancer screening and vaccinations.

21. Therefore, the cervical cancer vaccine and the family planning services programs have a positive effect on the wellbeing of the residents of this State and, accordingly, serve to keep insurance available and affordable by reducing the number and magnitude of health insurance claims.

(8) The Lead Poisoning Prevention Program, (9) The Childhood Lead Poisoning Primary Prevention Program, and (10) The Lead Prevention Program

22. The sub-allocations for lead poisoning prevention, childhood lead poisoning primary prevention, and lead prevention fund programs administered by local health departments to prevent a common health problem for young children in this State.

23. The services funded by these sub-allocations include public and professional education and community outreach on lead poisoning prevention in children and pregnant women, finding and reducing sources of lead, increasing the availability of housing units that are free of lead-based paint hazards in communities with a high incidence of childhood lead poisoning, inspection of

dwellings with a high risk of lead hazards; correction of identified lead hazards, universal blood lead screening for children and pregnant women, nursing and environmental follow up services for children with elevated lead blood levels, prevention activities to reduce or eliminate lead exposures, and medical and environmental management for children with lead poisoning.

24. Prevention of childhood lead exposure saves children from permanent neurotoxic damage and, thereby, reduces lifetime healthcare costs associated with, among other things, cognitive loss, developmental delays, attention deficits, learning disabilities, and hypertension.

25. Thus, the lead poisoning prevention program, the childhood lead poisoning primary prevention program, and the lead prevention program have a positive effect on the wellbeing of the residents of this State and, accordingly, serve to keep insurance available and affordable by reducing the number and magnitude of health insurance claims.

(11) The Childhood Obesity Program

26. The childhood obesity program improves hospital breastfeeding practices and promotes healthy lifestyles during childhood that will persist into adult years through programs

which include community activities, training, consultation, and guidance geared towards improved nutritional environments and increased physical activity.

27. In so doing, the childhood obesity program combats an epidemic that can lead to chronic diseases, such as diabetes, heart disease, arthritis, and some forms of cancer.

28. Therefore, the childhood obesity program has a positive effect on the wellbeing of the residents of this State and, accordingly, serves to keep insurance available and affordable by reducing the number and magnitude of health insurance claims.

(12) The Immunization Program

29. Through the immunization program, the Department of Health educates the public about the importance of immunizations and provides vaccines, such as measles/mumps/rubella, inactivated poliovirus, diphtheria/tetanus/acellular pertussis, and hepatitis A and B, to health care providers for administration free of charge to eligible patients. Thus, the immunization program has a positive effect on the wellbeing of the residents of this State and, accordingly, serves to keep

insurance available and affordable by reducing the number and magnitude of health insurance claims.


EDWARD M. CAHILL

Sworn to before me this
26th day of September, 2013


NOTARY PUBLIC

RICHARD J. ZAHNLEUTER
NOTARY PUBLIC, State of New York
Qualified in Saratoga County
Reg. No. 027A4766948
Commission Expires 11/30/2014