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October 27, 2011

Via E-Mail and Regular Mail

Steven P. Weissman, Esq.
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Somerset, NJ 08873

Re: Implementation of Medco Arbitration Award

Dear Steve:

Please accept this letter as a response to the issues raised in your August 3, 2011 letter. As you note, the Arbitrator's remedy is both retroactive and prospective. As to the retroactive "make whole" part of the remedy, the award directed that all employees who can prove individual additional costs associated with the impact of the Preferred Drug Step Therapy (PDST) program shall be made whole by the State through reimbursement of "actual added costs" due to the implementation of the PDST program. An employee seeking reimbursement must provide proof of "actual additional costs" before reimbursement will be made.

The State plans to begin implementation of the "make whole" portion of the remedy as follows. Attached please find a PDST Reimbursement Form together with a cover memo from Pensions explaining the purpose of the form and giving instructions for its completion. Affected union members or covered dependents who were denied approval for coverage of a nonpreferred drug and who paid more for the drug than the applicable copay in the collective negotiations agreement will be notified and provided the Reimbursement Form and memo.



As to the prospective part of the remedy, rather than suggesting that the June 30, 2011 expiration of the parties' collective negotiations agreement had an effect upon the award, I raised the issue of the effect of the enactment of P.L. 2011, Chapter 78. As you correctly note, the law vests in the State Health Benefits Plan (SHBP) Design Committee the "responsibility for and authority over the various plans and components of those plans, including for medical benefits, prescription benefits, dental, vision, and any other health care benefits, offered or administered by the program." Moreover, the law provides that the committee "shall have the authority to create, modify, or terminate any plan or component, at its sole discretion."

The implementation steps as to the prospective portion of the award were inextricably tied to the SHBP Design Committee's action which occurred on October 5, 2011 and takes effect on January 1, 2012. The SHBP Design Committee set the plan coverage for prescription drug benefits and determined that the PDST "program and the prescription drug tiers will not be changed from the current program for those groups covered under the arbitration award." Thus, this action provides for the same result as the prospective portion of the remedy in the arbitration award.

Due to the recent action of the SHBP Design Committee and the time required to shut down the PDST program, this shutdown cannot take effect until January 1, 2012, which is also the effective date of the Design Committee's action. Between now and January 1, 2012, any affected union members or covered dependents who pay more for a nonpreferred drug than the applicable copay in the collective negotiations agreement may seek reimbursement using the attached form.

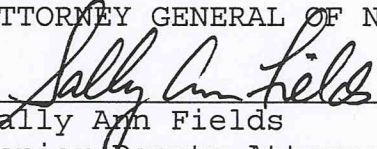
Please note that the reimbursement period covers prescription drug claims that were denied between February 1, 2010 when the PDST program began through December 31, 2011 when the PDST program terminates for affected union members. Because a sixty-day period is being allowed, all reimbursement forms must be filed on or before March 1, 2012.

Please also be advised that it is the State's position that if the SHBP Design Committee should act in the future to set the plan coverage for prescription drug benefits to be effective after December 31, 2012, the Medco arbitration award may no longer be effective as it may be preempted by the Design Committee's plan and the operation of P.L. 2011, Chapter 78.

If you should have any questions, please let me know.

Sincerely,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
Sally Ann Fields
Senior Deputy Attorney General

att.
SAF/cma

c: Via E-mail and regular mail with attachments

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