New York HPA Health Plan Association

41 State Street • Suite 900
Albany, NY 12207
www.nyhpa.org

March 7, 2023

Hon. Andrea Stewart-Cousins
Senate Majority Leader
Room 907, LOB
Albany, NY 12247

Hon. Carl Heastie
Assembly Speaker
LOB 932
Albany, NY 12248

Hon. Liz Krueger
Chair, Senate Finance Committee
Capitol Building, 416C
Albany, NY 12247

Hon. Helene Weinstein
Chair, Assembly Ways and Means Committee
LOB 923
Albany, NY 12248

Hon. Neil Breslin
Chair, Senate Insurance Committee
Capitol Building, 430C
Albany, NY 12247

Hon. David Weprin
Chair, Assembly Insurance Committee
LOB 716
Albany, NY 12248

Hon. Gustavo Rivera
Chair, Senate Health Committee
Capitol Building, 502C
Albany, NY 12247

Hon. Amy Paulin
Chair, Assembly Health Committee
LOB 822
Albany, NY 12248

Dear Leader Stewart-Cousins, Speaker Heastie, Senator Krueger, Assemblywoman Weinstein, Senator Breslin, Assemblyman Weprin, Senator Rivera, and Assemblywoman Paulin:

Thank you for the opportunity to present comments during the Joint Legislative Budget Hearing on Health before the Assembly and the Senate on Tuesday, February 28 on the Governor's proposed Health and Mental Hygiene bill (A.3007/S.4007). As a follow-up to our testimony, we would like to respond to several issues raised during the course of the hearing that are outlined below by topic. We appreciate your willingness to continue the dialogue on these important issues and hope to have an opportunity to follow up with you and your staff in the next couple of weeks.

**Pay and Pursue (Part J)**
Hospital representatives speaking at the hearing and the Superintendent of the Department of Financial Services claimed that the pay and pursue proposal is aimed at improving efficiency in the health care system. In reality, it will add administrative burdens and greatly lengthen the process for resolving disputes. Currently, New York law sets strict timeframes for plans to pay complete and accurate claims — within 30 days for claims submitted electronically and 45 days for paper claims. Under this proposal, disputed claims will go through a protracted process that could take up to 10 months to resolve before health plans would be able to seek a refund of payment for services that were clinically inappropriate, billed improperly or provided in the wrong setting. At the same time, as we raised in our written testimony, the proposal would create incentives for providers to order unnecessary and duplicative procedures and tests, making it more difficult to ensure that care is safe and effective, and that providers follow best practices. For these reasons, coupled with the fact that it will increase the cost of health care, we ask the Legislature to reject Part J.

**Guaranty Fund (Part Y, Subpart D)**
Part of the argument made in support of this proposal is that New York is the only state without a guaranty fund for health insurers. However, the proposal would not only establish a guaranty fund coverage for insurers writing health insurance, but also expand the fund to include long-term care carriers. However, health insurance and long-term care insurance are distinctly different, and assessing health plans for potential failures in the life insurance or the long-term care market will only result in higher health care premiums.

Additionally, as we stated in our testimony, a guaranty fund for health insurers is unnecessary because health insurance premiums are subject to the Department of Financial Services prior approval process that gives the Department discretion to review and approve health plans' proposed rates. So long as the rates the Department approves are actuarially sound rates, there should not be concerns about plan solvency. Additionally, there are no fiscal implications for the state budget. For these reasons, we ask the Legislature to reject this proposal.

**Site of Service Review (Part L)**
During the hearing, hospital representatives claimed that health plans are steering patients towards ambulatory surgical centers (ASCs) by denying reimbursement for services provided at in-network outpatient clinics or are dramatically increasing copayments for services provided at these clinics. There were also questions raised about the safety of ASCs.

There is ample evidence showing that ASCs are safe and effective sites of care. The nationally recognized Leapfrog Group, long known for collecting, analyzing and publishing data on hospital safety, also assesses the safety and quality of ASCs based on national, evidence-based measures, with that information readily available to employers, health care purchasers, and consumers. Using this quality and safety information, health plans may encourage patients to obtain certain services in a free-standing outpatient setting rather than at a much more costly hospital-based outpatient center. ASC settings lower patients' cost-sharing obligation, which in the case of high deductible policies can be thousands of dollars. Steering patients toward more expensive hospital-based centers will ultimately lead to higher out-of-pocket costs for patients and higher premiums for consumers, employers, and union benefit funds. With no fiscal implications for the state budget, we ask the Legislature to reject this proposal.

**Restoring the Quality Pools**
During the hearing, several members asked how plans currently spend quality incentive pool dollars now. Plans use quality funding to incentivize both providers and plan members to improve health outcomes. Plans only receive quality incentive funding if they meet or exceed performance metrics on several measures, as determined by DOH.

DOH has stated that the use of financial incentives has been successful in promoting high quality care and closing the quality of care gap between Medicaid and commercial insurance, and holds plans accountable for the care they provide. The program measures plans on many of the key metrics of health care disparities experienced by low-income communities and people of color.

The following are a few examples of how incentive funding is spent.

Provider incentives for closing gaps in care focused on preventive screenings and chronic care management:

- Eye exams for diabetic patients
- Child/adolescent well visits
- Preventive cancer screenings

- Diabetes screenings for patients on anti-psychotic medications
- Follow-up for children on ADHD medications
- Follow-up after inpatient behavioral health/substance use stay
- Childhood immunizations

Member incentives (usually gift cards) for completing preventive, routine and follow-up care:

- Postpartum visits
- HbA1c testing for diabetic members
- Following up after an emergency room visit for behavioral health/substance use
- Preventive cancer screenings

Funding is also used to support:

- In-home comprehensive exams for members who have not recently used the health care system, and connection to ongoing preventive care
- Healthy food home deliveries and nutritional coaching for members with certain conditions

MLTC-specific

- In-home vision screenings and in-home nurse practitioner/physician visits when necessary
- Coverage of transportation to urgent care centers to avoid ER visits
- In-home Flu and COVID vaccinations
- Calls to members before inclement weather to assure adequate medication supply, and arrange delivery if not
- Education and self-management programs for members with congestive heart failure

We would urge the Legislature to reject the Governor's proposal to cut $111.8 million in state share funding from the Medicaid managed care quality program, restore full funding to the program, totaling at least $225 million state share, and codify the quality incentive program in statute.

**Reversing the Pharmacy Carve-Out**

During the hearing, Assemblywoman Paulin asked why the Wakely actuarial analysis on the pharmacy carve-out proposal used the federal fiscal year (FFY) 2017 CMS-64 report to estimate the amount of supplemental drug rebates the state would capture under a carve-out model, instead of more recent data. As stated in their report, Wakely's actuaries believed that the supplemental rebate figures contained in FFY 2018 and later CMS-64 reports "did not appear to be reliable" and were not used in the analysis. The analysis goes on to explain that, based on the DOH analysis of supplemental rebates, they believe their estimate is "reasonable (and potentially conservative)", notwithstanding use of a report from FFY 2017.

Moreover, while there was significant discussion regarding impact on 340B providers, we have serious concerns about the impact on plan members regarding the carve-out. Despite the state's claims, we have no reason to believe the carve-out will go smoothly in New York, and remain concerned that Medicaid members, especially those with chronic illnesses requiring medication management, will not get the care coordination services they need to remain healthy when the pharmacy benefit is operated through a fee-for-service structure. Nor do we believe the state will have the capacity to share timely data to plans for them to be able to provide optimal care management to members with chronic illnesses on multiple medications. California Medicaid members experienced significant disruption in their ability to get their medications for an extended period of time – issues that continue more than a year into the transition. Moreover, plans have several unanswered operational questions regarding the carve-out with less than 30 days to go before implementation.

Thank you again for providing HPA with an opportunity to offer testimony at the February 28 Joint Legislative Budget hearing and to submit this response to discussions that arose during the course of this hearing. We look forward to an opportunity to meet with you and your staff in the coming weeks to continue this dialogue. In the meantime, if you have any questions or need additional information on the issues outlined in this letter, please do not hesitate to have your staff contact me at 518-462-2293 or elinzer@nyhpa.org.

Sincerely,

Eric Linzer
President & CEO

cc: Members of the Senate Finance Committee
Members of the Assembly Ways and Means Committee
Members of the Senate Insurance Committee
Members of the Assembly Insurance Committee
Members of the Senate Health Committee
Members of the Assembly Health Committee