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MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: JUNE 14, 2017

Re: S.5880-A (Murphy)/A.7719-A (Abinanti) – An act to amend the public authorities law, in relation to authorizing the Westchester health care corporation to enter into agreements for the creation and operation of a health care delivery system network.

The New York Health Plan Association (HPA) has serious concerns that S.5880-A/A.7719-A will increase health care costs for consumers and businesses living in the lower Hudson valley. This legislation is overly broad in its application, and unnecessary as existing antitrust laws are not a barrier to efficient collaborations that benefit health care consumers. Accordingly, HPA strongly opposes this legislation.

This legislation would allow health care providers in the seven lower Hudson valley counties of Westchester, Rockland, Dutchess, Orange, Ulster, Putnam, and Sullivan to coordinate with private and public health care providers, and grant them broad immunity from liability from federal and state antitrust laws. The broad immunity granted under this bill would include a wide range of activities from joint ventures, price information sharing, and joint contract negotiations with health plans, physicians and hospitals, which will reduce competition and result in higher health care costs for consumers and businesses in the Hudson valley. Current antitrust laws in New York allow for collaborative arrangements that reduce health care costs and benefit consumers and businesses through efficient and coordinated care.

The Office of the Attorney General (AG) in New York is charged with the responsibility to prevent mergers and collaborations that would result in substantial anticompetitive harm to consumers, unless there are procompetitive benefits to the collaboration that would reduce costs and increase quality and access to health care. The AG, in a letter dated May 15, 2015, to the sponsors of similar legislation for Erie County Medical Center, stated that the proposal was “not in the interest of New Yorkers because they grant...virtually unlimited discretion to work together with competitors to raise the prices of health care services that...the bill is unnecessary because collaborations among health care providers that truly benefit patients are already lawful and need no exemption from antitrust laws” The letter further stated “Such joint negotiations are likely to increase health care costs for patients and payors without any positive contribution to the health care system”, and that the legislation “offer a vast array of possibilities for increasing health care prices – including through coercive concerted price-fixing practices – and reducing health care quality, innovation, and access, without yielding countervailing consumer benefits.”

This legislation ,as drafted, is unnecessary as existing law allows health care providers in the seven counties of the lower Hudson valley to engage in procompetitive activities and is not a barrier to the creation of efficient and cost effective health care collaborations. According to the Federal Trade Commission (FTC) in a letter dated June 5, 2015:

The New York Health Plan Association represents 29 managed care health plans that provide comprehensive health care services to nearly 8 million New Yorkers.

“procompetitive or competitively benign health care collaborations already are permissible under antitrust laws, the main effect of this legislation is to immunize conduct that would *not* generate efficiencies that greater than consumer harms, and therefore would *not* pass muster under the antitrust laws. Therefore, these bills are likely to lead to increased health costs – in the form of higher premiums, co-pays, deductibles, and other out-of-pocket expenses – and decreased access to health care services for New York consumers.”

This legislation is overbroad, unnecessary, and will result in a dramatic increase in health care costs for consumers and businesses living in western New York.

For all these reasons, HPA opposes S.5880-A/A.7719-A.