New York
HPA
Health Plan Association

MEMORANDUM

ICYMI—In Case You Missed It

TIME FOR AFFORDABILITY

Date:	March 27, 2018
To:	New York State Senate and Assembly
From:	New York Health Plan Association
Re:	ICYMI – POLITICO story on Reserves

POLITICO broke a story last night detailing a last minute budget proposal that would allow New York to confiscate money from private not-for-profit health insurers, to be placed in a public asset fund to be used for "community health reinvestment," according to a draft of the proposal obtained by POLITICO.

Cuomo's latest proposal would hit Fidelis, MetroPlus

By DAN GOLDBERG and NICK NIEDZWIADEK

03/26/2018 08:35 PM EDT

New York State would be allowed to confiscate money from private not-for-profit health insurers under Gov. Andrew Cuomo's latest budget pitch, a proposal that has left many in the insurance industry apoplectic.

A draft proposal obtained by POLITICO outlines the idea, which bears a striking resemblance to an unsuccessful plan proposed by former Republican Gov. Chris Christie in New Jersey, and one that so far has little traction with legislators.

The governor's proposal would apply to not-for-profit prepaid health service plans — the kind that offer only Medicaid — that have more than 150 percent of the minimum contingent reserve. The minimum contingent reserve is equal to 7.5 percent of a company's net premium income.

For the moment, the only two companies that meet that definition are Fidelis, which harshly criticized the governor's efforts to recoup some of the proceeds from the company's sale to Centene, and MetroPlus, the insurance arm of NYC Health + Hospitals, which is run by Mayor Bill de Blasio, a favorite Cuomo target.

A copy of the full story is attached.

As the story explains, taking plan reserves can be very risky business and the proposal ignores the very reason that plans are required to have reserves in the first place.

- Health plan reserves are an important protection for consumers and providers, helping ensure that doctors, hospitals and other providers are paid if an unexpected or catastrophic event occurs that would result in an unpredictably high level of claims. Examples of this include a bad flu season, such as New York has experienced this year.
- Reserves also protect against unexpected financial losses, volatility in the capital markets, or unanticipated costs like when a high-cost prescription drug comes to market. A good example of this is the introduction of high-cost drugs such as Sovaldi.
- Inadequate reserves also threaten plan solvency. In 2015, the sudden failure of Health Republic created tremendous confusion and disruption for individuals enrolled in the health plan and left some physicians and hospitals with approximately $200 million in unpaid claims for the services they provided.

As Senate Insurance Committee chair James Seward rightly noted: ***"The reserves are set aside to pay claims and these are not just excess funds being banked. ... I would personally not favor this proposal because it cuts it too close and could potentially put our health plans at financial risk. That's my hesitation."***

Assembly Insurance Committee chair Kevin Cahill raised similar concerns about meddling with plan reserves, and highlighted what can happen, worst case scenario, if plan reserves are not adequate: ***"In light of what happened with Health Republic, because they were not required to have significant reserves ... we should be very careful before we make [insurers] financial situation more precarious."***

This proposal is problematic and may undermine the financial stability of the state's nonprofit health plans. Moreover, it is unnecessary because cuts to federal health care programs that the funds this proposal might generate have not materialized.

As you continue your work towards finalizing the new state budget, we ask that you remain steadfast in rejecting proposals such as this one that will impede health plans' efforts to provide affordable coverage and quality health care services to millions of New Yorkers.

The New York Health Plan Association represents 28 managed care health plans that provide comprehensive health care services to more than 8 million New Yorkers.

POLITICO NEW YORK

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Other not-for-profit prepaid health service plans such as Affinity or HealthFirst could be hit if their reserves reached that threshold.

"Obviously, we have a problem with it," said Leslie Moran, a spokeswoman for the Health Plan Association, which represents insurers. "We believe that the proposal is problematic because it could undermine financial stability of New York's not-for-profit health plans."

The governor's executive budget, released in January, proposed cutting Medicaid payments to certain health insurance companies with excess reserves, and was rejected by both houses of the Legislature.

This new proposal goes much further, allowing the state to simply confiscate the excess funds. The draft language affords the insurance company the opportunity to explain why such reserves are necessary. But the state health commissioner could ignore that argument and take as much of the excess reserves as desired. The money would be placed in a public asset fund to be used for community health reinvestment, according to the draft proposal.

This is the second budget proposal from the Cuomo administration that appears to target Fidelis. Cuomo's executive budget proposedchanging the rules governing the sales of not-for-profits operating with a certificate of public authority. Fidelis, also known as the New York State Catholic Health Plan, is the only known company that fits into this category. It recently announced it was selling its assets to Centene for $3.75 billion, and would use that money to create a charitable foundation "which will be centered on the health and welfare of poor, low-income, elderly, disabled and underserved individuals and families throughout New York state," according to the announcement.

Separate draft language, obtained by POLITICO, shows that Cuomo wants the state to recoup 80 percent of the $3.75 billion, an idea that Cardinal Timothy Dolan, the Catholic archbishop of New York, last week rejected.

Dolan said the Roman Catholic Archdiocese of New York would walk away from the Centene deal and continue to operate Fidelis if Cuomo got his way. But that wouldn't help if Cuomo gets the change to tap into excess reserves.

A spokesman for Fidelis declined to comment.

Fidelis isn't Cuomo's only target. The governor's executive budget had other proposals designed to garner revenue from the health insurance industry, including a 14 percent tax on the money companies received as a result of the recently passed Republican tax plan. The Senate has rejected the proposal.

These latest drafts come during what is scheduled to be the final week of budget negotiations, when lawmakers and their staff hash out the details of a roughly $170 billion budget. Though the state fiscal year begins April 1, lawmakers have been racing to complete the spending plan by March 28 to avoid conflicting with the Passover and Easter holidays.

Cuomo's proposal is similar to Christie's attempt to pressure Horizon Blue Cross Blue Shield of New Jersey, the state's largest insurer, to fork over hundreds of millions of dollars to fund his anti-addiction agenda.

Christie's proposal would have given broad discretion to the state insurance commissioner to assess Horizon's reserves for "excess surplus," which was never defined, and to place the money in a fund controlled by the health department. In the end, Christie and state lawmakers reached a deal that set a maximum cap on Horizon's reserves, but it was far above the insurer's current reserve ratio, meaning Christie didn't get any of the money he was seeking.

So far, Cuomo's move isn't receiving much love from legislators.

"Personally I think we have to proceed very cautiously on that proposal," said state Sen. James Seward (R-Milford). "The reserves are set aside to pay claims and these are not just excess funds being banked. ... I would personally not favor this proposal because it cuts it too close and could potentially put our health plans at financial risk. That's my hesitation."

His counterpart in the Assembly, Kevin Cahill (D-Kingston), the chamber's insurance committee chairman, said he believes the reserve levels are not that high relative to the amount of claims these insurers are on the hook for, and brought up the specter of Health Republic Insurance of New York's bankruptcy.

"I don't think there's any excess reserving done by the not-for-profits," Cahill said. "In light of what happened with Health Republic, because they were not required to have significant reserves ... we should be very careful before we make [insurers] financial situation more precarious."

Health Republic's ignominious end in 2015 left physicians and hospitals on the hook for more than $200 million and wreaked havoc on the individual insurance market.

It's a mistake that should not be repeated, Moran said.

"Proposals like this completely ignores the reason we have reserves," Moran said. "Reserves are there to protect consumers and providers to some extent and taking plan reserves puts that in jeopardy."

Morris Peters, a spokesman for the budget division, said only that "budget negotiations are ongoing."