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MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: MAY 14, 2018

Re: S.8316 (Valesky)/A.4328 (Gottfried) – AN ACT to amend the insurance law and the state finance law, in relation to creating the health insurance guaranty fund.

This legislation, S.8316/A.4328, would create a health insurance guaranty fund in New York. The New York Health Plan Association (HPA) opposes this legislation because it is nothing more than a new tax on health plans in New York.

The sudden closure of Health Republic in 2015 disrupted coverage for 215,000 New Yorkers, with ripple effects across the health care system. Health Republic's financial insolvency was a result of the Department of Financial Service's (DFS) failure to provide adequate oversight of Health Republic. DFS had complete insight into the financial condition of Health Republic, and it failed in its duties to ensure stability in the marketplace and to ensure that Health Republic was financially viable. The role of DFS is not just to penalize insurers if they engage in conduct detrimental to consumers, but also to ensure a robust and competitive insurance market in New York. In the case of Health Republic, DFS failed in its oversight and responsibilities.

At a Legislative hearing following the collapse of Health Republic, DFS was questioned vigorously about its responsibility in the process leading up to the collapse. DFS failed to fully acknowledge or justify its role in learning of the financial difficulties of Health Republic, nor did it explain why it failed to take the necessary steps to return the company to fiscal solvency. The failure of DFS in its oversight of the fiscal health of Health Republic was only exacerbated by the prior approval process used in rate setting.

The DFS prior approval process initially approved inadequate rates for Health Republic when it should have acted in a prudent manner and, based on the fiscal health of the company, moved to ensure that appropriate rates were approved, even if the rates were higher than those requested by Health Republic. To add fuel to the fire, once Health Republic tried to increase rates to account for its failing fiscal health, DFS then reduced proposed rates, ultimately ensuring the collapse of Health Republic. DFS has used unfettered authority to artificially suppress premium increases to "below the average increase in health care costs." This practice threatens plans' financial stability and, by extension, consumers' access to care.

Hospital and doctors have called for creation of a so-called guaranty fund, which would be used to reimburse providers for unpaid Health Republic claims. The idea of a fund is touted as an effort to protect consumers and medical providers in the event of another health insurer collapse like Health Republic. This fund removes any remaining responsibility and accountability on DFS for its failures in oversight and rate settings that resulted in the collapse of Health Republic. Instead of holding DFS accountable, the proposed guaranty fund monies would come from an assessment—a tax—on all health plans.

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The new tax proposed by this legislation would be on top of New York's existing health plan taxes. These include nearly $5 billion collected annually through the Health Care Reform Act (HCRA) patient services assessment, a tax on inpatient and outpatient hospital charges as well as numerous other health care services ($3.8B), and covered lives assessment, a sales tax placed on every policy sold in New York State ($1.1B). In addition to the HCRA taxes, there is also a 1.75% premium tax on commercial health insurance policies that is directed to the general fund, which raised an estimated $350 million in 2015, as well as, Section 206 "assessments" that fund DFS's operations, totaling $366M in 2018-2019, which is an increase of $15M.

Taxes on private health insurance rank third highest of the state's tax levies, with only personal income taxes and sales taxes higher. Looking at the overall tax burden, according to the "2018 State Business Tax Climate Index" by the Tax Foundation, New York is ranked 49th with only New Jersey being worse. Given New York's tax climate, the state shouldn't be adding another tax on health plans. Existing state funds should be used to reimburse providers for unpaid Health Republic claims. Instead of a guaranty fund, the new monies need to come from "one time" funding from various monetary settlements such as the tobacco agreement or from the existing $5 billion in already collected health care taxes, not a new tax on health plans.

Health plans play an important role in the state's economy. They contribute billions of dollars in economic activity annually, paying hundreds of millions of dollars in payroll taxes on wages to employees, as well as state and local withholdings taxes. Health plans also employ tens of thousands of residents throughout the entire state, including in many upstate communities where New York has struggled to attract good paying jobs. They make a direct impact on the economic vitality of their local communities, supporting local organizations and investing in programs that improve the health and wellness of New York residents. Adding to the cost of doing business for these plans makes it less likely they will continue to invest in our state and their local communities.

As many New Yorkers continue to struggle to afford the health insurance coverage they have, and with the state continuing its efforts to ensure access to coverage for more New Yorkers, this bill is ill advised. The prior approval process needs to be reformed to use an objective not subjective standard with safeguards to insure actuarial accountability and DFS transparency. We urge you to say no to S.8316/A.4328, and to seek solutions that will make insurance more affordable and available to more New Yorkers.