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MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: JANUARY 22, 2019

Re: S.984 (Breslin) – AN ACT to amend the public health law, social services law and insurance law in relation to dihydropyrimidine dehydrogenase deficiency testing

This legislation, S.984, would mandate coverage for dihydropyrimidine dehydrogenase deficiency testing. The New York Health Plan Association (HPA) opposes this legislation, as imposing new mandated benefits will increase the cost of coverage for consumers, employers, and the state.

Health plans support and promote the use of evidence-based, best practices. However, these measures evolve and change over time and legislation that mandates specific coverage results in plans being required to provide procedures even when the science later indicates they are no longer appropriate. For this reason, health plans should be able to set criteria based on evidence and unique circumstances of the patient.

Mandating coverage of specific services disproportionately affect small and medium-sized employers. Forcing employers to include benefits they and their workforce may not want or need exacerbates the challenge they face to find affordable health care options. Mandated benefit bills pertain only to fully-insured policies, which are generally those purchased either by individuals who buy coverage on their own or receive it through a small or medium-sized business. Large companies typically "self-insure," providing employee health benefits by directly paying health care claims to providers. These self-insured plans are governed by the Federal Employee Retirement Income Security Act (ERISA) and therefore not subject to state mandated benefits. This exemption offers self-insured employers greater control over the particular benefits they cover for their employees.

One reason large employers typically self-insure is to avoid covering certain mandated benefits. Today, more than 50 percent of the commercial market in New York is covered under a self-insured plan. As more employers self-insure, state laws mandating specific types of benefits and services affect an increasingly smaller portion of the privately insured marketplace and fall largely on small and medium-sized employers.

Mandated benefit bills will increase health care costs for the state. The Affordable Care Act (ACA) established and defined a comprehensive set of benefits and services known as the

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“essential health benefits” (EHB) package that must be included in every health insurance policy, with states allowed to offer benefits beyond the EHB. However, the ACA requires states to absorb the costs of mandated benefits enacted after December 31, 2011 that fall outside the essential health benefit package established as part of a state's benchmark plan for all Qualified Health Plan enrollees. As New York's benchmark plan did not include dihydropyrimidine dehydrogenase deficiency testing, this legislation would constitute new coverage benefits, requiring the state to take on the costs associated with this mandate.

Finally, if enacted, the effective date of 120 days from the law's passage would be completely unfeasible for health plans to operationalize a new coverage requirement. Rates are set on an annual basis, usually begun in January for the following calendar year. If the state were to expand on the essential health benefits list by adding this new requirement, health plans would need at least one calendar year after the January following this proposal's adoption to effectively undertake implementing a new mandatory requirement.

At a time when New Yorkers are grappling with the high cost of health care, adopting new benefit mandates exacerbates this challenge and does nothing to address underlying health care costs. For all these reasons, we urge you to reject S.984.

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