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MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: MARCH 12, 2019

Re: S.3543 (Salazar) – AN ACT to amend the insurance law, in relation to the definition of over the counter contraceptive products and voluntary sterilization procedures

This legislation, S.3543, is intended to serve as a chapter amendment to S.659-A/A585-A, the Comprehensive Contraceptive Coverage Act, seeking to clarify that vasectomies and over the counter contraceptive products listed on the Health Resources and Services Administration publication as of January 21, 2019, would be covered as an essential health benefit without cost-sharing.

While the New York Health Plan Association (HPA) and our member health plans recognize the importance of contraceptive coverage and currently provide a broad range of coverage options, we oppose this proposed expansion of the Comprehensive Contraceptive Coverage Act, which, to date, has not been signed into law. The bill would require coverage of vasectomies and over-the-counter contraceptive products, such as male condoms, without patient cost-sharing. Regardless of the merits of these items, they go well beyond what is required under the Affordable Care Act (ACA).

Additionally, the state would be required to absorb the cost associated with these items, as it would constitute a new mandated benefit. The ACA requires states to defray the costs of state 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 vasectomies without any cost sharing requirements, the state would be required to take on the costs associated with this mandate.

The Department of Financial Services (DFS) recognized the potential cost to the state of mandating male contraceptive coverage. In issuing its regulations related to contraceptive coverage, DFS had considered the inclusion of male contraception but chose to exclude it, noting that,

*"a male contraceptive coverage requirement would constitute a new mandate for which the State would be required to defray the cost in full for small group and individual plans. Additionally, unlike in the field of female contraception, where the Department's amendment is consistent with public policy adopted by the Legislature in the Women's Health and Wellness Act and the existing Federal government's rules under the ACA, there is no similar state or federal pronouncement of public policy for the coverage of male contraception."*¹

Further, requiring coverage of sterilization procedures without patient cost-share would create a special class of coverage for certain medical procedures. This sets a precedent that physicians or consumers could look to apply to other procedures, adding to the cost of coverage for employers and consumers.

Additionally, the immediate effective date raises other serious concerns. Applying this benefit immediately allows no time for DFS to provide guidance to the marketplace and for health plans to operationalize those requirements, creating confusion for consumers, health plans, and providers. For these reasons, we urge you to **reject S.3543**.

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

¹ NYS Register, June 28, 2017. Department of Financial Services, Notice of Adoption. Page 13