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# MEMORANDUM IN OPPOSITION

**FOR IMMEDIATE RELEASE: FEBRUARY 19, 2021**

**Re: S.2121 (Rivera) – AN ACT to amend the public health law, in relation to enhancing coverage and care for medically fragile children.**

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This legislation, S.2121, would mandate coverage of any services for medically fragile children requested by a clinician, limiting important tools health plan utilize to ensure that care is appropriate, safe, and coordinated, while also setting minimum reimbursement levels for providers. This bill is also unnecessary as statutory protections already exist to ensure that patients can access the care they need and will increase the costs of coverage for individuals and employers.

Health plans are committed to high quality care for every patient and take seriously the unique needs of medically fragile children. This includes working with doctors and other providers to ensure that proposed medical procedures, services or treatments are safe and effective for that particular patient based on the best available clinical evidence, are administered or provided in the appropriate care setting by a qualified, licensed provider and are provided with other support services that may be needed.

However, S.2121 outlines an overly-prescriptive set of standards that health plans would have to follow that would sharply undermine their ability to evaluate the clinical appropriateness of health care services. For example, health plans would have to defer to the referring physician as to whether a health care service is appropriate, unless it can demonstrate through “clear and convincing evidence” the treatment plan is not in the best interest of the child or another provider offering substantially the same level of care. By essentially rewriting how medical necessity is determined, this legislation would severely limit health plans’ efforts to ensure that members receive care that is medically necessary and is provided in the correct setting.

In making medical necessity decisions, health plans already must abide by stringent state requirements that their medical necessity guidelines and criteria are evidence-based. The development of evidence-based clinical criteria and procedures for approving and denying care ensures that a plan's decisions are objective and based on clinical evidence. Health plans also employ an ongoing process that includes a rigorous review of the most current evidence-based literature and input from clinical and program staff, as well as from external clinical experts. Further, utilization management criteria and procedures are reviewed at least annually and criteria are updated more often as new treatments, applications and technologies are adopted as generally-accepted professional medical practice. Moreover, the state requires that medical necessity guidelines be developed with input from Board-certified, actively-practicing physicians within a plan’s service area, and allied health professionals from the medical specialties and subspecialties, as well as utilizing standards adopted by national accreditation organizations, including the National Committee for Quality Assurance (NCQA).

*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.*

Additionally, S.2121 mandates that health plans contract with providers with expertise in caring for medically fragile children and reimburse specialty care centers at least 85 percent of the facility's acute care rate. Health plans strive to make a robust network of qualified providers available to meet the needs of their members, and access to the provider of their choice remains a strong consumer demand for health plan members and employers, who expect that their health plans will make all reasonable efforts to reach agreements with providers. However, by mandating contracting with certain providers and establishing a minimum reimbursement level, without any requirement on the provider to control their costs or improve their performance, this legislation will result in higher health care costs for New Yorkers and do nothing to improve the quality of patient care in the state.

For these reasons, HPA opposes S.2121.