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MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: February 5, 2021

Re: A.179 (Gottfried)/S.2543 (Rivera) – AN ACT to amend the public health law, in relation to payments for personal protective equipment for home and community based long term care services.

This legislation, A.179/S.2543, would mandate that Medicaid Managed Long Term Care (MLTC) plans cover the cost of personal protective equipment (PPE) for home care providers. Health plans are committed to high quality care for every patient and take seriously the unique needs of home bound members who are dependent on their home care aides for survival and the ability to safely remain in the community. Plans worked tirelessly during the height of the COVID-19 pandemic to assure that members were safe at home. For the reasons outlined below, HPA is opposed to this legislation.

First, the statement that plans, “have generated \$52 million per month in revenue surpluses that are available for the purchase of PPE,” is grossly misleading and patently false. There is no surplus being generated as a result of the COVID-19 crisis. MLTC plans incurred substantial administrative costs during the peak of the pandemic in an effort to keep members safe, as numerous members refused to allow aides into their homes for fear of contracting the virus –and worse – as aides and a number of home care agencies refused to serve members, leaving plans scrambling to find replacement workers. The calculation itself was based on 2018 cost report data. However, since 2018, MLTCs have taken millions of dollars in premium cuts as a result of enacted state budget actions from FY19 and FY20. Indeed, since January 2020, *MLTC premium rates have been at the **bottom** of the actuarially sound rate range as required by Federal statute* – as part of the state’s effort to close the FY20 Medicaid budget gap. In addition, MLTCs will take hundreds of millions of dollars more in premium reductions when additional FY21 budget “savings” measured are implemented.

Next, MLTCs have always been contractually obligated to provide PPE for plan members, which they have done throughout the pandemic. On the other hand, it is the licensed home care services agencies (LHCSAs) who have always been obligated to provide PPE for their workers. As the use of PPE and maintaining an appropriate supply of PPE is not a new obligation, the providers should have been able to accomplish this task within their negotiated rates with the plans, particularly, as they point out themselves, fewer individuals were using home care services.

In addition, and most critically, since LHCSAs and fiscal intermediaries (FI) in the consumer directed personal assistance services (CDPAS) program *have never submitted cost reports*, even though they have received billions of dollars in additional funding over the past several years related to increases in minimum wage funding, it is impossible to determine whether there is a need for additional funding for PPE. Until there is a full accounting of the finances of all LHCSAs and FIs, they should continue to be expected to fulfill their obligation to provide PPE to their workforce. For these reason, HPA opposes A.179/S.2543.

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.