Testimony of the New York Health Plan Association

to the

New York City Council Committee on Health
And Committee on Hospitals
on the subject of

Hospital Costs – Impact on Access to Care

October 15, 2021

Chairperson Levine, Chairperson Rivera and members of the committees, thank you for the opportunity to appear at this week's hearing on hospital costs and the impact they have on access to care.

The New York Health Plan Association is a non-profit organization that represents 28 health plans that provide coverage to nearly eight million fully-insured New Yorkers. The people served by HPA's member plans include individuals who receive coverage through an employer or who purchase it on their own directly through a health plan or through the NY State of Health, the state's Exchange, and residents covered by state programs including Medicaid, Child Health Plus, the Essential Plan and Managed Long-Term Care.

Our member health plans are committed to the goal of universal coverage, and have a long history of working collaboratively with New York government in implementing the Affordable Care Act and the state's ambitious Medicaid redesign program. This common effort is a major reason for New York's success in insuring coverage for more than 95 percent of state residents and reducing the number of uninsured from 10 percent in 2013 to less than five percent today.

Keeping health care affordable is a major challenge facing many employers and consumers, who are also struggling with the financial impact of the pandemic. New York has some of the highest health care costs in the country. According to the Kaiser Family Foundation's State Health Facts, New York's health care costs are $9,779 per capita, which is significantly higher than the national average of $8,045 per capita.

Health insurance premiums and health care costs are inextricably linked, and the rising cost of coverage is driven in large part by the growth in the cost of medical care charged by hospitals and other providers, increases in the price of prescription drugs, and government taxes and assessments on health insurance. Our comments for today's hearing will focus on issues related to provider prices as a result of provider consolidation and contracting practices.

Every New Yorker deserves access to high-quality, affordable health care. Achieving the goal of universal coverage requires focusing on the underlying factors that are driving rising health care costs.

A July 2019 report from the NY State Health Foundation and the Health Care Cost Institute (HCCI), *Health Care Spending, Prices and Utilization for Employer-Sponsored Insurance in New York*, stated that "spending is increasing at a rapid rate and rising price, not greater utilization of services, is the main culprit." The report went on to say, "These data point to prices of services that experienced particularly high growth, including for certain inpatient admissions and

prescription drugs, as areas of focus for New York employers, health plans, and State policymakers to target in efforts to control health care costs for their employees."

A robust and growing body of research demonstrates that the consolidation of health care providers into health systems with market power is a primary driver of increased provider prices. For example, a September 2021 issue brief by the Milbank Memorial Fund noted that numerous studies have found "that prices increase between 20% and 60% following the merger of two neighboring hospitals, and researchers have consistently found that physician prices increased by 3% to 14% following an acquisition. Importantly, most studies find no statistically significant impacts on quality after a merger."[1]

Further, a 2020 report from the Medicare Payment Advisory Commission summarized the literature, stating "[t]aken together, the preponderance of evidence suggests that hospital consolidation leads to higher prices. These findings imply that hospitals seek higher prices from insurers and will get them when they have greater bargaining power."[2]. More recently, the Federal Trade Commission noted that "Too many hospital mergers lead to jacked up prices and diminished care for patients most in need" in a statement commenting on a preliminary injunction halting a New Jersey hospital merger,[3] and hospital concentration has been linked to average annual marketplace insurance premiums that are 5% higher than those in less concentrated areas.[4]

Certain provider contracting practices can amplify the impact of provider consolidation, increasing health care costs for individuals, families, and employers. For example, some provider organizations often include restrictive, contracting language that act as barriers to promoting greater competition in the marketplace, impeding health plan's ability to contract with providers that may help to reduce costs to employers and consumers. According to a *Wall Street Journal* article published on September 18, 2019, "Dominant hospital systems use an array

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[1] "Mitigating the Price Impacts of Health Care Provider Consolidation", Katherine L Gudiksen, Alexandra D. Montague, and Jaime S. King, Milbank Memorial Fund Issue Brief, September 2021, https://www.milbank.org/publications/mitigating-the-price-impacts-of-health-care-provider-consolidation/

[2] March 2020 Report to the Congress: Medicare Payment Policy, Congressional request on health care provider consolidation (Chapter 15), http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch15_sec.pdf?sfvrsn=0

[3] Statement of FTC Office of Public Affairs Director Lindsay Kryzak on District Court's Decision to Grant Preliminary Injunction Halting New Jersey Hospital Merger, August 4, 2021, https://www.ftc.gov/news-events/press-releases/2021/08/statement-ftc-office-public-affairs-director-lindsay-kryzak

[4] "Vertical Integration: Hospital Ownership of Physician Practices Is Associated With Higher Prices and Spending", Laurence C. Baker, M. Kate Bundorf, and Daniel P. Kessler, May 2014 *Health Affairs*, https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2013.1279

of secret contract terms to protect their turf and block efforts to curb health-care costs. As part of these deals, hospitals can demand insurers include them in every plan and discourage use of less-expensive rivals."[5]

As the Milbank brief noted,

> *"many health systems contain at least one must-have provider and may be able to require any insurer wanting to contract with the must-have facility to contract with other facilities controlled by the health system. When using all-or-nothing or affiliate contracting, a health system demands that any health plan that wants to contract with a particular provider or affiliate in a health system must contract with all other providers or a specific affiliated provider in the health system."*[6]

Large, "must-have" providers will often use these types of provisions to demand high payment rates for the entire provider organization, increasing the cost of health care without providing any meaningful benefit for employers or consumers.

Government can play an important role to improve the current market dynamics and ensure that provider consolidations and contracting practices do not further impede health care access and affordability for New Yorkers. This should include measures that restrict contracting provisions that harm consumers and employers, promote greater accountability of provider mergers and acquisitions, and prohibit providers from imposing unnecessary "add-on" costs. Approaches should include:

- **Eliminate Anticompetitive Contracting Practices:** Prohibit restrictive contracting language that serves as a barrier to promoting greater competition in the marketplace, increasing transparency of health care costs, and providing more affordable options for employers and consumers. Measures should include:
  - prohibiting "all-or-nothing" clauses in which an insurer is required to contract with all provider locations for a multi-location provider instead of contracting only with individual provider locations;
  - allowing for contracting with individual institutions based on quality measures;
  - barring confidentiality clauses that limit the ability of consumers to know prices charged by providers;

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[5] "Behind Your Rising Health-Care Bills: Secret Hospital Deals that Squelch Competition", A Mathews, *The Wall Street Journal* [New York City], 18 September 2018. https://www.wsj.com/articles/behind-your-rising-health-care-bills-secret-hospital-deals-that-squelch-competition-1537281963

[6] "Mitigating the Price Impacts of Health Care Provider Consolidation", Katherine L Gudiksen, Alexandra D. Montague, and Jaime S. King, Milbank Memorial Fund Issue Brief, September 2021. https://www.milbank.org/publications/mitigating-the-price-impacts-of-health-care-provider-consolidation/

    - forbidding anti-steering provisions that prohibit insurers from using benefit design to encourage consumers to obtain care at more affordable provider sites; and
    - disallowing provisions that limit the ability of health plans or employers to offer tiered network products if they do not include certain hospitals in the most favorable tier.
- **Enhanced oversight of provider mergers, acquisitions and affiliations:** Require annual reporting of provider entities that merge and that they hold their prices flat for a 3-5 year period, to ensure that benefits described for the transaction are actually realized and that employers and consumers benefit from lower costs and better quality.
- **Ban hospital facility fees:** Prohibit hospitals from imposing facility fees for services provided in a hospital or at a facility not on a hospital's campus.

Our industry remains committed to working with you and other policymakers on measures to rein in the factors driving increases in the cost of care to ensure that every New York has access to high-quality, affordable health care.

We appreciate the opportunity to offer our comments and are happy to engage in further discussions with the Council.