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

Establishing an Office of Healthcare Accountability

February 23, 2023

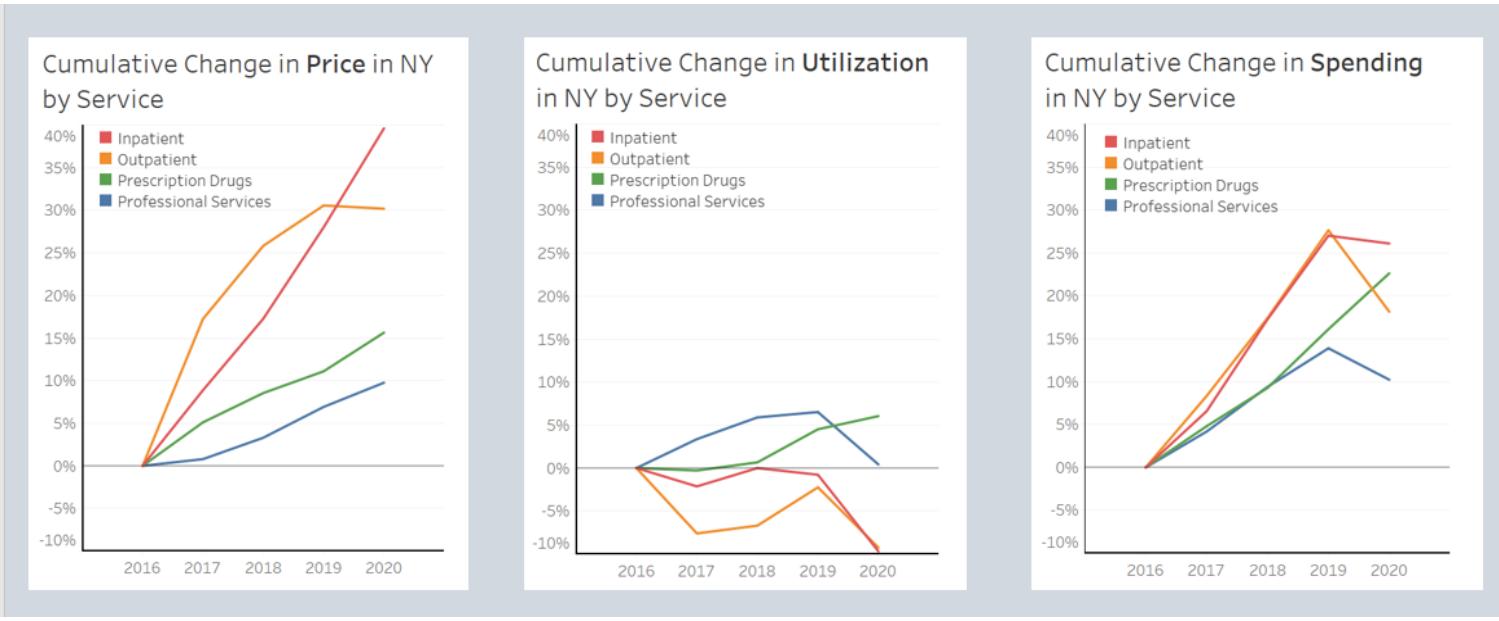
Chair Schulman, Chair Narcisse and members of the committees, thank you for the opportunity to appear at today's hearing on the proposal to create an Office of Healthcare Accountability.

The New York Health Plan Association (HPA) is comprised of 27 health plans that provide comprehensive health care services to more than eight million fully-insured New Yorkers. HPA members include plans that offer a full range of health insurance and managed care products (HMO, PPO, POS, etc.), public health plans (PHPs) and managed long term care (MLTC) plans. The New Yorkers who rely on these plans are enrolled through employers, as individuals, or through government sponsored programs — Medicaid Managed Care, Child Health Plus — and through New York's exchange, the NY State of Health (NYSOH).

We are here today in support of Councilmember Menin's proposal (Int 0844-2022) to create an Office of Healthcare Accountability.

Keeping health care affordable is ***the*** number one challenge facing all of us in the health care system, and rising costs remains the most pressing health care issue facing consumers, employers and working families. The creation of an Office of Healthcare Accountability would be an important step towards increased transparency of rising costs and addressing the factors contributing to the growth in health care spending.

New York's health care costs are among the highest in the country, and markedly higher than the national average. According to the Health Care Cost Institute (HCCI), per person spending in New York is approximately 14% higher than the national average. As the enclosed charts show, increases in spending were directly tied to higher prices – especially on hospitals – while utilization declined.



Source: Health Care Cost Institute (HCCI), Presentation at the HPA 2022 Annual Conference

This is consistent with the 2019 NY State Health Foundation and the Health Care Cost Institute (HCCI) report, *Health Care Spending, Prices and Utilization for Employer-Sponsored Insurance in New York*, which concluded that "spending is increasing at a rapid rate and rising price, not greater utilization of services, is the main culprit."

Increased accountability through meaningful price transparency is necessary to help patients make informed decisions about their care and lower health care costs. While the federal Hospital Price Transparency Rule has been in effect since January 1, 2021, according to a February 6 report by the Patient Rights Advocate, only a quarter of hospitals studied were fully compliant with a federal price transparency rule. For New York, the report showed only 6% are in full compliance. The intention of the Hospital Price Transparency Rule was to enable patients to compare prices and promote competition in the health care markets. However, a recent Kaiser Family Foundation analysis of hospital pricing information found that hospital transparency is very opaque and described some of the data hospitals are sharing as "ambiguous, missing, or difficult to find."

Councilmember Menin's legislation to create an Office of Healthcare Accountability would play a vital role to rein in out-of-control hospital costs and anti-competitive behavior that exacerbate the challenge consumers, employers and labor unions face in accessing high-quality, affordable health care. The bill's provisions to require public reporting on the costs of hospital procedures, annual reporting on hospital pricing practices, and establishing an annual transparency rating for each hospital would help to promote greater accountability to protect New Yorkers.

Government can play an important role to improve the current market dynamics and ensure that hospital pricing and contracting practices do not further impede access and affordability. The Office of Healthcare Accountability would serve as an important safeguard against unchecked price increases large health systems are able to demand through market leverage. A substantial body of research exists to demonstrate that the exercise of market power through consolidation of health care providers into health systems is a primary driver of increased provider prices. A September 2021 issue brief from the Milbank Memorial Fund[1] 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."

A 2020 report from the Medicare Payment Advisory Commission[2] 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

[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

have greater bargaining power." Additionally, while advocates of provider mergers often suggest consolidations will result in better integration and improved quality for patients, most studies find no statistically significant impacts on quality after a merger."

Certain provider contracting practices can amplify the impact of provider consolidation, as some health systems have utilized their market power to restrict choice and require use of higher cost alternatives to boost their revenue while increasing health care costs for individuals, families, and employers. 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."*

We have heard from our members that market-dominant hospitals often demand anticompetitive terms in their contracts. These include:

- Limiting plan activities that reduce fraud and abuse. For example, hospitals are increasingly demanding health plans eliminate audits that identify cost savings for employer customers. These audits include recovering payments that were also covered by another payer, examining itemized bills before payment to determine if the services are being provided to a plan enrollee, and reviewing claims to validate the principal and secondary diagnoses to ensure all diagnoses were billed appropriately.
- Restricting policies that allow plans' enrollees to choose high-performing, more affordable options to receive care outside of the hospital.

Other examples mirror those cited in the Milbank brief such as:

- "All or nothing" tying arrangements requiring health insurance plans to contract with all of a hospital's general acute care and outpatient services, as well as physician services as a bundle, i.e., take everything together or nothing at all.
- Exclusive dealing requirements in the form of anti-steering and anti-tiering provisions, which prevent insurance companies from steering insureds to less expensive and/or higher quality options as a means to promote competition and reduce prices.

We would urge expanding the oversight of the proposed Office of Healthcare Accountability to include these anticompetitive contract provisions. By having the authority to examine hospital pricing and contracting practices, an Office of Healthcare Accountability would help to address barriers to greater competition in the marketplace and reduce costs for New Yorkers.

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 on this issue.