New York
HPA
Health Plan Association

41 State Street • Suite 900
Albany, NY 12207
518.462.2293
www.nyhpa.org

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CONTACT:
Leslie S. Moran
518.462.2293
(cell) 518.588.6655

NEW YORK HEALTH PLAN ASSOCIATION OPPOSES PROPOSED NORTHWELL TAKEOVER OF NUVANCE

Voices Concerns About Increased Costs for Consumers, Employers & Labor Unions and Impact on Care

At today's meeting of the Public Health and Health Planning Council's Establishment and Project Review Committee, the New York Health Plan Association (HPA) will urge that the Committee disapprove the proposal for Northwell Health to take over Nuvance Health in the Mid-Hudson Valley. Among the concerns HPA will raise in its comments:

The takeover will translate to higher health care costs for consumers, employers, and labor unions. There is an extensive body of academic research demonstrating that consolidation among hospitals, physicians and other providers is not good for patients and their families, either for their pocketbooks or for the quality of care they receive. New York's health care costs are among the highest in the country and the exercise of market power through consolidation of health care providers into health systems is a primary driver of increased provider prices.

Hospital mergers do not generally lead to reduced costs or improved quality. While the applicants claim that the takeover will result in an integrated system that will enhance quality, accessibility and equity in the communities they serve, the research indicates that hospital consolidation has few positive effects and many harmful ones as hospitals have assumed more market power, producing worse outcomes and higher prices for patients.

Before proceeding, the Committee should conduct a more detailed financial analysis. To determine the impact on consumers, employers, and labor unions, the Committee should conduct a financial analysis on how this takeover will affect prices for patients and reimbursement rates charged to health plans, self-insured employers, and union benefit funds. Additionally, it should request comparable information from Northwell Health and Nuvance Health to provide a full understanding of the potential cost increases this proposal will have on the marketplace.

If the Committee approves moving the application to the full Public Health and Health Planning Council for consideration, HPA also outlined a series of sensible conditions the Committee should include designed to protect consumers and employers from higher costs, promote accountability so that the transaction's expected benefits of improving outcomes and promoting clinical integration are realized, and ensure that this takeover does not merely result in enhanced bargaining power and higher hospital prices.

A copy of HPA's letter to the Committee is attached.

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The New York Health Plan Association represents 26 managed care health plans that provide comprehensive health care services to more than 8 million New Yorkers.

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August 20, 2024

Peter G. Robinson, MPH, Chair
Establishment and Project Review Committee
State of New York Public Health and Health Planning Council
Empire State Plaza – Corning Tower, Room 1805
Albany, New York 12237

re: Nuvance Health/Northwell Health Merger

Dear Chairman Robinson:

On behalf of the New York Health Plan Association (NYHPA), which represents 26 health plans that provide coverage to more than 8 million New York residents, I am writing to express our concern with and opposition to the proposed merger of Nuvance Health and Northwell Health that is currently before the Establishment and Project Review Committee (the Committee). Given the potential increase in prices that may result from this transaction, we ask that the Committee disapprove the proposal or recommend imposing significant restrictions to protect employers and consumers from increases in the rates these providers charge if it is sent to the full Public Health and Health Planning Council (PHHPC) for consideration.

Among the benefits the parties anticipate in announcing the merger:

- Increase capacity to invest in medical advancements and innovation to better serve patients in their respective markets and communities;
- Create healthier communities by making significant improvements to health outcomes and address health disparities across the communities they serve;
- Expedite medical innovation through combined purchasing power, clinical expertise, and care infrastructure;
- Increase workforce opportunities for physicians, nurses, surgical and research specialists, as well as allied health and business professionals.

Northwell is already the largest health care system in the state and considered a "must have" provider for all plans that contract with it. The merger with Nuvance will extend its market leverage further north into the Hudson Valley. While the parties claim that the merger is intended to result in an integrated system that will enhance quality, accessibility and equity in the communities they serve, we are concerned that it will lead to higher prices, resulting in increased costs for employers and consumers. As Martin Gaynor, professor of Economics and Health Policy at Carnegie Mellon University and former Director of the Bureau of Economics at the US Federal Trade Commission has noted, "While there is a logic to these claims regarding the potential benefits of consolidation, the evidence does not support them. Hospital mergers do not generally lead to reduced costs or improved quality."[1]

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[1] **New Health Care Symposium: Consolidation And Competition In US Health Care,** Martin Gaynor (March 1, 2016), *Health Affairs Blog*. http://healthaffairs.org/blog/2016/03/01/new-health-care-symposium-consolidation-and-competition-in-us-health-care/

Over the past decade, leading experts have routinely raised concerns with the wave of mergers, acquisitions and clinical affiliations among hospitals, physicians and other providers noting that more consolidation "isn't good for patients and their families, either for their pocketbooks or for the quality of care they receive."[2] Further, the research indicates that hospital consolidation has few positive effects and many harmful ones as "hospitals have assumed more market power, producing worse outcomes and higher prices for patients."[3]

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. For example, a September 2021 issue brief from the Milbank Memorial Fund[4] 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."

Research also has shown that outpatient spending rises as physicians gain market power through their hospital alliance, with spending increases due almost entirely to price increases rather than to changes in utilization.[5] A 2020 report from the Medicare Payment Advisory Commission[6] 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." Recent developments, including in neighboring states, show these impacts are real. For example, a lawsuit[7] filed by consumers against a market-dominant hospital system in Connecticut provide evidence that recent mergers have significantly reduced competition and increased costs.

We also understand that Northwell's past acquisition of two Staten Island University hospitals has created a near monopoly in the commercial insurance market, with the only competing hospital's payer mix primarily government programs. This has provided Northwell with anti-competitive bargaining power and we expect Northwell to apply the same strategy after merging with Nuvance as there are few alternative hospital options in the relevant Mid-Hudson region.

A recent study published by the National Bureau of Economic Research examining the effects of hospital mergers has also raised concerns about implications of provider consolidation for the larger economy. According to the analysis of 304 hospital mergers between 2010 and 2015, inpatient and outpatient prices rose an average 1.2% in the two years after a transaction with approximately 40% of the hospitals involved increasing prices by more than 5%.[8] Further, the analysis points out that higher health care prices from these transactions result in lower tax

[2] **New Health Care Symposium: Consolidation And Competition In US Health Care,** Martin Gaynor (March 1, 2016), *Health Affairs Blog*. http://healthaffairs.org/blog/2016/03/01/new-health-care-symposium-consolidation-and-competition-in-us-health-care/

[3] **The Perils of Hospital Consolidation**, Yevgeniy Feyman & Jonathan Hartley (Summer 2016), *National Affairs*. http://www.nationalaffairs.com/doclib/20160616_FeymanHartley_Indiv.pdf

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

[5] **Association of Financial Integration Between Physicians and Hospitals With Commercial Health Care Prices**, Hannah T. Neprash (December 2015), *JAMA Internal Medicine. http://archinte.jamanetwork.com/article.aspx?articleid=2463591*

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

[7] **John Brown, et. al. v. Hartford Healthcare Corporation.** Class Action Complaint filed in the Connecticut Superior Court, Judicial District of Hartford (February 14, 2022). HHC-Complaint-FINAL-1.pdf (ctmirror-images.s3.amazonaws.com)

[8] **Who Pays for Rising Health Care Prices? Evidence from Hospital Mergers**, Zarek Brot-Goldberg, Zack Cooper, Stuart V. Craig, Lev R. Klarnet, Ithai Lurie, and Corbin L. Miller (June 2024), NBER Working Paper No. 32613. https://www.nber.org/papers/w32613

revenue with the negative consequences borne by lower- and middle-income individuals and not by individuals earning more than $100,000 annually.

The adverse effects of hospital market concentration also affect access to care. Recent research has shown that decreased market competition as a result of hospital concentration increases the strain placed on public hospitals and was more likely to reduce access for Medicaid patients seeking labor and delivery care.[9]

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.*"

In addition to the examples that the Milbank brief references, we have heard from our members that market-dominant hospitals often demand other anticompetitive terms in their contracts. This includes:

- 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 setting.
- Exclusive dealing requirements in the form of anti-steering and anti-tiering provisions, which prevent insurance companies from directing insureds to less expensive and/or higher quality options as a means to promote competition and reduce prices.
- Requiring plans to pay "facility fees" to all hospitals in the system, which may be higher than the pre-merger hospital would have charged.
- Requiring plans to include "revenue neutral" clauses to make the hospital whole for any savings achieved through care management activities.

Nuvance Health's hospitals and physician practices are an important component to our members' ability to serve employers and consumers in Dutchess and Putnam counties. Any potential loss of these providers could create challenges in their ability to meet the needs of patients in this region and comply with network adequacy requirements. Since the announcement of this merger, we have been informed of requests for significant rate increases that would make it difficult for coverage to remain affordable.

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[9] **Hospital concentration and low-income populations: Evidence from New York State Medicaid**, Desai SM, Padmanabhan P, Chen AZ, Lewis A, Glied SA. (May 2023) Journal of Health Economics 90(2):102770.

Based on the potential to increase costs for employers and consumers, the Committee should conduct a financial analysis on how this transaction will affect prices for patients and reimbursement rates charged to health plans, self-insured employers, and union benefit funds. Additionally, the Committee should request comparable information from Nuvance Health and Northwell Health to provide a full understanding of the potential cost increases this merger will have on the marketplace.

While we urge the Committee to disapprove this merger, if the Committee makes a recommendation to approve it, the approval should include conditions so that this transaction does not result in higher costs for employers and consumers. This should include the following provisions:

- Prohibiting the inclusion of all-or-nothing, anti-tiering, facility fees, revenue neutral, and other anti-competitive contracting provisions;
- Not allowing Nuvance to increase inpatient or outpatient prices as a result of the merger;
- Thereafter, limiting price increases to no more than the Producer Price Index (PPI) for a period of five years;
- Requiring community investments in health equity; and
- Including an unwind procedure in the event that the merger does not result in the claimed efficiencies and improved outcomes.

Additionally, if the Committee approves this merger, its recommendations should require regular reporting to both the Department of Health and PHHPC to ensure that there is accountability for the expected benefits of the transaction are realized. This should include the following elements:

- Whether the transaction is resulting in lower costs as measured by changes in contract prices and health care spending;
- Whether integration is taking place by explaining any changes in referral patterns, how care is being directed to the most appropriate, lowest-cost setting, and efforts to coordinate care across facilities to avoid duplication of services; and
- Whether quality is improving as determined by changes in the performance on key quality measures.

The benefit of this transaction should be that the combined entities truly function as a system, improving outcomes and promoting clinical integration, as well as resulting in greater efficiency and lower costs for employers and consumers, not enhanced bargaining power.

We appreciate the opportunity to offer our comments on this transaction. If you have any questions on our comments or require additional information please, do not hesitate to contact me at 518-462-2293.

Sincerely,

Eric Linzer
President & CEO

cc: Members of the Establishment and Project Review Committee
Colleen Leonard, Executive Secretary, Public Health and Health Planning Council