

New York



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# MEMO IN OPPOSITION

**FOR IMMEDIATE RELEASE: JUNE 11, 2007**

Re: A.5291 (Perry)/S.5397 (Morahan)

An act to amend the public health law in relation to facilitating access by people with disabilities to the facilities and medical equipment of health maintenance organizations.

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This legislation, A.5291/S.5397, seeks to have plans contract with a maximum number of medical providers that comply with the Federal Americans with Disability Act (ADA). It takes the extra step of also mandating plans to maximize contracting with providers that have accessible “examination tables...scales, x-ray and mammography and any other diagnostic machines.” While the New York Health Plan Association (HPA) finds the goal of this legislation laudable, we oppose its passage for the following reasons:

1. By statute, health plans are already required to ensure the availability of providers in compliance with the ADA. The Department of Health (DOH) will not allow a health plan to operate without a sufficient number of ADA compliant providers in the network,
2. This proposal goes beyond the scope of ADA facility standards by requiring plans to determine the accessibility of a provider’s equipment without any existing standards to make such a determination.
3. The proposal contains vague language making implementation problematic.
4. This legislation is much broader than the court decision is modeled on.

### **CURRENT STATUTE REQUIRES HEALTH PLAN TO HAVE A SUFFICIENT NUMBER OF ADA COMPLIANT PROVIDERS**

Every certified health plan must undergo a rigorous examination by DOH to ensure the adequacy of its network. By statute, the Department must include in its health plan certification process criteria that includes “the availability of appropriate and timely care that is provided in compliance with the standards of the Federal Americans with Disability Act.” Without sufficient adequacy in this area, the plan will not receive clearance from DOH to operate.

Health plans now require providers to include information on ADA facility compliance during the credentialing process. A provider’s response to these inquiries becomes part of the record that the plan uses in making a final determination of the provider’s qualifications to join the panel. To date, HPA is unaware of any problems that people with disabilities have had in attaining quality care from accessible providers. As such, it would appear that DOH’s current statutory authority is meeting the challenge envisioned under this proposal.

### **HEALTH PLANS AS EQUIPMENT INSPECTORS?**

While health plans are now able to establish if a provider’s facility is ADA compliant, this proposal goes much further by requiring plans to determine the level of accessibility of a provider’s medical equipment. Currently, HPA is unaware of any standards for accessibility as it relates to “examination tables...scales, x-rays and mammography and all other diagnostic machines” as required under this proposal. Without objective standards and a certification process for equipment in place, plans will be required to visit every provider -

regularly to make evaluations. This expensive undertaking will engender unequal application among plans, leaving providers, plans, regulating agencies and patients frustrated. These provisions will also add more expense and time to the credentialing process in general, which ironically the legislature acted last year to shorten plan timeframes. The equipment accessibility provisions place an unwelcome level of discretion on plans in making credentialing decisions.

#### **BILL IS VAGUE**

This legislation contains several vague provisions that will make implementation problematic for years to come. For instance the requirement that plans shall make the “maximum reasonable effort to maximize” the number of accessible providers is extremely troublesome – leaving DOH with overbroad discretion on what constitutes a “maximum but reasonable effort.” Additionally, the provisions pertaining to out-of-network rights for individuals are vague on two counts. While the language in the proposal indicates that the plan should provide the same terms and conditions that would apply if the patient were seeing his or her in network provider, it is silent as to the plan’s treatment of the out-of-network provider. Are the terms the same for that provider too? Does this include reimbursement levels? The bill’s silence will lead to future litigation.

Additionally, the legislation states that “if a patient’s provider is not accessible to the patient” the plan is required to send the patient to another provider even if it is out of network. What is not clear is who makes such a determination? The patient? The patient’s provider? The plan? DOH? The lack of guidance on who makes that determination in this legislation will again lead to significant implementation and future legal problems.

It should be noted that HPA is unaware of any problem in New York that leads to this bill’s introduction. In fact, according to sponsor’s memo, the bill’s origins lie in a court case in which a member of Kaiser Permanente in California successfully settled with that health plan that failed to have ADA compliant facilities. In this case the facility was a Kaiser owned health center. HPA is unaware of any provisions in the settlement that included equipment accessibility as required under this legislation. As for Kaiser’s lack of ADA compliance, HPA has no quarrel with regulators and courts challenging Kaiser or any facility on its compliance with ADA.

Health plans are bound to ensure their members have full access to medical care. To our mind, every provider should be ADA compliant – or actively striving to get there. Perhaps a more appropriate way to meet the spirit of this legislation would be for DOH to order providers to meet ADA standards and not penalize and encumber plans for contracting with non-compliant providers. If such an initiative was implemented, the need for this legislation and for health plans to become de facto regulating agencies would be moot.

For all these reasons and more, HPA strongly opposes this legislation.