



MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: FEBRUARY 23, 2009

Re: A.723 (Gottfried) – AN ACT to amend the public health law and the insurance law, in relation to the definition of clinical peer reviewer

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The New York Health Plan Association (HPA) opposes A.723 because it adds unnecessary costs to a health plan's utilization review process without providing any benefit to the consumer.

In 1998, New York enacted landmark legislation (Chapter 586) providing health plan enrollees with access to an external appeals process for plan denials based on medical necessity or on the experimental nature of the service(s) in question. That legislation defined the type of physician (clinical peer reviewer) that would make determinations in the external appeal process. This physician must be of the "same or similar specialty" as the provider recommending the service in question. However, this requirement duplicated the current internal plan process. Thus, the Legislature modified the internal review process to allow plans to use licensed physicians (without regard to specialty) to make internal coverage determinations. The Legislature determined that this modification was appropriate because a health plan would be fully responsible for the costs of external appeals. Thus, health plans would remain incentivized to make prudent and well founded determinations. The annual report from the NYS Department of Insurance shows that this decision was sound. Health plan determinations are upheld in whole or in part in the external review process in more than sixty percent of the cases.

Additionally, A.723 is unwarranted because plans often contract with specialists to review certain, more technical cases as required by the National Committee for Quality Assurance (NCQA). To gain NCQA accreditation, plan medical directors are required to call on outside experts in those cases where specialized clinical judgment is necessary to make appropriate coverage determinations. However, mandating this standard for every denial is overly prescriptive and will add administrative costs to health plans, including those in government programs – especially for smaller plans that are less likely to have this expertise readily available. This proposal also would be difficult to implement in rural upstate areas where there are often shortages of certain specialties. The cost of providing this expertise will be borne by premium payers at a time when health insurance costs are already rising at two to three times the consumer price index.

Since enactment of the external review law, New York's process has been hailed as a national model for providing broad access to independent determinations for patients without significantly adding administrative costs to this process. The process empowers New Yorkers to take a more active role in their own health care decisions and further protects their rights as a patient. This legislation fails to demonstrate a need to undo the Legislature's prior changes and provides no information on how the change would improve access to care for consumers.

Lastly, the sponsor states that there would be no fiscal implications for enacting this proposal. In HPA's view this bill ignores the increased costs for commercial as well as the government sponsored programs in complying with the new requirement. For all these reasons, we urge you to vote no on A.723.

The New York Health Plan Association represents 27 managed care health plans that provide comprehensive health care services to nearly 7 million New Yorkers.