



MEMORANDUM IN OPPOSITION

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Re: S.4788 (LaValle)/A.1540 (Gottfried) – AN ACT to amend the general obligations law, the civil practice law and the public health law, in relation to holding health care organizations accountable for the consequences of their decisions.

The New York Health Plan Association (HPA) **OPPOSES** S.4788/A.1540. This bill would impose unprecedented tort liability on HMOs, PPOs, IPAs, physician-hospital organizations, integrated delivery systems, workers' compensation carriers, casualty insurers and life insurers for quality assurance programs and utilization review decisions made by physicians.

HPA opposes this bill because:

- New York's successful external appeal process already provides effective health plan accountability.
- Recent experiences in other states suggest that expanding health plan liability will drive up health care costs for New Yorkers by 4% to 6%, at a time when New Yorkers are already struggling to pay for the high cost of health care.

External Appeal - a New York Success Story

Since liability legislation was first proposed, the Legislature has enacted numerous health care consumer protection laws making health plans the *most* accountable portion of the health care system. Most notably, the External Appeal Law in 1998 provided New Yorkers with the right to appeal health plan decisions to an independent medical panel. According to two studies, one by the Kaiser Family Foundation and a second by the State Insurance Department, New York had the highest number of external appeal requests nationwide. In 2005, (the latest data available) New York's external appeals program processed a record number of appeal requests - 2,475. Cases are being disposed of in a timely and efficient manner and the studies found cases being decided equitably.

Additionally, a recent national survey regarding the liability issue found that 75% of *physicians* believe independent medical review is preferable to lawsuits for resolving disputes over coverage. Our state's patient friendly external appeals process assures New Yorkers receive an objective, independent review and decision, and in a timely manner. It also promotes accountability in the health care system while avoiding the uncertainties of the type of "litigation lottery" promoted by this legislation.

Expanded Liability Will Dramatically Increase Health Care Costs

In Arizona, a liability law that took effect in January 2001 significantly increased health care costs. According to published reports, average premiums increased by 4% to 6% just to cover

the cost of the legislation. The Arizona law also increased the cost of providing health insurance to Arizona's 35,000 government employees by \$60 million. The cost to New York and its localities for the more than one million covered employees and dependents would be significantly more. (Arizona's liability law was found unconstitutional by the Supreme Court because it violated provisions of ERISA).

Skyrocketing liability exposure in all parts of the health care system threatens to limit patient access to health insurance in New York. Concern for liability already impacts New York's high premiums in the practice of "defensive medicine." There is no policy justification for this expansion of liability when a more cost-effective, time sensitive and accessible process is already in place to address questions on medical necessity decisions.

For all these reasons the Health Plan Association urges you to vote NO on S.4788/ A.1540.

The New York Health Plan Association represents 25 managed care health plans that provide comprehensive health care services to nearly 7 million New Yorkers.