



March 3, 2021

The Honorable Andrew M. Cuomo
Governor New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

On behalf of a broad group of organizations representing employers, unions, brokers, and health plans that are committed to ensuring access to quality and affordable health care, we are writing to express our concern with a proposal promoted by several hospital associations – and purportedly under consideration by your Administration – that will fundamentally change the health care financing system in New York and dramatically increase the cost of coverage for employers, consumers and union benefit funds.

The proposal – referred to as “Pay and Pursue” – would require that hospital claims be paid *before* hospitals submit information needed to determine whether the service or treatment was medically necessary. It would also create a new, lengthy and costly negotiation process whereby each medical necessity claim denial would be reviewed and negotiated by health plans and hospitals prior a health plan being able to pursue a refund from the hospital for any overpayments. Under this construct, with payments already having been made to the hospital, there would be no mutual incentive to resolve disputes on the merits.

This new “Pay & Pursue” process would establish a case-by-case negotiation of each claim denial resulting in a patchwork of inconsistency as to what constitutes medical necessity. Moreover, the process would undermine New York’s landmark External Review statute which, when adopted in 1997, became a model for all other states and the federal government in allowing a qualified, state certified external review entity to independently determine whether the care was medically necessary. In addition to the external review process, hospitals and health plans will also develop contractual mechanisms to address issues without the need for heavy-handed State legislation. By all objective accounts, the external review process has been successful in establishing objective standards for determining when care is medically necessary.

There is no policy basis or any data to support the necessity for this new approach, which will make it more difficult to ensure that care is clinically appropriate and that providers follow best practices. Instead, the purpose of this proposal is to simply increase payments to hospital systems, regardless of whether such payments are

appropriate. This will result in higher health care costs for consumers, employers, labor unions, the State employee benefit program and the Medicaid program. At a time when you have emphasized the magnitude of the State budget deficit, increasing the cost of hospital care will intensify the fiscal challenges facing the State. Further, this proposal is contrary to the discussions taking place among health care stakeholders as part of the Administrative Simplification Workgroup that was included as part of last year's budget.

Affordability is one of the major challenges facing the health care system, especially for small businesses recovering from the current economic crisis. The State and ratepayers have a strong fiscal and public policy interest not to pay for medically unnecessary care. This proposal also will inevitably result in higher costs for union benefit funds and self-insured employers because their TPAs will find it impossible to administer two claims review processes. Pay and Pursue will undermine the quality of care and exacerbate the rising cost of health care for all New Yorkers. In short, it is nothing more than a financial windfall for hospitals and a huge hidden tax on New York consumers.

For all these reasons, we urge you to reject including the Pay and Pursue proposal in the final FY21-22 state budget.

Sincerely,

Organized Labor

United Federation of Teachers
32BJ Health Fund
BAC Local #2
NY State Laborers 157
Teamsters Local 445

Employers & Business Organizations

The Business Council of New York State
Arnoff Moving & Storage
Associated General Contractors of New York State
Capital District Transportation Authority
CDS Life Transitions
Curtis Lumber
Empire State Highway Contractors Association
Employer Alliance for Affordable Health Care
Farm Family Insurance
Lexington ARC
National Federation of Independent Businesses-NY
National Fuel
Northeast Dairy Foods Association
Revere Copper
Unshackle Upstate

Brokers & Health Plans

Big I New York
Bouchey & Clarke Benefits Inc.
Jaeger and Flynn
Marshall & Sterling Inc.
The Ten Eyck Group
Worksite Benefits Inc.
New York State Association of Health Underwriters
New York State Conference of Blue Cross and Blue Shield Plans
New York Health Plan Association