New York
HPA
Health Plan Association

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MEMORANDUM IN OPPOSITION

FOR IMMEDIATE RELEASE: JUNE 22, 2011

Re: S.3186-A (Hannon)/A.2474-A (Canestrari) – AN ACT to amend the public health law, in relation to requirements for collective negotiations by health care providers with certain health benefit plans.

The New York Health Plan Association (HPA) opposes A.3186-A/A.2474-A, which authorizes collective negotiations for certain health care providers. This proposal is anti-consumer as it will result in consumers and employers facing higher prices for health insurance coverage and make it more difficult for New York to attain universal coverage.

Historically, antitrust laws have effectively protected consumers from predatory price-fixing in a variety of industries including health care. Currently, these laws prohibit independent physicians from engaging in collective efforts to set the price for medical services. This has benefited patients by encouraging greater choice, higher quality products and services, and innovative approaches to health care delivery. Current law has been crucial to promoting competition and preventing local provider monopolies that would allow physicians to set unfair prices. This legislation would diminish competition to the detriment of premium payers and patients.

Opposition to this legislation is widespread:

- The **United States Department of Justice,** in conjunction with the **Federal Trade Commission** (FTC), issued a report in 2004 (*Improving Health Care: A Dose of Competition)* condemning provider collective bargain stating that such measures would "likely harm consumers by increasing costs without improving quality of care."
- The **FTC** on June 8, 2011 issued an opinion on the Connecticut legislation that would allow physician's to collectively bargain. According to that opinion the FTC concluded, "this legislation is likely to foster anticompetitive conduct that is inconsistent with federal antitrust law and policy, and that such conduct could work to the detriment of Connecticut health care consumers."
- The **Center for Medical Consumers** opposes this measure, because it raises concerns about giving "economic power back to health care providers who have a long history of behaviors motivated by self-interest rather than the public interest."

Legislators' interest to allow collective bargaining represents a substantial reversal of long-standing public policy of endorsing competitive approaches to health care. Although advocates cite the need to "level the playing field" to counter "unbelievable market domination" by payers, an examination of New York's marketplace portrays a healthy competitive environment. In October 2005, **The United States Government Accounting Office** (GAO) released data that reported that the number of health plans operating in New York exceeded the national median number of licensed carriers in the small group market by 30%. Furthermore, the median share of the small group market held by the states largest carrier is ***50% less*** than the national average.

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

S3186A

Despite claims to the contrary, this legislation is solely designed to increase physician compensation. This is ironic because at a time when the nation debates healthcare reform and New York continues to explore affordable access options, it would seem illogical to direct limited resources to further compensate physicians who are widely recognized as one of the wealthiest professions in the nation.

2010 Physician Compensation Survey
American Medical Group Association
(Based on 2009 Data)

Specialty	Median Salaries
Allergy	$249,674
Anesthesiology	$370,500
Cardiac Surgery	$533,084
Cardiology	$402,000
Dermatology	$375,176
Diagnostic Radiology - Interventional	$478,000
Diagnostic Radiology – Non Interventional	$454,205
Emergency Care	$267,293
Endocrinology	$218,855
Family Medicine	$208,861
Gastroenterology	$405,000
General Surgery	$357,091
Gynecology and Obstetrics	$275,152
Hospitalist	$215,716
Internal Medicine	$214,307
Neurology	$236,500
Obstetrics	$275,152
Ophthalmology	$238,200
Oral Surgery	$380,500
Orthopedic Surgery	$500,672
Otolaryngology	$368,777
Pathology	$354,750
Pediatrics	$209,873
Psychiatry	$214,740
Sports Medicine	$231,540
Trauma Surgery	$424,555
Urgent Care	$222,920
Urology	$413,941
Vascular Surgery	$413,629

HPA urges the legislature to focus on improving quality and affordability of health care, and to reject measures that foster price-fixing. S.3186-A/A.2474-A is bad medicine for all New Yorkers.

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

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Fw: A.2474-A (Canestrari) S.3186-A (Hannon) MEMORANDUM IN OPPOSITION

Kemp Hannon to: Nicholas Mullally, John Clinton 06/22/2011 01:17 PM

-----Forwarded by Kemp Hannon/senate on 06/22/2011 01:16PM -----
To: hannon@nysenate.gov
From: Lisa Olson <lolson@hinmanstraub.com>
Date: 06/22/2011 08:16AM
Subject: A.2474-A (Canestrari) S.3186-A (Hannon) MEMORANDUM IN OPPOSITION

June 22, 2011

RE: AN ACT to amend the public health law, in relation to requirement for collective negotiations by health care providers with certain health benefit plans
A.2474-A (Canestrari)
S.3186-A (Hannon)

MEMORANDUM IN OPPOSITION

Unshackle Upstate, a bipartisan coalition of more than 80 business and trade organizations representing a growing group of 70,000 companies and employing upwards of 1.5 million people, opposes this legislation. If enacted, this bill would provide for “collective negotiation” by physicians and other health care providers, which would raise the health care costs for all privately insured New Yorkers.

As the cost of health insurance coverage continues to rise, the Legislature should not be advancing legislation of this nature, which will ultimately lead to increased costs for those with private health insurance. A recent study performed by the Health Insurers Association of America found that a similar federal physician collective bargaining proposal would raise premiums by 6% to 11% - which will ultimately be borne by businesses and their employees across New York State.

Perhaps even more alarming is that from 2001-2005 there was a steady decline in employment-based health coverage throughout the state. Specifically in Upstate New York, there was a 2.2% drop in employment based coverage during that time period and a 1.3% drop statewide as a result of rising premiums.

Our organization is extremely concerned that authorizing the collective bargaining of health care providers will lead to sudden increases in premiums, forcing many employers to either increase the costs for employee contributions or eliminate their employee health care coverage completely. These affected employees would then have to choose between either paying for the significant increases in their health care premiums or joining the millions of uninsured New Yorkers.

For these reasons, Unshackle Upstate opposes the enactment of this legislation.

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ON HEALTH COMMITTEE AGENDA

June 6, 2011

RE: AN ACT to amend the public health law, in relation to requirement for collective negotiations by health care providers with certain health benefit plans

A.2474-A (Canestrari)
S.3186-A (Hannon)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York strongly oppose enactment of this bill, which would provide for "collective negotiation" by physicians and other health care providers. Although this legislation purports to create new authority to permit physicians to collectively negotiate with payers, it is actually a transparent attempt to exempt physicians from the New York's anti-trust laws and unfairly empower physicians in negotiating with health plans.

1. ESSENTIAL CONSUMER PROTECTION DEVICES ARE MISSING FROM THIS BILL.

This bill would eviscerate current antitrust laws that are designed to protect consumers from unfair collaboration between health care providers. For example:

No quality control. Under existing antitrust law, physicians may bargain collectively if there is sufficient "clinical integration" – which can take the form of uniform quality improvement controls or a single quality assurance program. This bill includes no such restriction, permitting physicians to collaborate for one purpose: increasing their revenue.

No controls over price-fixing. Essentially, this bill would permit physicians and health care providers to determine their own levels of reimbursement, as a health plan faced with a multi-discipline negotiating coalition would have little choice but to accept the coalition's terms. This bill provides no protection against exorbitant price-setting by providers.

No protection against anti-competitive "spillover". Existing antitrust law prohibits communication between competitors regarding prices. This bill would alter such protections, permitting competing health care providers to communicate freely with each other regarding reimbursement matters. In the event that an agreement between the providers is disapproved, there is no way of "undoing" the anti-competitive impact of these communications.

2. THE NEW YORK STATE ATTORNEY GENERAL HAS ALREADY OPINED THAT THIS BILL WOULD VIOLATE FEDERAL ANTITRUST LAW.

The Attorney General, writing in opposition to this legislation on June 14, 2000, opined that a State may only displace federal antitrust law where a two-pronged test articulated by the U.S. Supreme court is satisfied. The test, known as the state action doctrine, requires (1) a clear and express articulation by the State of the intent to displace competition with regulation; and (2) active supervision by the State of the regulatory scheme. The opinion offered by the Attorney General's Office is that this proposed legislation fails **both** prongs of this test. (See letter to Assemblyman Canestrari from Assistant Attorney General Kathy Bennett, Bureau Chief Legislative Bureau, dated June 14, 2000).

Under the provisions of this bill, two things are clear: (1) The bill is designed mainly to serve the financial interests of providers; and (2) there are no specific provisions of the bill which would afford state officials the ability to have or exercise the power to review **particular anticompetitive acts** that would rise to the level of "active supervision" as defined by the Supreme Court in Patrick.

Likewise, in F.T.C. v. Indiana Federation of Dentists, 476 U.S.447 (1986), the Supreme Court stated "Anticompetitive collusion among private actors, even when the goal is consistent with state policy, acquires antitrust immunity only when it is actively supervised by the state." Under this bill, the Commissioner of Health has only the power to disapprove a report identifying the subject of the negotiations and the benefits to be received, which is simply not sufficient regulatory involvement to satisfy the Supreme Court.

This bill does not establish a regulatory scheme requiring negotiation and prescribing limitations. Instead, it provides a broad outline of what can be collectively negotiated and simple reporting requirements leaving the state's already troubled health care system subject to dangerous restraints on competition. Clearly, this loose system of regulation and oversight is not what the Supreme Court intended to suffice for the state-action doctrine as elucidated in the aforementioned cases.

3. THIS BILL DEPARTS FROM GENERALLY ACCEPTED PRINCIPLES OF ANTITRUST LAW AND THE JOINT RECOMMENDATION OF THE FEDERAL TRADE COMMISSION AND THE DEPARTMENT OF JUSTICE.

This legislation is completely contrary to a July 2004 report issued by the Federal Trade Commission and the Department of Justice. In that report, the agencies state that "[g]overnments should not enact legislation to permit independent physicians to bargain collectively.: *See* Improving Health Care: A Dose of Competition, A Report by the Federal Trade Commission and the Department of Justice, July 2004, Executive Summary at 23. They predict that "physician collective bargaining will harm consumers financially and is unlikely to result in quality improvements." *Id.* Finally, it explains how competition can lead to lower prices and higher quality, but that regulation interferes with obtaining these desirable results. *See id.* at 5. Consequently, this proposed legislation is inconsistent with

generally accepted antitrust principles and ignores the recommendations of a recent Federal Trade Commission and Department of Justice report.

4. **THIS BILL IS UNNECESSARY IN LIGHT OF EXISTING NEW YORK AND FEDERAL ANTITRUST LAW.**

Existing law permits health care providers of all professions to form an organization for many purposes including collective negotiation with insurers, health maintenance organizations, and other payors. These organizations are commonly known as independent practice associations, or IPAs. IPAs can negotiate collectively with payors on behalf of all members, and can also negotiate to perform certain administrative functions on behalf of the payor such as claims processing or credentialing. In cases where IPA models are not permitted (for example, contractual arrangements with indemnity insurers), a "messenger model" could be used to negotiate essential elements of the contract, or the providers could form a joint venture in which there is sufficient clinical and financial integration to justify collaboration on fees.

There is no need for additional legislation for providers to be able to bargain collectively because they are already able to do so under the existing law. Moreover, the existing models for collective bargaining include all of the consumer protection provisions that this bill would sweep away.

5. **SIMILAR RELAXATIONS OF FEDERAL ANTITRUST LAWS IN OTHER STATES HAVE PROVEN HARMFUL TO CONSUMERS**

The Federal Trade Commission (FTC) has intervened numerous times in situations where independent contractor physicians practiced collective negotiation tactics similar to those proposed by this legislation in order to curb the dangerous effect that they had on the surrounding health care community. The most recent edition of a report by the Federal Trade Commission Bureau of Competition, Overview of FTC Antitrust Actions In Health Care Services and Products, (Mar. 2010), details dozens of examples of such activity and identifies significant increases in health care costs as a result. For example, in the case of Southeastern New Mexico Physician's IPA (138 F.T.C. 281 2003), the FTC found that physician reimbursement in New Mexico for various services was typically between 120% and 140% of Medicare's Resource Based Relative Value System (RBRVS). However, due to the price fixing tactics employed by the groups in question, which are precisely what this bill would permit, rates in this particular part of New Mexico were typically over 200% RBRVS and at times topped 250% RBRVS. The FTC found the group's "joint negotiation of fees and other competitively significant contract terms has not been, and is not, reasonably related to any efficiency-enhancing integration" and therefore is unjustified. The FTC takes a similar position over and over with respect to price-fixing for no purpose other than to increase physicians' reimbursement rates at the detriment of consumers.

6. **THIS BILL WILL RAISE HEALTH CARE COSTS, RESULTING IN HIGHER PREMIUMS AND AN INCREASE IN THE NUMBER OF UNINSURED NEW YORKERS.**

A study performed by the Health Insurers Association of America analyzed similar federal physician collective bargaining legislation and determined that it would raise premiums by 6% to 11%. These costs, like any other costs, would be paid for by purchasers of health insurance coverage. From 2001-2005 there has been a steady decline in employment-based health coverage throughout the state. In upstate New York, there was a 2.2% drop in employment based coverage between 2001-2005 and a

1.3% drop statewide as a result of rising premiums. Doing away with the Federal antitrust restriction on providers would have a devastating effect on the already falling percentage of employer-based coverage in the state. Collective bargaining by providers would lead to sharp increases in premiums forcing many employers to increase employee contributions or being forced to eliminate their employee coverage altogether. Employees would have to choose between paying the substantial increases in health care premiums or joining the millions of New Yorkers' that are uninsured.

In a letter to the American Association of Health Plans, John Sheils, Vice President of the Lewin Group, explained:

> Various studies have shown that employer coverage is sensitive to the price of insurance. The available literature indicates that an increase in the price of insurance is typically associated with a reduction in the proportion of workers who have coverage. . . . Thus, in our estimates, each one-percent increase in private insurance premiums will be associated [nationally] with an increase in the number of persons without insurance of about 400,000 persons.

In New York, the number of uninsured has reached crisis levels. A February 2000 study by the Commonwealth Fund found that more than one in four (28%) New York City residents are uninsured, a rate that is 50% higher than the national average. Statewide, the uninsured rate has reached 19.8% for adults aged 18-64 (U.S. Census Bureau, 2005). Tellingly, a 1996 study (Donelan) showed that 64% percent of the uninsured cite high costs as the reason for having no insurance coverage.

By driving up health care costs, this bill will contribute to the growing number of uninsured New Yorkers. Physicians who earn, on average, nearly $200,000 a year should not be given additional leverage to increase their income at the expense of working people. Legislative efforts should be directed at reducing, not increasing, the number of uninsured.

For these reasons, we strongly oppose enactment of this bill.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC
Legislative Counsel for Capital District Physicians' Health Plan

4833-2908-7752, v. 2

A.2474-A (Canestrari)

S.3186-A (Hannon)

MEMORANDUM IN OPPOSITION

Unshackle Upstate, a bipartisan coalition of more than 80 business and trade organizations representing a growing group of 70,000 companies and employing upwards of 1.5 million people, opposes this legislation. If enacted, this bill would provide for "collective negotiation" by physicians and other health care providers, which would raise the health care costs for all privately insured New Yorkers.

As the cost of health insurance coverage continues to rise, the Legislature should not be advancing legislation of this nature, which will ultimately lead to increased costs for those with private health insurance. A recent study performed by the Health Insurers Association of America found that a similar federal physician collective bargaining proposal would raise premiums by 6% to 11% - which will ultimately be borne by businesses and their employees across New York State.

Perhaps even more alarming is that from 2001-2005 there was a steady decline in employment-based health coverage throughout the state. Specifically in Upstate New York, there was a 2.2% drop in employment based coverage during that time period and a 1.3% drop statewide as a result of rising premiums.

Our organization is extremely concerned that authorizing the collective bargaining of health care providers will lead to sudden increases in premiums, forcing many employers to either increase the costs for employee contributions or eliminate their employee health care coverage completely. These affected employees would then have to choose between either paying for the significant increases in their health care premiums or joining the millions of uninsured New Yorkers.

Coalition of New York State Public Health Plans

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Affinity Health Plan

Fidelis Care New York

Healthfirst

Health Plus

Hudson Health Plan

MetroPlus Health Plan

The Monroe Plan for Medical Care

Neighborhood Health Providers

Total Care

Reject Increased Health Care Costs

The Legislature is currently considering three bills that would increase the cost of Medicaid in New York State without improving the quality of care.

A.8237B/S.5646A limits the health plans' ability to successfully manage the pharmacy benefit that the Medicaid Redesign Team decided should be "carved-in" to Medicaid managed care on October 1st.

A.7431/S.4597A requires plans to pay an additional fee for ambulatory surgeries performed in accredited office-based facilities.

A.2474A/S.3186A allows physicians to collectively bargain with health plans.

Senator Hannon

The Coalition of NYS Public Health Plans urges the Legislature to oppose all three of these bills in the final days of the legislative session.

All three bills will increase Medicaid costs to health plans and the State without improving consumer care. As plans are being asked by the State to control costs and improve outcomes as part of the Medicaid redesign process, these three bills actually limit many of the tools that plans would use to meet these joint goals.

For example, the final 2011/12 State Budget accrued $50 million in savings by allowing health plans the flexibility to manage the pharmacy benefit for the State's Medicaid beneficiaries. Savings are expected to accrue through stronger negotiations with pharmaceutical companies, better oversight over fraud and abuse of prescription medications, greater use of generic equivalents, and comprehensive medication reviews to eliminate duplicative or harmful drug combinations. If **A.8237B/S.5646A** is enacted, the state will lose an estimated $50 million in 2011 and $100 million in 2012.

Both **A.2474A/S.3186A** and **A.7431/S.4597A** directly drive up health care costs by raising provider reimbursements without increasing the quality of care. The physician collective bargaining bill could increase costs to Medicaid plans by as much as 10%, according to recent studies. These new costs can not be passed along to Medicaid beneficiaries, so the State must pay health plans additional premium to absorb these costs—thus adding to the State's growing current year deficit.

The Coalition of New York State Public Health Plans represents non-profit health plans serving over 2.5 million, or over two-thirds of, children and adults enrolled in New York's Medicaid managed care, Family Health Plus, and Child Health Plus programs. Coalition plans offer decades of experience in delivering high quality services to populations that often experience significant barriers to health care. Coalition plans are sponsored by or affiliated with public and not-for-profit hospitals, community health centers and physicians.

For more information, please call the Coalition's representatives, Anthony Fiori at (212) 790-4582 or JoAnn Smith at (518) 431-6700, of Manatt, Phelps & Phillips.

ALLIANCE ALERT!

MEMORANDUM IN OPPOSITION

Bill: S3186-A (Hannon) /A2474-A (Canestrari)
Permits Physicians to Collectively Bargain With Health Care Plans
June 2011

The Employer Alliance for Affordable Health Care is a grassroots coalition of more than 3,000 sole proprietors and small and medium-sized business owners representing more than 150,000 working New Yorkers. Our members believe that everyone should have access to basic, affordable health insurance. This proposal that will allow health care providers, including physicians, to join together for the purpose of collectively bargaining with health plans will significantly drive up the cost of health coverage for individuals and employers in New York.

WE **OPPOSE** THIS MANDATE FOR THE FOLLOWING REASONS:

- This legislation is designed to increase physician compensation. While many small and medium sized businesses in New York struggle to provide health insurance coverage for their employees, physicians are widely recognized as one of the wealthiest professions in the nation.
- The federal health care reform law enacted last year was designed to increase accessibility and decrease costs. As part of the new law, New York is working to enact a Health Insurance Exchange aimed at providing New Yorkers a choice of high quality, affordable health coverage options. With that in mind, state lawmakers would be remiss to enacting any new measures that could impact not only current costs, but also threaten future affordability.
- The cost for employer-sponsored coverage continues to rise and at a time when premium payers are shouldering increases on average of 17%, it's irresponsible to consider any additional cost-increasing measure.

State lawmakers have a responsibility to ensure that individuals with insurance maintain their coverage. Allowing physicians to join together to improve their bargaining power with health plans will have the opposite impact – increasing health care costs and the making is harder for business to maintain coverage or begin offering it in the future.

For these reasons, the Employer Alliance asks you to oppose S3186-A/A2747-A

The Business Council

Legislative Memo

Contact:
Margaret Moree
Director of Federal Affairs
T 518.465.7517 x207
www.bcnys.org

BILL: **S.3186-A (Hannon) /A.2474-A (Canestrari)**

SUBJECT: **Permits Physicians to Collectively Bargain With Health Care Plans**

DATE: **June 22, 2011**

OPPOSE

S.3186-A (Hannon) /A.2474-A (Canestrari)

The Business Council of New York State opposes this legislation which would permit health care providers, including physicians, to form unions for the purpose of collectively bargaining with **health plans**.

At a time when changes resulting from implementation of the federal Affordable Care Act will substantially alter the landscape of health care delivery, this is not the time to introduce state-specific authorization to permit health care providers to organize for the purpose of collectively bargaining with health plans. When the two largest payers in the country are Medicaid and Medicare, and neither reimburse health care providers at a sufficient level relative to providers' true costs, a network of doctors collectively bargaining would likely seek to offset losses of Medicare and Medicaid revenue by charging more to privately insured patients – merely shifting costs rather than innovating and evaluating their own business practice models to wring efficiencies out of the system.

The new federal Affordable Care Act encourages joint ventures, known as accountable care organizations (ACOs), in which doctors and hospitals take collective responsibility for the care of Medicare beneficiaries. Hospitals around New York State have been preparing for this change acquiring physician practices and adding to their ranks of employee physicians. The theory – not yet tested on any realistic scale - is that when competitors collaborate, they can produce enormous efficiencies. A very real possibility, however, is that they may also be tempted to engage in monopolistic practices. Experts note as well, that the risk tends to be greatest in small- and medium-size communities dominated by one or two hospitals or health care systems.

The cost for employer-sponsored coverage continues to rise and policy makers continue to avoid the very serious conversation on how to "bend the cost curve" for a **health care system** that nationally consumes 16% of GDP. Allowing health care providers to organize for the purpose of collectively bargaining with health plans distracts from addressing the issues driving health care costs and utilization and will provide yet another way for the providers to shift costs to the employers and employees who are already struggling to maintain **health coverage**.

For these reasons, The Business Council opposes this bill.

FOR: SENATE FLOOR, CAL. NO. 1456

CENTER FOR MEDICAL CONSUMERS
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NEW YORK PUBLIC INTEREST RESEARCH GROUP
107 Washington Avenue • Albany, N.Y. 12210 • 518 436-0876

MEMORANDUM OF OPPOSITION
S./3186-A/A.2474-A

Our organizations oppose this legislation because this legislation would empower health care professionals to use their collective power in ways that are not in the best interest of the public.

We recognize that this legislation attempts to address a public policy concern that our organizations share; namely that health plans with dominate positions in defined markets may be able to take unfair advantage of their economic power so as to harm health care providers and restrict consumer choice. *But the solution to such problems is not to swing the pendulum of economic power back to health care providers who have a long history of behaviors motivated by self-interest rather than the public interest.* We would support legislation that consists of more targeted regulatory relief for specific abuses by health plans that have demonstrably harmed the public's well-being.

The legislation follows efforts to enact laws providing health care providers certain exemptions from federal anti-trust laws. Robert Pitofsky, Chairman of the Federal Trade Commission, testified in front of the House Judiciary Committee on June 22, 1999 regarding H.R.1304, a bill in Congress which has the same intent as this bill. Then-Chairman Pitofsky warned of the public harm that such a broad exemption could and would create.

> *"The Commission believes that measures designed to increase the power of consumer choice will serve patients, and our nation as a whole, far better than giving providers the collective power to dictate what choices - and significantly, what prices - will be available in the marketplace. Government can play an important role in creating the conditions for effective competition in health care markets, and in addressing specific abuses through targeted regulation."*

At the same hearing, Joel I. Klein, former Assistant Attorney General, Antitrust Division, U.S. Department of Justice, testified that:

> *"Our investigations reveal that when health care professionals jointly negotiate with health insurers, without regard to antitrust laws, they typically seek to significantly increase their fees...This bill is the wrong way to deal with problems identified with managed care and will harm consumers of health care in the future."*

OVER-OVER-OVER

S3186A

Center for Medical Consumers/NYPIRG
Oppose S.3186-A/A.2474-A
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We believe that the above criticism by the two senior U.S. Government officials charged with protecting the public interest from the harm caused by predatory market behavior applies to this bill, as well. In addition, broad-based consumer organizations such as the Consumer Federation of America, and health care professional groups such as nurse anesthetists, have opposed the unique application of exemptions from federal antitrust laws to health care providers. They believe that on balance the harm caused the public interest by such exemptions would far outweigh any benefit that is achieved.

We urge you not to be misled by the noble title of this proposed legislation. What this bill proposes is not really about "Health Care Consumer and Provider Protection Act" – it is about who is going to be in control of New York State's health care system in the future - health plans or health care providers. Neither one can be relied upon to consistently put the public's well being ahead of their own self-interest.

Our organizations therefore urge you to oppose this legislation.

For more information contact: *Arthur Levin, MPH 212-674-7105*
Center for Medical Consumers
Russ Haven 518-436-0876
NYPIRG

2of2

June 22, 2011

OPPOSITION
Memorandum

TO: Members, New York State Legislature

FROM: Gary J. Fitzgerald

RE: **S.3186-A** Hannon/**A.2474-A** Canestrari-Enacts the health care consumer and provider protection act relating to collective negotiations by health care providers with certain health care plans

As the regional association representing 57 hospitals and health systems in 31 counties of Upstate New York, the Iroquois Healthcare Alliance writes in opposition to Senate bill S.3186A/A.2474A.

The Iroquois Health Care Alliance opposes this legislation and urges that it not be enacted into law.

Specifically, this bill would authorize collective negotiations on fee and non fee-related issues between independent contractor providers including physicians and health plans.

The legislation's goal is to counter the current imbalance in negotiating strength in certain markets that health plans currently enjoy by allowing groups independent providers to join together and bargain fees, terms of consumer coverage and health plan policies and procedures.

While there are inarguably markets in which health plans enjoy much superior negotiating strength and this legislation attempts to counter that dynamic, this bill may go too far and shift the balance of marketing strength to independent contractor providers to the detriment of other stakeholders and the overall health care system while statutorily inviting a governmental law agency to play an ongoing and active role in the contract negotiations including clinical issues between two stakeholders in the health care system.

While the bill clearly seeks to protect the position of these independent contractors and claims to protect the best interest of consumer when laying out the basis for negotiations and involvement of the Attorney General, other parties, such as employers and other care financiers, non-independent health care contractor providers such as hospitals, and other parties such as pharmaceutical and medical supply companies etc could be clearly disadvantaged by the negotiations between health plans and independent contractors. The Attorney General is under no clear obligation to consider these effects. As a result of this legislation, consumers could see their costs of care increased, and their benefits and their site of care choices diminished.

Furthermore, the current trend in health care delivery and financing, strongly encouraged by the enactment of the federal health care reform act, is for the integration of health care providers, through models such as accountable care organizations (ACOs), as a means to improve the quality and reduce the cost of the provision of health care services. Enactment of this legislation will run counter to this trend and slow down health care reform in New York State. At a minimum, independent contractor providers, under the provisions of this legislation may be able to dictate the structure and reimbursement under these new integrated health care delivery models.

Finally, statutorily allowing independent contractor providers to collectively negotiate fees/reimbursement might only be the first step in authorizing broader collective bargaining rights. The effect of extending collective negotiating rights to providers such as physicians employed by hospitals could well precipitate widespread collapses within this already unstable sector of the health care system.

For these reasons, the Iroquois Healthcare Alliance opposes this legislation and respectfully requests that this bill be defeated.