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February 28, 2020

RE: AN ACT to amend the insurance law, in relation to authorizing municipalities to join a county self-funded or self-insured health plan

S1408A (Breslin)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The New York State Conference of Blue Cross and Blue Shield Plans strongly oppose enactment of this legislation, which would permit a municipality located in whole or in part of a county to join that county's self-funded or self-insured health plan as long as both the county and the municipality agree.

This legislation is problematic as it disregards the existing requirements of Article 47 of the Insurance Law, which provides a structure to allow municipalities to join to self-fund a health benefit plan. This statute is specifically designed to ensure that any municipal cooperative maintain a viable cross section of risks and also has sufficient reserves to protect against insolvency. While recent amendments to the Bill impose some requirements on the structure of the county self-funded or self-insured plan in order for a municipality to join, these requirements do not align with the existing requirements imposed under Article 47. In addition, the Bill poses a significant threat to the existing insured community that could result in higher premiums for employers that are not part of a county's self-funded or self-insured health plan.

Article 47 of the New York Insurance Law authorizes certain municipal corporations to form municipal cooperative health benefit plans (MCHBP) in order to share, in whole or in part, the costs of self-funding employee health plans. The Article was specifically adopted to establish safeguards where, like a commercial insurance company, municipalities are permitted to collaborate to share risk and provide coverage from a single reserve pool. The overriding concern was that unregulated municipal employee health benefit plans may not have adequate reserves and surplus, thus exposing municipality taxpayers to unpredictable liabilities. Article 47 provides the many of the consumer protections to the employees of municipalities that the New York Legislature has determined to be important and required for the commercial insured. Specific requirements include maintaining a reserve for payment of claims and expenses which equals at least 25% of total expected claims and expenses and maintaining a surplus account of

5% percent of annualized earned premium equivalents. Recent amendments to this Bill would require that the county self-funded or self-insured plan maintain a reserve fund in an amount of 12% of claims, which is significantly lower than the minimum reserve fund required under Article 47.

Importantly, policies established under Article 47 are required to be community rated, in which the premium is determined by the collective claims experience of all insured's in a particular community pool, without regard to age, sex, health status or occupation. This bill would allow municipalities that join county self-insured health plans to disregard the requirements in Article 47, potentially exposing municipality taxpayers to unpredictable liabilities.

In addition, the language requiring county consent for a municipality to join the county's self-insured health benefits plan would result in a significant detriment to the insured community pool. A county would be permitted exercise its sole discretion to preclude any municipality from participating in its self-funded plan. It is not unreasonable to assume that a county would only consent to those municipalities that have demonstrated low risk to be accepted by the county and to not consent to municipalities that have demonstrated poor claims experience. As a result, municipalities with a poor claims experience will be left in the insured community pool to the detriment of the community pool. While this would significantly decrease costs for the municipality and county, the impact of this "cherry picking" on the community pool will result in increased costs for all other insured employers subject to community rating.

Finally, it has been longstanding state public policy to encourage groups to avail themselves of New York's comprehensive consumer protection laws by purchasing insurance coverage. In allowing a municipality, or any other business, to "self-insure", those vital consumer protections afforded under New York law are no longer available to those New Yorkers. Thus, community rating, prompt pay, external review of claims, managed care rights and protections, mandates for coverage, insurer solvency protections, among the many consumer benefits enacted into law, would be lost if this Bill were to be enacted and utilized by a municipality.

For all of the forgoing reasons, the New York State Conference of Blue Cross and Blue Shield Plans strongly opposes the enactment of this legislation.

Respectfully submitted,

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