



121 STATE STREET
ALBANY, NEW YORK 12207-1693
TEL: 518-436-0751
FAX: 518-436-4751

June 1, 2023

RE: AN ACT to amend Part FFF
Subpart B §2, Chap 59 of 2018
Extends provisions of the public
health law related to the
redeployment of excess reserves of
certain not-for-profit managed care
organizations until 2025

A.7393 (Darling)
S.7477 (Rivera)

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 opposes enactment of this legislation, which extends the authority of the Commissioner of Health to establish a process for the “redeployment” of the reserves of non-profit prepaid health services plans (PHSPs) in excess of a presumptive reserve ceiling, defined to be no less than 150% of the minimum contingent reserve. This authority, which was granted for the specific purpose of capturing Medicaid monies from the acquisition of Fidelis Medicaid managed care by another insurer, Centene, is overly broad and is no longer necessary to achieve its purpose.

The original legislation authorizes the Commissioner to require non-profit Medicaid managed care plans to submit all financial and other records to evaluate the organization’s reserves up to two times a year. In the event the Commissioner determines that a plan has reserves in excess of the reserve ceiling for two consecutive quarters, the Commissioner is authorized to make a preliminary determination that all or a portion of the reserves in excess of the ceiling are to be redeployed and deposited in the Transformation Fund. The maximum annual transfer of reserves for a plan cannot exceed \$750 million. The purpose of these transfers was to require Centene to make payments to the state for five years, as the cost of completing the acquisition of Fidelis. This legislation was set to sunset within five years, which corresponds to the schedule of payments to the state required of Centene in order to consummate the acquisition. This legislation extends the Commissioner’s authority to take insurer’s reserves for purposes beyond the original scope.

Extension of this authority beyond its original purpose gives the Commissioner of Health unbridled power to reclaim reserves, which are both legally required and necessary for the payment of claims. Reserves ensure the ability of health insurers to pay claims resulting from unforeseen events, such as, for example, the COVID-19 pandemic that required the use of reserves to advance payments to hospitals to avoid financial collapse by providers. Moreover, in the case of not for profit plans with limited investment authority, reserves become the only source of liquidity in the event of either an unanticipated health care (e.g. a global pandemic) or financial (e.g. the Great Recession) crisis. Indeed, if these examples prove anything it is that, in the case of not for profit plans, “excess” reserves is oxymoronic as New York’s not for profit plans have experienced dramatic swings in reserves during times of economic and health care crisis. Likewise, extending this authority would allow the Commissioner of Health circumvent the reserve requirements of the financial services law, which erodes important consumer safeguards that protect against the insolvency of health insurance plans.

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

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC
Legislative Counsel for the Blue Cross and Blue Shield Plans