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June 2, 2026

RE: AN ACT to amend the insurance law, in relation to allowing for Medicaid accountable care organizations to purchase experience-rated health insurance for their members

A.6522-A (Lee)
S.2113-A (Cooney)

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 the enactment of this legislation, which would allow Medicaid accountable care organizations ("ACOs") issued a certificate of authorization to be issued large group health insurance. This bill would also amend State law to allow issuance of large group health insurance even if the number of member-employees is below the 101-member threshold currently required under New York law for a group to be eligible for large group coverage. While providers serving predominantly Medicaid populations do provide a tremendous service to underserved communities, this bill is flawed in changing an allowable group size for this limited purpose, as well as failing to consider federal preemption of these groups as federal law would likely treat these groups as Multiple Employer Welfare Arrangements ("MEWAs") under the Employee Retirement Income Security Act ("ERISA"), therefore preempting the application of this bill at a state level.

The federal Affordable Care Act ("ACA") explicitly allows states to treat employers who employ between 1 to 100 full time employees during the preceding calendar year as a small group.[1] New York is one of these states. The expansion of the definition of small group employers ensures that these groups receive the protections afforded to them by the ACA, including State essential health benefits ("EHB") and community rating rules. These ACA protections for small groups are in place to expand access to affordable health insurance, eliminate discriminatory insurance practices, and ensure comprehensive coverage for more

[1] 42 U.S.C. § 300gg-91(c)(7)

Americans.[2] This bill would attempt to remove these small groups from these protections – providing a loophole to one of New York State's fundamental health insurance laws and creating a dangerous precedent which could result in reduced health insurance protections for New York residents. Moreover, allowing small groups to opt out of the small group market both leads to potential gaming of the small group market through adverse selection and will likely have a negative impact on the small group community pool resulting in increases to the cost of coverage for small businesses.

Even if this bill is signed into law, it is likely unenforceable due to federal preemption. While this bill might seek to amend the Insurance Law to narrowly exclude Medicaid ACOs from group size restrictions, an ACO comprised of separate, albeit clinically integrated, health care providers, is unlikely to be treated as a single employer under ERISA. The Centers for Medicaid and Medicaid Services ("CMS") has previously released guidance detailing that "in most situations involving employment-based association coverage, the group health plan exists at the individual employer level and not at the association-of-employers level. In these situations, the size of each individual employer participating in the association determines whether that employer's coverage is subject to the small group market or the large group market rules."[3]

ERISA defines an "employee welfare benefit plan" as any Plan established or maintained by an employer or an employee organization.[4] ERISA defines a MEWA as an employee welfare benefit plan or other arrangement which is established for the purpose of offering plan benefits to the employes or two or more employers. Under ERISA, State insurance laws may not be enforced against a MEWA if "inconsistent" with ERISA.[5] As this bill seeks to define "employer" for purposes of a group health plan in a manner that is inconsistent with ERISA, it is likely to be preempted and the member-employers would still be considered small groups for purposes of health insurance coverage.

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

Respectfully submitted,

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

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[2] *About the Affordable Care Act*, U.S. Department of Health and Human Services, *available at*: https://www.hhs.gov/healthcare/about-the-aca/index.html#:~:text=Make%20affordable%20health%20insurance%20available%20to%20more,subsidies%20(%E2%80%9Cpremium%20tax%20credits%E2%80%9D)%20that%20lower%20costs

[3] *Application of Individual and Group Market Requirements under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or through, Associations*, CMS.gov, *available at*: https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf

[4] 29 U.S.C. § 1002 (1)

[5] *Multiple Employer Welfare Arrangements under the Employee Retirement income Security Act (ERISA): A Guide to Federal and State Regulation*. DOL.gov, *available at*: MEWAs Under ERISA: A Guide to Federal and State Regulation