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August 4, 2015

Alphonso David  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, NY 12224

Re: A.7208/S.4893 - Clarifying Prescriber Prevails Procedures in Medicaid Managed Care

Dear Mr. David:

Empire Justice Center urges Governor Cuomo to sign **A.7208/S.4893** amending New York Social Services Law (SSL) § 364-j(25) regarding prescriber prevails procedures in Medicaid managed care.

Empire Justice Center is a statewide legal services organization that provides representation to low income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including health. We also provide support and training to legal services and other community based organizations, undertake policy research and analysis, and engage in legislative and administrative advocacy.

Empire Justice's health work has included individual representation and administrative advocacy for access to prescription drugs in Medicaid, Medicare and commercial insurance. We have served on numerous advisory committees for New York State during Medicaid Redesign and the implementation of the Affordable Care Act, and also serve on the steering committees of Medicaid Matters New York, Health Care for All New Yorkers, and the Coalition to Protect the Rights of New York's Dually Eligible. These experiences, along with our day to day work with low income New Yorkers and their advocates, have helped to shape the perspective we provide in this letter.

The Medicaid managed care prescriber prevails bill the Governor is asked to sign will help ensure that Medicaid managed care enrollees' access to medically necessary medications in certain drug classes is not sacrificed in favor of cost controls. By aligning the prescriber prevails procedures in Medicaid managed care with those in fee-for-service Medicaid, this legislation clarifies that it is a prescriber's medical judgment that ultimately determines whether a Medicaid

managed care organization (MCO) must cover a specific formulary or non-formulary drug in nine specified drug classes.

We believe strongly that, because of their familiarity with their patients' medical and psychiatric histories, health care providers are in the best position to know which medications and combinations of medications are most appropriate and safest for their patients. This is particularly true when it comes to patients with complex needs, chronic illness, co-occurring disorders and psychiatric diagnoses. These providers must make prescribing decisions that take into consideration not only the condition for which a drug is used, but also interactions with multiple drugs and how a drug's effects, including side effects, may impact co-occurring conditions.

Under current SSL § 364-j(25)-(25-a), prescriber prevails protections are intended to exist in Medicaid managed care for nine classes of drugs: anti-depressant, anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic, immunologic and atypical antipsychotic. Nevertheless, we have observed that some MCOs have ignored the law and prescribers' medical judgment by continuing to deny appropriate medications in these classes. We do not suggest that MCOs can never impose utilization controls, such as prior authorization, for drugs in the nine classes. Indeed, A.7208/S.4893 requires providers to consult with the MCO in making prescribing decisions. However, the imposition of step therapy and other similar cost controls after a prescriber has consulted with the health plan and made clear the necessity of a medication, guts the prescriber prevails law in managed care to the determinant of the health and safety of Medicaid patients.

The legislation would restore meaning to the Medicaid managed care prescriber prevails law. It would do this by mirroring language in the fee-for-service prescriber prevails law that "the prescriber's determination shall be final." N.Y. Public Health L. § 273(3)(b); A.7208/S.4893 Sec. 1.

We ask that Governor Cuomo sign A.7208/S.4893 and fulfill the promise made to the poorest and sickest New Yorkers by the Legislature and the Executive when the original Medicaid managed care prescriber prevails statute was enacted.

Very truly yours,



Amy E. Lowenstein  
Senior Health Attorney