New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org
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Supplemental Memorandum

ELDER LAW AND SPECIAL NEEDS SECTION

February 21, 2017

Elder #3-Supplemental

S.2007; Part E, Sec. 1 — By: BUDGET
A.3007; Part E, Sec. 1 — By: BUDGET
Senate Committee: Finance
Assembly Committee: Ways and Means

THE ELDER LAW AND SPECIAL NEEDS SECTION OPPOSES THE PROPOSAL TO REQUIRE A NURSING HOME LEVEL OF CARE AS A CONDITION OF MANAGED LONG TERM CARE ELIGIBIILITY

In follow-up to our meeting on February 7, 2017 and our memorandum in opposition to the proposal to limit enrollment in Managed Long Term Care Plans (MLTCP) to patients requiring a nursing home level of care, the Elder Law and Special Needs Section wishes to specifically address the Governor's Memorandum in Support of this requirement, which incorrectly states that "those enrollees excluded from MLTCPs would still receive comparable services through a mainstream managed care plan."

Specifically, Department of Health regulation 18 NYCRR Section 360-10.5(c) provides that a Medicaid recipient **shall be excluded** from enrollment in a Medicaid managed care organization ("MMCO") if the recipient meets one of the criteria identified in Section 364-j(3)(c) of the Social Services Law. One of the categories of individuals listed in Social Services Law Section 364-j(3)(c)(v) is "Medicare/Medicaid dually eligible individuals [who are] not enrolled in a Medicaid TEFRA plan."

Notwithstanding that Section 364-j(3)(c) has been repealed, 18 NYCRR 360-10.5 is still in force and incorporates by reference the list of categories in Social Services Law Section 364-j(3)(c), which expressly includes Medicare/Medicaid dually eligible individuals, confirming that class of recipients **shall be excluded** from enrollment in an MMCO.

Moreover, over the last 3 years the State of New York has implemented the regulation and reinforced the State's policy of excluding Medicare beneficiaries from Mainstream Managed Care (MMC) in several ways. First, the NYS Department of Health MLTC Policy 15.02 states "On April 1, 2015, the Division of Health Plan Contracting

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and Oversight issued a policy designed to provide for an orderly disenrollment of Medicaid Managed Care (MMC) enrollees who become eligible for Medicare coverage." *See* https://www.health.ny.gov/health_care/medicaid/redesign/mltc_policy_15-02.htm

Also attached to this memorandum is an excerpt of Model Mainstream managed care contract that **requires** the disenrollment of members once they begin receiving Medicare. Section 8 of the model contract is entitled "Disenrollment" and Paragraph 8.9 is titled "Passive Reassignment of Enrollees in Receipt of Medicare." Paragraph 8.9(a) states that "On a monthly basis, the Enrollment Broker, or LDSS, shall transmit to the Contractor a disenrollment file of current Enrollees in *receipt of Medicare, and thus subject to disenrollment from the plan*" (emphasis added).

Finally, attached is a sample notice sent to mainstream members by NY Medicaid Choice when they become eligible for Medicare, disenrolling them from the Plan. Note the first paragraph of the Notice: "This change is happening because our records show that XXX has Medicaid and Medicare. People who have both Medicaid and Medicare cannot be enrolled in a Medicaid Managed Care Plan."

Considering that the Governor's rationale -- that enrollees excluded from MLTC plans because they don't meet the minimum level of care would still receive comparable services through a mainstream managed care plan -- does not apply to dual eligibles and these individuals will be ***excluded*** from mainstream managed care plans, the Elder Law and Special Needs Section's OPPOSITION to the proposal to add a nursing home level of care requirement as a condition of eligibility for MLTC remains steadfast. As stated previously, we understand that this new requirement is estimated to deny MLTC enrollment to about five percent (5%) of prospective members. With over 170,000 people enrolled in MLTC plans statewide, this change will affect thousands of people desperately needing home care services, and for whom the provision of case management and several hours of care enables them to remain in the community.