ECLEG JUN19'12 AM10:47

A RESOLUTION TO BE SUBMITTED
BY LEGISLATORS GRANT, MAZUR, HOGUES, MILLS, MARINELLI, HARDWICK, LOUGHRAN, RATH, McCRACKEN, DIXON & LORIGO

RE: Conveying Support for the New York State Health Department's Request for a Federal Good Cause Waiver of the Two-Year Claiming Limit Relating to Certain Nursing Home UPL Payments

WHEREAS, on July 26, 2011, the Medicaid Director/Deputy Commissioner of the Office of Health Insurance Programs in the New York State Health Department dispatched a letter to the U.S. Department of Health & Human Services' Centers for Medicare & Medicaid Services (CMS) requesting a good cause waiver; and

WHEREAS, this good cause waiver relates to certain Medicaid-related nursing home Upper Payment Limit (UPL) payments made by county governments in June 2009; and

WHEREAS, New York State further requested a federal waiver of the two-year claiming limit for all nursing home UPL payments made in previous periods to which the CMS believes a deferral or disallowance may be applicable; and

WHEREAS, statewide, the negative financial ramifications on public nursing homes would be nearly $20 million as the result of a new payment methodology employed by CMS; and

WHEREAS, the potential impact on Erie County alone is $5.3 million, a projection that has not yet been verified in writing by the New York State Department of Health but which, if accurate, would be an unbudgeted 2012 expense for the County; and

WHEREAS, according to the New York State Department of Health, for years CMS never questioned the date of payment methodology used by New York State and has failed to justify its new interpretation that a date of service methodology should be the payment model; and

WHEREAS, public nursing homes are truly the last option of long term care for many frail elderly in our community, particularly those with limited means, making it imperative that these nursing homes receive adequate reimbursement; and

WHEREAS, given the unclearly communicated new payment process, the potential federal bill to New York State has the characteristices of an unjustified federal recoupment that would place an undue burden on counties having public nursing homes, including Erie County; and

WHEREAS, it is fitting and proper for New York State to seek relief from this unjustified federal recoupment on behalf of public nursing homes - the safety net providers of care – as well as the counties they serve.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature convey its full support for the good cause waiver requested by the New York State Department of Health regarding the UPL intergovernmental transfers to certain nursing facilities, including but not limited to the potential forthcoming $5.3 million UPL repayment demanded by CMS for Erie County; and be it further

RESOLVED, that certified copies of this legislation be conveyed to Governor Cuomo; Erie County Executive Mark Poloncarz; Marilyn Tavenner, Acting Administrator of the Centers for Medicare and Medicaid Services [Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201]; Jason A. Helgerson, Medicaid Director/Deputy Commissioner, Office of Health Insurance Programs, NYS Department of Health [Corning Tower, Empire State Plaza, Albany, NY 12237], Senators Charles Schumer and Kirsten Gillibrand, and the WNY Delegation to the U.S. House of Representatives.

FISCAL IMPACT: Positive for Erie County and NYS if the Federal Waiver is Granted