MEMORANDUM IN SUPPORT

S.7104 (Seward) **A.**

AN ACT to amend the insurance law, in relation to the definition of small group; and to repeal section 7 of chapter 12 of the laws of 2015 relating to directing the superintendent of financial services to contract with an independent entity to conduct an assessment regarding the impact of the prohibition on the sale of stop loss, catastrophic and reinsurance coverage to the small group market relating thereto

The bill would amend the insurance law to return the definition of "small group" to 1-50 lives for purposes of health insurance, in conformity with applicable provisions of the federal Protecting Affordable Coverage for Employees (PACE) Act (Public Law 114-60). This technical definitional change is necessary to prevent ongoing disruption in the small group insurance marketplace with the loss of commercial insurance carriers and health plans marketing thereto; and to allow self-funded, mid-sized groups with 51-100 employees or members to obtain stop loss insurance coverage.

The **New York State Association of Health Underwriters (NYSAHU),** comprised of licensed health insurance brokers, agents and employee benefits consultants, which support universal health coverage by integrating existing public plans with market-based solutions to improve the availability and affordability of health insurance plans for all, **STRONGLY SUPPORTS** S.7104. This measure is one of NYSAHU's Legislative Priorities.

Ever since the definition of "small group" size for purposes of health insurance policies and plans was doubled from 50 to 100 lives effective January 1, 2016 in conformance with the federal Affordable Care Act (ACA), severe market disruptions have been experience in certain regions of New York, as fewer carriers and health plans offer coverage into the small group market. This was one of the major "unintended consequences" of Obamacare in New York.

Moreover, stop loss insurance coverage that provides a safety net for mid-sized employers and other plan sponsors, with 51-100 employees that self-fund their employee or member health benefits was also removed by operation of law when the definition of small group went to 100 lives. This excess risk insurance protects mid-sized groups from unforeseen claims like serious accidents, cancers, or an influenza pandemic, and provides such mid-sized businesses, labor union or municipal groups – the backbone of New York's economy – an economically attractive means of providing health coverage and benefits to their employees or members.

On January 1, 2016, the definition of "small group" changed from 50 to 100 employees or members. While some recent changes in New York law did allow a 3-year "grandfather period" for stop loss coverage for a limited number of eligible self-funded, mid-sized groups, this bill would allow all such groups to be eligible to shop for and purchase stop loss coverage. This statutory amendment is necessary to permit approximately 1400-1700 mid-sized employer or other plan sponsors with between 51-100 employees or members that want to self-fund, to again obtain stop loss insurance.

Many of these groups have already experienced 20%+ increases in their health insurance premiums[1]. A recent RAND Corporation study concluded that "without the option to self-insure, firms may drop coverage."[2] Some groups have already lost their employer-provided health coverage altogether and have had to go into the NY Health Insurance Marketplace Exchange to obtain coverage, only to find that their new coverage has higher co-pays, larger deductibles, great total out-of-pocket annual limits, narrower in-plan healthcare provider networks, and fewer out-of-network medical specialists. Moreover, concerns regarding the possibility of self-funding creating adverse selection issues for the Marketplace Exchange were proven to be misplaced.

The current New York market for stop loss has served employers well, and has evolved to include safeguards against the issues that were prevalent in the market 25 years ago. There are large, reputable insurance carriers offering this stop loss insurance products and experienced, licensed insurance brokers who provide invaluable guidance to those clients who consider purchasing it.

New York thus should amend the size of "small group" back to 50 lives from 100 by immediate passage of S.7104. This would again open up the insurance marketplace to more carriers offering a greater selection of products, thus ensuring more consumer

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[1] *Costs for a well-managed Self-funded plan generally may run at 7 – 11% less than a fully-funded plan over the long term. Pure community-rated plans tend to run approximately 10-12% more than a partially community-rated plan with credits for good experience. If stop-loss coverage is denied these groups, and they enter the fully-insured market under the new definition of a small community-rated group they'll see substantial rate increases.*

[2] *Small Firms' Actions in Two Areas, and Exchange Premium and Enrollment Impact – RAND Corporation, 2012*

choice in the mid-sized market. It would also once again allow for self-funding by mid-sized groups, which had constituted about 12% of the former market in this space. Doing so would provide mid-sized employers, labor unions and municipal groups with the same choices that are available to such groups across the United States, and to large groups in New York. Presently, New York is the only state that does not allow small groups with 100 or fewer lives to purchase stop loss coverage (Delaware prohibits stop loss coverage for groups of 15 or fewer lives).

For the reasons enumerated herein, and on behalf of the members of the New York State Association of Health Underwriters (NYSAHU) we **STRONGLY SUPPORT** S.7104 and **URGE ITS PASSAGE**.

Respectfully submitted,

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