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## **MEMORANDUM IN OPPOSITION**

### **S.417 Senator Breslin – An ACT to impose extra-contractual tort liability upon health care plans**

On behalf of **New Yorkers for Lawsuit Reform**, a broad based coalition of businesses, professionals, municipalities, not-for-profits, and concerned citizens, I am writing in **STRONG OPPOSITION** to the above referenced bill.

Health maintenance organizations and trade groups have articulated a myriad of reasons why this legislation should be held by this Committee. There are at least six major reasons to reject this measure, to wit:

- The proposal is likely to be found pre-empted by the Employee Retirement Income Security Act (ERISA).
- Presently independent review protections afford health plan participants appropriate safeguards to insure proper coverage determinations without the need to expand the tort system.
- Adoption of the legislation would interfere with the patient-physician relationship as health care plans are encouraged to micro-manage provider decisions for fear of extra-contractual liability.
- The legislation would bar the application of normative joint and several liability rules and impose disproportionate responsibility upon health care plans.
- The bill would result in a substantial reduction in the use of utilization review as a sound cost control measure due to the fear of tort liability.
- Lastly and most assuring not least the legislation would significantly raise the cost of health insurance by more than \$1,500 per household.

As a nation the United States faces a staggering 46 million people lacking health insurance including more than 2.4 million New Yorkers. Driving substantial increases in the cost of the health care reimbursement system is precisely the wrong thing to do as we seek to find solutions for the uninsured and the underinsured. In fact, rather than adding additional costs to the civil justice system, New York should implement tort reforms which would reduce the cost of health care. For example, adoption of a cap on pain and suffering and expanded joint and several liability protections are two measures employed in sister states which have reduced the cost of health insurance and spurred economic development. Both of these measures should be enacted in New York.

New York and the nation as a whole are facing the most severe economic downturn since the great depression. The loss of hundreds of thousands jobs in the financial service sectors and related jobs unique to New York cannot be blithely ignored. Moreover, this legislation will substantially add to the cost for health coverage for both the state and local governments at a time record deficits. The Legislature must abandon its proclivity to advance various special interests, including the personal injury lawyer agenda, and put the needs of New Yorkers first. Simply put, New York cannot afford to continue to adopt policies which make our state an unattractive place to locate or grow a business. Clearly, at the inception of new Obama Administration it is time for a change and an end to the downward spiral in the Empire State.

Respectfully submitted,

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Executive Director  
**New Yorkers for Lawsuit Reform**