

Authorizing Ulster County To Join The Pending Federal Court Litigation Between The City Of New York And Other Counties Of New York State, As Plaintiffs, And Against Various Pharmaceutical Manufacturers, Wholesalers, Retailers, Distributors And Others, As Defendants, For Recovery For Excessive And Improper Medicaid Pricing Practices And To Engage The Firm Of Kirby, McInerney & Squire, LLP To Represent The County's Interest In Such Litigation

The Ways and Means Committee (Chairman Cummings and Legislators Busick, Noonan, Stock, Tipp, Dart, Feldmann, Lomita and R.A. Parete) and Legislators Aiello, Alfonso, DePew, Every, Felicello, Gerentine, Harris, Hathaway, Maloney, McAfee, Meyer, Roberti and Tipp offer the following:

WHEREAS, Medicaid fraud litigation is currently pending whereby New York City and the majority of New York State's counties are attempting to recover overcharging by various pharmaceutical manufacturers, suppliers, wholesalers, retailers, and others allegedly caused by improper and illegal reporting of prices, thereby manipulating such prices and causing Medicaid drug prices to be inflated, and in failing to properly apply rebate requirements under federal law, and

WHEREAS, this highly complex "Medicaid fraud" litigation is being handled on behalf of the City of New York and the majority of New York's counties by the law firm of Kirby, McInerney & Squire, LLP of the City of New York, a firm which has specialized in antitrust and health fraud litigation, on a contingent fee basis whereby the firm would be paid fifteen percent of the amount of any recovery, and

WHEREAS, Ulster County pays twenty-five percent of the pharmaceutical costs of the Medicaid program and would, therefore, be entitled to recover funds if it is a plaintiff in this litigation if the litigation succeeds, and

WHEREAS, the New York State Association of Counties has negotiated an understanding with New York State that this litigation be considered a demonstration project, so that the counties may obtain their proper share of any recovery, rather than have it absorbed by New York State through the Medicaid cap methodology, and

WHEREAS, the Ways and Means Committee has met and reviewed said request with a majority of the members voting approval.

RESOLVED, that the County of Ulster become a plaintiff as part of the pending litigation as brought by the City of New York and the majority of the other counties in New York State against the various pharmaceutical manufacturers, wholesalers, distributors, retailers and any other parties who have engaged in illegal or improper practices to inflate the cost of prescription drugs to the Medicaid program and to the extent that they have failed to comply with other laws or engaged

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in any other type of fraudulent or improper conduct to increase such cost by improperly following rebate requirements, or otherwise, and

FURTHER RESOLVED, that Ulster County engage the services of Kirby, McInerney & Squire, LLP to represent Ulster County's interest in such litigation on a contingency fee basis of fifteen percent of any amounts recovered, and

FURTHER RESOLVED, that the Chairman of the Ulster County Legislature is authorized to enter into an appropriate retainer agreement with such firm providing for such rate of compensation of fifteen percent on a contingency basis in such form as may be approved by the County Attorney, and

FURTHER RESOLVED, that the Ulster County Treasurer and Chairman of the Ulster County Legislature are authorized to sign an agreement that if this litigation is certified and approved as a demonstration project, the non-federal portion of any recovery or savings shall be shared between the New York State Department of Health and Ulster County based on their respective historical contributions to Medicaid drug costs,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 30 NOES: 0
(Absent: Legislators Aiello, Hyatt and Provenzano)

FINANCIAL IMPACT:
UNKNOWN