

EMPIRE CENTER

Testimony of Bill Hammond
Health Policy Director, Empire Center for Public Policy

Before the Joint Legislative Fiscal Committees
February 12, 2018

The past year has been a roller-coaster ride for New York's health care system, as Congress tried repeatedly to scale back Medicaid and dismantle the Affordable Care Act while allowing other health-related programs to lapse. Because New York depends so heavily on federal health dollars, it had more to lose than almost any other state in all of those fights.

Now that the smoke has cleared, it must be said that the state dodged almost every bullet.

Efforts to repeal-and-replace the ACA appear dead for now. Federal funding for Child Health Plus and community health centers has been reauthorized. Cuts to Disproportionate Share Hospitals, which have been on the books since 2010, were delayed by another two years in the budget deal passed last week.

In fact, virtually all of the ACA infrastructure that is pumping extra billions into New York's health care system - and which drove down the uninsured rate by 5 points - remains intact. Federal health aid to the state is due to continue growing, not shrinking, for the foreseeable future, an outcome few would have predicted a year ago at this time.

Yet the governor's executive budget is written as if the health-care system were facing an immediate crisis - using the threat of cuts in the future to justify significant tax hikes in the here and now.

Worse, one of the proposed hikes - a 14 percent surcharge on the underwriting gains of for-profit insurers -- would add to the already state's enormous tax burden on health coverage. Since most large employers are self-insured (and therefore are not, technically, "underwritten" by an insurance company), the tax would mainly affect individual and small-group policy holders, the more fragile and price-sensitive sectors of the market.

The governor calls his proposal a "windfall surcharge," since the companies who would pay are benefiting from the recent 14-point cut to federal corporate tax rates. But that reduction applies to all corporations. The only apparent reason for singling out a subset of insurers is Albany's tradition of taxing health care to pay for health care.

This is a self-defeating way to finance Medicaid. One big reason a third of the state's population needs government-funded care is because they can't afford private coverage. Taxing insurance only makes that problem worse, and drives more New Yorkers onto the Medicaid rolls.

The state already collects \$4.4 billion annually from medical insurers through the Health Care Reform Act – making them the state’s third-largest source of revenue, and helping saddle New Yorkers with some of the highest premiums in the country. The state should be doing everything it can to improve health-care affordability, not layering on yet another cost.

The executive proposal would seek new revenue from non-profit insurers as well – by identifying Medicaid managed care plans with cash reserves above the regulatory minimum, then clawing back the excess through rate cuts. This effectively penalizes plans for prudently hedging against unexpected costs, and forces them to choose between sustaining operating losses or discontinuing their participating in the program. If the state believes Medicaid plans are being overpaid, it should adjust the rates up front rather than after the fact.

The executive further proposes to glean \$750 million a year – and \$3 billion over four years – from the conversion of non-profit health plans to for-profit ownership. This plainly targets the pending acquisition of non-profit Fidelis Care to for-profit Centene, with a sale price of \$3.7 billion.

Fidelis is controlled by the state’s Roman Catholic bishops, who were planning to put the proceeds into a foundation to support health care for the needy. Thus, the executive proposal is effectively swiping from the collection basket.

The executive argues the state is entitled to compensation because Fidelis made much of its money from state contracts while enjoying tax-free status. It also points to the precedent set when Empire Blue Cross Blue Shield converted to for-profit in the early 2000s, with 95 percent of the proceeds going to the state treasury.

But that transaction was an anomaly. The norm with such conversions is a court-approved transfer of charitable assets to a private foundation, as is proposed with Fidelis. The executive plan would require a change to state law that, for unknown reasons, was not included in the governor’s initial package of Article VII bills.

The deal is not something the state should want to discourage. It would add a major new tax-paying business to the state’s economy, and the proposed foundation would become a source of charitable giving in perpetuity.

The executive proposal, by contrast, would treat most of the proceeds as a “one-shot,” spending the short-term windfall on long-term, ongoing costs for Medicaid and other health programs – a fiscally unsound practice that would burn through the billions in a matter of a few years.

The budget calls for putting \$250 million a year of the Fidelis proceeds in a “health care shortfall account” to offset a sudden, unforeseen loss of in federal aid. But nearly all of the proposed cuts contemplated over the past year would have been phased in slowly, giving the state plenty of time to adjust through its normal budget process.

A final health-related revenue item is the executive’s proposed surcharge on prescription opiates. The governor says this would raise \$125 million a year, which would be dedicated to addiction prevention and treatment. Since his budget does not include a corresponding increase

in spending on those programs, it's not clear whether the surcharge would supplement existing funds or merely replace them.

One loss of federal aid that has not yet been reversed concerns the Essential Plan, which offers free or very low-cost coverage to New Yorkers just above the eligibility cutoff for Medicaid. Federal aid had been covering an extraordinary 95 percent of this program. Citing a court order, the Trump administration halted payment under the ACA's cost-sharing reduction program, which accounted for about a quarter of the Essential Plan's funding, or \$1 billion a year. The governor says the state remains committed to the program, which has more than 700,000 enrollees, but his financial plan does not fully delineate how it will make up for the lost funds.

On the spending front, the governor is proposing another \$425 million in capital grants for health care facilities – for a total of \$3.8 billion in such commitments over five years. While some financially fragile providers may merit state help, the Legislature needs to establish tighter guidelines to avoid waste as it effectively gifts taxpayer money to private organizations. Many of the grants so far have gone to wealthier providers that certainly could have raised the money from other sources.

Another concern is the \$1 billion Indigent Care Pool, the state's main program to compensate private hospitals for treating the uninsured. As currently designed, the pool overcompensates hospitals that provide little or no charity care while shortchanging the true safety nets. This budget calls for a one-year extension of the "transition adjustment," which perpetuates the program's well-documented dysfunction.

To end on a positive note, the governor rightly seeks to close the Medicaid eligibility loophole known as "spousal refusal." While this is a complex issue, the Legislature should work with the governor to ensure that a safety-net program for the poor and disabled is not abused as an asset-protection strategy for the well-off.

