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Human Services Council

Testimony of Michelle Jackson
Joint Legislative Public Hearing on the Proposed 2016-2017 Executive Budget: Human Services
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I am Michelle Jackson, Associate Director & General Counsel of the Human Services Council of New York ("HSC"), and I appreciate the opportunity to submit testimony.

About the Human Services Council of New York

HSC is a membership association comprising almost 200 of New York State's leading human services organizations – direct service providers as well as umbrella and advocacy groups. Our members are involved in such realms as early childhood education, youth development, health, mental health, employment and services to seniors and immigrants. To operate these programs, our members partner extensively with all levels of government and hold a significant number of contracts with the State. HSC serves our membership as a convener, a coordinating body and an intermediary to government, and we focus on such matters as procurement practices, disaster preparedness and recovery, budgetary issues, and public policies that impact the sector.

The FY 2017 Budget: A Good Start

The Governor's proposed budget includes some wise and much-needed investments in certain human services, but we believe that the Legislature can do even more to support our sector's infrastructure or workforce. Nonprofit human services providers require greater investment in order to realize the Governor's vision of a State of opportunity—one in which all New Yorkers have the chance to meet their full potential. The Governor should demonstrate his commitment to creating opportunity for all by prioritizing the support of critical interventions and community programs, the building blocks to long-term success. The Human Services Council of New York ("HSC") urges the Governor and the Legislature to work with providers to develop a concrete plan for a strong human services sector.

Nonprofit human services providers are indispensable partners in achieving the Governor's vision of a "State of Opportunity." Accordingly, the FY 2017 budget should include the following investments to strengthen the human services sector:

- A minimum wage increase with full funding for human services contracts and adequate Medicaid rate adjustments;
- A recurring investment of $100 million to expand the Nonprofit Infrastructure Capital Investment Program ("NICIP"); and

- Full implementation of the federal Office of Management and Budget's mandate with respect to nonprofit indirect costs.

Only with significant, long-term investment in our sector can we address the fiscal and structural challenges that have compromised the effectiveness of human services providers. In fact, a forthcoming report developed by HSC's Commission to Examine Nonprofit Human Services Organization Closures explores these challenges and makes recommendations for the reinvention of the human services delivery system. The Commission was formed in March 2015 in the wake of the FEGS collapse and other closures and mergers to identify the underlying causes of instability in our sector. We will share the report with the Legislature in the coming weeks and hope to work with you to implement the recommendations.

Like the Governor, HSC believes that the State can provide greater opportunity for all New Yorkers while remaining fiscally responsible, and the conditions are now ripe to do so. By fully funding human services infrastructure, contracts, and wage increases, the Governor can make good on the promise of a New York that is built to lead.

The Opportunity Agenda: One Year Later

A focal point of the Governor's FY 2016 budget was his ten-point plan aimed at reducing the state's poverty rate—then 15.6 percent—by "restor[ing] economic opportunity statewide."[1] This "Opportunity Agenda" included investment in nonprofit infrastructure through the creation of the $50 million NICIP and a limited cost-of-living adjustment for certain human services workers—allocations that HSC and its partners viewed as an important starting point for reinvestment. The plan also included substantial funding for homeless services and the Anti-Hunger Task Force. While HSC welcomed the Governor's focus on creating opportunities for economic empowerment, we called for a much more significant investment in human services to compensate for years of funding cuts. We also recommended that the State fund urgently needed infrastructure improvements, address workforce needs, and enable the sector to meet growing demand.

The Opportunity Agenda was a good starting point, but the State must now build on its momentum to realize its promise. Unfortunately, the human services sector, which is absolutely indispensable in bridging the opportunity gap, remains precariously balanced over a fiscal precipice. A survey administered by HSC in September 2015 to 60 nonprofit human services providers across the state revealed that more than half are financially distressed, having no more than three months of cash reserves. This is due in large part to underinvestment by government funders, as low indirect cost rates starve providers of the capital they need to meet ever-increasing standards and demand.

Furthermore, in calendar year 2014, state agencies reported that 3,568 (77 percent) of total contracts were processed late.[2] Interest was paid on only 32 percent of eligible contracts. Late registration and payment place undue financial stress on already cash-strapped nonprofits, which "float" the government (in most cases, interest-free) until payment is made.

[1] Cuomo, Andrew M. 2015-16 Executive Budget.
[2] Office of the State Comptroller. *Prompt Contracting Annual Report Calendar Year 2014.* Available at http://www.osc.state.ny.us/contracts/reports/2014/pcl_report.pdf

Meanwhile, statewide minimum wage increases for certain sectors have taken effect, but the nonprofit human services workforce remains among the lowest-paid. Constrained by low indirect cost rates, unfunded mandates, and late payments, providers cannot afford to pay a living wage that makes them competitive with other industries. Not surprisingly, the poverty rate remains high, now at 15.9 percent.[3]

The Minimum Wage and Cost-of-living Adjustments

HSC commends the Governor for his bold campaign to raise the minimum wage across all sectors to $15 per hour by July 1, 2021. We agree that New Yorkers who work full-time should not have to live in poverty. As mentioned above, however, the human services sector must receive additional funding in their government contracts not only to support the increase to $15 per hour, but also to address the "spillover" effect (also known as wage compression); workers who are currently paid more than the new minimum wage must also receive increases to maintain the pay scale and those below must receive appropriate adjustments that keep the pay scale intact. HSC, FPWA, and the Fiscal Policy Institute (FPI) have made clear in their advocacy that additional funding—not an exemption—is the only way to ensure the continued viability of the sector. The State relies on nonprofits to carry out its constitutional obligation to care for those in need, and it must fund these organizations accordingly, just as it has done for the State University of New York.

Caring for others is important—and often difficult—work, and human services save the State money year after year. In addition, the human services workforce is highly educated, with two-thirds of workers having at least some college education.[4] The human services sector is already facing a recruitment and retention crisis, with high turnover rates due in large part to noncompetitive salaries and benefits. Frontline workers—most of them people of color and women—are increasingly eligible for the same public assistance benefits as their clients. For these reasons, increasing the minimum wage while increasing funding of human services—including Medicaid rates—is not only the morally right thing to do, but also the economically rational thing to do. A fully funded $15 minimum will reduce poverty and promote greater economic equity, which are two of the Governor's priorities.

The human services workforce is essential to achieving the Governor's vision, and our minimum wage campaign is our primary mechanism for obtaining human services wage funding. In previous years, HSC has advocated for COLAs for the sector, as many human services workers under contract with the State have not received an increase in six years. An increase in the minimum wage, with funding for this increase on human services contracts, would give substantial raises to many frontline workers, and spillover funding for those making over $15 will be crucial to ensure adequate pay scales. Funding for the minimum wage, with spillover across contracted workers, is essential to right-size the salaries of human services workers under contract with the State. The budget does not include funding for a $15

[3] New York State Community Action Association. New York State Poverty Report 2015. Available at http://nyscommunityaction.org/wp-content/uploads/2014/03/2015-Poverty-Report-w-50th-logos-for-online.pdf

[4] FPWA, Fiscal Policy Institute, and The Human Services Council of New York. *A Fair Wage for Human Services Workers: Ensuring a government funded $15 per hour minimum wage for human services workers throughout New York State*. Available at http://fpwa.org/press_category/policy-reports/

minimum wage on human services contracts, and it includes only a very small COLA of just 0.2 percent. This trivial increase is deeply disappointing for a workforce that has been completely overlooked for six of the last eight years. To put this COLA into perspective, consider an annual salary of $35,000. This paltry increase—just *one-fifth of one percent*—amounts to $2.69 per paycheck. "Cost-of-living" is thus a misnomer, as such a small increase bears no relationship whatsoever to the actual rise in the cost of living.

Nonprofit Infrastructure Capital Investment Program

Responding to the advocacy of HSC, UJA, and UNH, the Governor last year established the NICIP to identify critical facilities and technology projects that will improve providers' ability to deliver high-quality services. HSC is pleased that the State has initiated the NICIP solicitation process, and we look forward to seeing much-needed improvement projects come to fruition. At the same time, we have serious concerns regarding the timing, funding, and eligibility criteria of the initial request for applications (RFA). The RFA was supposed to be released this summer but was not published until October 28th, with an application deadline of December 23rd. Some of the eligibility criteria were unclear, and answers to provider questions were not released until December 2nd. Because eligibility is a threshold issue, this meant that many providers could decide whether to compete until December 2nd, which would have made for a tight turnaround during the holiday season. Under the new timeline, it is unlikely that awards will be disbursed by April.

In addition to the unfortunate delays in the solicitation process, certain NICIP eligibility criteria precluded numerous well-established organizations from receiving funding. For example, organizations that are eligible to receive funding through DSRIP were ineligible for NICIP funds, as were those that have received or will receive funding through the Health Care Efficiency and Affordability Law for New Yorkers ("HEAL NY") or the Capital Restructuring Financing Program ("CRFP"). This excluded a significant number of organizations from the program. HSC has worked closely with UJA, UNH, Fran Barrett, and Senator Tony Avella to address these issues. On December 11th, in response to the advocacy of HSC, UJA, and UNH, the Dormitory Authority clarified that the DSRIP exclusion applied only to organizations that are the lead for performing provider systems. Unfortunately, the HEAL NY and CRFP exclusions still apply.

HSC will continue to work with UJA and UNH to address the terms of the RFA for the next round of competition. In addition, we are advocating for the doubling of the fund (to $100 million), for the fund to be recurring, and for the individual award limit to be increased to accommodate larger projects.

Nonprofit Indirect Costs

Also absent from the proposed budget is any mention of the now two-year-old Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards issued by the federal Office of Management and Budget ("Guidance") on December 26, 2013.[5] This Guidance requires that agencies receiving and redistributing federal funds to nonprofit

[5] 2 C.F.R. §§ 200.400-200.475. Available at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

organizations pay an indirect cost rate of no less than 10 percent on contracts supported by federal dollars. The State has yet to articulate how it is implementing the Guidance.

Low indirect cost rates have starved the human services sector of adequate funding for many years. Our members report receiving indirect cost rates as low as 2.3 percent,[6] which is unquestionably a factor contributing to the brittleness of the sector. Stigma around indirect costs and the common misperception that philanthropy will cover these critical investments are the leading causes of anemic contracts. Without adequate indirect cost reimbursement, organizations cannot:

- Acquire, maintain, or modernize mission-critical facilities and equipment;
- Harness the power of technology to realize efficiencies;
- Provide training for staff to ensure high-quality service delivery;
- Pay living wages and provide career ladder opportunities to attract and retain qualified staff;
- Invest in strategic planning or innovation to ensure sustainability; or
- Expand services to meet growing need as inequality becomes amplified.

A recent example of the consequences of low indirect cost rates is the New York City homeless shelter dispute of last fall. Shelters are held to safety and sanitation standards, as they should be, but their contracts do not cover the costs of meeting these standards. Now the Governor seeks to authorize comptrollers to revoke contracts and close shelters for safety and sanitation violations but has not provided appropriate funding for repairs.

HSC is working closely with the State to advance the implementation of the OMB Guidance. We call on the Governor not only to hold the State accountable for implementing the Guidance, but also to lead the nation in extending the same indirect cost principles to State-funded contracts.

Medicaid

As mentioned above, the proposed budget allocates $7 million in new Medicaid rate enhancements to stabilize providers as they transition to managed care. We are pleased that the Governor has acknowledged the need for transitional support. We note, however, the vast difference between the transitional funding that hospitals received (more than $1 billion) and what is proposed for human services providers. Human services providers are already struggling to keep up with current mandates and will need even more funding to meet the requirements of the managed care environment. Specifically, they will need financial support in order to:

- Conduct risk assessments to determine whether value-based payment is a viable option for them;
- Demonstrate that their services have an impact on SDHs;
- Transition to a more entrepreneurial approach in which they can make value-based propositions;
- Determine how to set rates;

[6] On some contracts, no indirect costs are reimbursed.

- Make technology upgrades to comply with new information management requirements; and
- Invest in and use evaluation systems.

There is an urgent need for training, technical assistance, and coordination among government, Managed Care Organizations (MCOs), Performing Provider Systems (PPSs), and CBOs to ensure that the health-improving and cost-saving potential of MC is realized. The proposed $7 million allocation simply will not cover the level of support required by the many organizations that will be vital to the managed care system.

Homelessness

HSC is pleased with Governor Cuomo's focus on increasing and improving housing opportunities for homeless New Yorkers. No one should have to live on the streets—especially in the harsh New York winter. We have grave concerns, however, regarding the Governor's plan for addressing problems with existing shelters. The Governor proposes to partner with State Comptroller Thomas DiNapoli to audit shelters statewide, New York City Comptroller Scott Stringer to review and inspect New York City shelters, and Buffalo Comptroller Mark J.F. Schroeder to review and inspect Buffalo shelters. The proposal provides:

> Shelters determined to be unsafe or dangerous will either immediately add local police protection or be closed. If a shelter is determined to be unsanitary or otherwise unfit it will be subject to contract cancellation, operator replacement, or closure because there are many qualified nonprofits that are capable of running a good operation. If an operator's management problem is systemic, a receiver will be appointed to run the system.

As revealed last year by events in New York City, this draconian plan does not address the root causes of noncompliance. Underfunding of contracts, restrictions on indirect costs, and burdensome procurement policies and practices all affect shelter conditions. More importantly, closing shelters will leave more New Yorkers out in the cold. In addition, the Governor's plan does not include details regarding "operator replacement," and it impinges on city contracting processes at a time when, at least in New York City, reform is underway.

Empire State Poverty Reduction Initiative (ESPRI)

HSC commends the Governor for his commitment to reducing poverty by creating opportunities across the State. The $25 million ESPRI targets much-needed funding and programming at the following cities: Syracuse, Binghamton, Oneonta, Buffalo, Utica, Elmira, Jamestown, Oswego, Troy, and Albany. Modeled after the state's Rochester Anti-Poverty Task Force, this proposal consists of $5 million in operating aid (in the form of $500,000 planning and implementation grants) and a pool of $20 million in capital funding to help ten high-poverty upstate communities to create and implement comprehensive plans to reduce poverty. The ESPRI will leverage community-nonprofit relationships to assess need, align resources with proven interventions, and develop a continuum of services.

Supplemental Nutrition Assistance Program (SNAP)

Another important proposal that will improve the lives of many New Yorkers is the expansion of SNAP eligibility. Governor Cuomo proposes to raise the eligibility threshold, known as the Gross Income Test level, from 130 percent to 150 percent of the poverty level for all households with earned income. This modification is expected to extend eligibility to an estimated 750,000 households currently not participating in SNAP and deliver an estimated $688.5 million in additional federal SNAP benefits to New Yorkers, without any increase in state or county costs. This is particularly important in light of the potential increase in the minimum wage, which will result in increased household incomes making some families ineligible.

Conclusion

We hope that the Legislature will recognize the integral role that nonprofit human services providers play in making the State more livable for all New Yorkers. The ongoing NICIP implementation, the statewide minimum wage conversation, the recent New York City minimum wage victory, and the fiscal health of the State are encouraging signs that we can adopt smarter policies and funding for critical social services programs. We look forward to working with the Legislature during this legislative session to ensure smart, equitable investment in this important sector for the benefit of all New Yorkers.

Thank you for the opportunity to testify.

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