HCP | NYS Association of Health Care Providers
Representing Home & Community-Based Care

Claudia J. Hammar
President

20 Corporate Wood Blvd.
2nd Floor
Albany, NY 12211
hcp@nyshcp.org
(P) 518.463.1118
(F) 518.463.1606
www.nyshcp.org

Testimony of the New York State Association of Health Care Providers, Inc.

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FY 2017-18 Executive Budget Proposal on Health and Medicaid

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Good afternoon Senator Young, Assembly Member Farrell, distinguished members of the Senate Finance, Assembly Ways & Means, and Senate and Assembly Health and Aging Committees. My name is Claudia Hammar, President of the New York State Association of Health Care Providers, Inc. (HCP). HCP is a trade association representing approximately 350 offices of licensed home care services agencies (LHCSAs), certified home health agencies (CHHAs), and health related organizations throughout New York State. With me today is Laura Haight, HCP's Vice President for Public Policy.

On behalf of HCP's Board of Directors and its members across the State, thank you for your support of New York's home care industry. HCP appreciates this opportunity to testify on Governor Cuomo's FY 2017-18 Executive Budget Proposal and present the Association's Budget recommendations to the Legislature.

VALUE OF HOME CARE

Home and community-based care has been widely recognized as an important component for new models of health care delivery directed at achieving the State's triple aim of improving care, improving health, and reducing costs within the Medicaid system. Home care is the patient-preferred option that allows individuals to receive essential health care and personal care services so that they can continue to live independently in their communities.

Aging baby boomers are reaching age 65 in record numbers, and so the demand for home care services in New York State is expected to grow rapidly. Fortunately, New York has a broad network of home care providers that can deliver a wide range of health care and personal care services.

Most of HCP's members are LHCSAs that provide long term care services for disabled, chronically ill, and elderly New Yorkers. In addition, many serve as fiscal intermediaries (FIs) for the State's Consumer Directed Personal Assistance Services (CDPAS) program. Most of these services are reimbursed through the State Medicaid program. With more than 180,000 current enrollees, the long term care population is a rapidly growing sector of New York's Medicaid program.

Long term home care provides value to the State's Medicaid system by helping people remain in their homes and communities for as long as possible, instead of in more costly care settings. Home care workers are often the first to identify changes in a patient's condition that can be quickly addressed to keep the patient stabilized at home. Home care has already played a major role in achieving cost savings in the State's Medicaid program, and has the potential to provide even greater value with the proper investment in health care information technology and workforce development.

Over the past few years, home care providers have faced unprecedented challenges, with mounting labor costs, reimbursements that do not begin to cover agencies' real costs, and a rapidly changing regulatory environment. In particular, the minimum wage increase and recent changes to the Federal overtime payment requirements for home care workers have added more than $100 million in labor costs just in the past year, and these numbers will go up significantly as the minimum wage increases are phased in.

The Governor and Legislature recognized the financial impact of these changes and included funding in last year's State Budget to support these additional costs. However, home care providers have had extreme difficulty getting paid for these costs from Medicaid managed care plans. Stronger mechanisms are needed to ensure that funding intended to support the home care workforce is actually passed through to home care providers.

As a growing percentage of New Yorkers "age in place" in their homes and communities, long term home care will become increasingly important to support those with chronic conditions and functional limitations. Implementation of HCP's budget recommendations will help ensure that New York's elderly and frail citizens will continue to have access to high quality home care services.

MINIMUM WAGE FUNDING

HCP and its membership supported the minimum wage increases that were approved in last year's State Budget, and appreciate the continued commitment of the State Legislature and Governor Cuomo to include additional Medicaid funding in the State Budget to support the direct cost of the minimum wage increases for health care workers.

Since last summer, HCP has been working with officials at the New York State Department of Health (DOH), Division of Budget (DOB), and other stakeholders to identify the worker costs and develop guidelines for the implementation of the minimum wage funding included in last year's Budget for the initial phase of the increase.

The home care industry is by far the largest component of the health care sector impacted by the increase. Home care agencies in New York employ more than 300,000 full and part-time home health aides and personal care assistants, who provide more than 300 million hours of care a year to chronically ill, disabled, and elderly citizens through the State's Medicaid program. Most of these workers are paid base wages at or near the minimum wage. Consequently, of the $44 million in State Medicaid funding appropriated for the minimum wage increase in FY 2016-17, $41.2 million went to home care workers.

The FY 2017-18 Executive Budget Proposal includes $255.4 million for increased minimum wage costs for health care workers that provide services reimbursed by Medicaid, of which $242.7 million is earmarked for home care/managed long term care (MLTC). DOB projects this will increase to $579 million in FY 2018-19, of which $555 is for home care. These projections are more than double DOB's initial forecasts, which had not factored in the Wage Parity law, and more closely align with home care industry projections for compliance with the minimum wage increase. While HCP continues to work with DOB and DOH to refine the State's cost projections, the current allocations in the Executive Budget Proposal appear adequate to meet the bare minimum cost of compliance with the State minimum wage mandates.

Implementation of the first year of minimum wage funding has been fraught with challenges. The Administration worked at an accelerated pace to ensure that this funding would be available to Medicaid managed care plans prior to December 31, 2016 so that providers could be reimbursed promptly for their additional labor costs, particularly in MLTC, where the impacts would be greatest. Despite multiple communications from DOH, however, many MLTC plans refused to follow DOH guidance for paying providers to meet their minimum wage obligations. In order to avoid potential disruptions in service delivery, DOH officials worked to address these contracting disputes right up through the end of December, but there are still unresolved issues regarding the implementation of the minimum wage funds that must be addressed in the future.

HCP Budget Recommendation:

HCP supports the $242.7 million in the Executive Budget Proposal to meet the increased cost of minimum wage compliance for Medicaid home care providers in FY 2017-18. In addition to providing adequate resources to support the minimum wage increase, the State must ensure that the funds intended for home care workers flow through to providers (see recommendations below).

ADEQUATE REIMBURSEMENT

Inadequate reimbursement for home care services provided under Medicaid managed care continues to threaten the long term viability of the home care industry.

Between 2015 and 2016, home care agencies saw their labor costs increase dramatically across the State, due to Statewide minimum wage increases, Wage Parity increases on Long Island and Westchester, Affordable Care Act health insurance requirements, and double digit increases in Workers' Compensation rates. In October 2015, changes in the Federal Fair Labor Standards Act (FLSA) rule went into effect that significantly increased overtime, travel and live-in costs, and triggered inclusion of home care workers in the State's Domestic Worker Bill of Rights law.

According to surveys of HCP provider members, two thirds reported that from 2015 to 2016, their managed care reimbursement rates stayed flat, and one third reported their rates had been cut, despite these escalating costs. Prevailing managed care reimbursement rates for personal care services in New York City in 2016 were between $18.50 and $19.00 an hour, well below what either DOH or HCP calculated to be the actual cost of providing such services. DOH estimated that the cost of providing an hour of aide services in 2016 in New York City, including mandatory wages, benefits, payroll taxes, overtime, and administrative and general costs (A&G) at $19.19. Assuming higher FLSA overtime and A&G costs, HCP calculated the actual cost of that hour was $20.36.

The State has recognized the precarious financial condition of the home care industry, and included additional funding in the MLTC plan rates to support the increased costs of compliance with the minimum wage, the FLSA overtime rule, and certain other wage and benefit mandates. However, much of this additional funding has been delayed or has never been passed through to home care agencies to pay their workers.

More than a third of HCP members surveyed reported that they never received the second half of the emergency pass through payments that DOH and CMS approved for the initial compliance with the FLSA rule, even though plans were instructed on multiple occasions that they were required to distribute these funds in their entirety ($45 million in total). From April 1, 2016 onward, additional funding for FLSA compliance has been included in managed care plans' rates, yet plans overwhelmingly have refused to pay providers for their FLSA costs. It is unclear what measures, if any, DOH can take to enforce its guidance concerning disbursement of these funds.

DOH tried a different approach with the Quality Incentive Vital Access Provider Pool (QIVAPP) Program, which allocated $70 million in FY 2014-15 and FY 2015-16 to reward agencies in New York City that offer expanded health benefits for their employees. While the funding was urgently needed, implementation of this program proved costly, time-consuming, and burdensome for DOH staff, home care providers, and MLTC plans alike, and the funding fell far short of provider needs.

HCP appreciates the significant effort undertaken over the past year by staff at DOH, DOB, and other agencies to help make these resources available to home care providers to meet their increased labor costs. Ultimately, however, the piecemeal approach taken by the State is not a sustainable solution to the problem. The State must require that Medicaid managed care plans reimburse their network providers for their cost of compliance with <u>all</u> State, Federal and local wage and benefit requirements, and provide actuarially sound rates to the plans to support such compliance.

HCP Budget Recommendation:

HCP urges the Senate and Assembly to include language in their respective Budget proposals that would require DOH to contract with an independent actuary to review the adequacy of current reimbursement rates provided in contracts or agreements between Medicaid managed care providers and home care agencies, as well as fiscal intermediaries in the CDPAS program, to determine whether the rates are adequate to meet the cost of compliance with all applicable State, Federal, and local wage and benefit laws. DOH would further be required to direct Medicaid managed care providers to establish adequate reimbursement rates in such contracts or agreements consistent with this review.

HOME CARE WORKFORCE RECRUITMENT AND RETENTION FUNDING

The FY 2017-18 Executive Budget Proposal continues funding for Home Care Recruitment and Retention (HR&R) with $272 million for the New York City Home Attendant Personal Care program and $22.4 million for the Upstate Personal Care program. This funding is consistent with levels of support in previous years' Budgets and is intended to be used solely for the purposes of recruitment, training and retention of non-supervisory home care services workers or other personnel with direct patient care responsibility.

While the Executive Budget Proposal includes funding to assist with recruitment and retention issues, there is little or no oversight in how the managed care plans disburse these funds.

Under fee-for-service Medicaid contracts, home care agencies received a separate line item in their remittances for their HR&R funds. However, in Medicaid managed care, there is no transparency regarding how the HR&R funds are used once they have been disbursed to the plans. Providers are not informed how much HR&R funding, if any, is being distributed to them, or what methods the plans used in determining their allocation. Plans are not required to submit records of their HR&R funding allocations to DOH or to notify their contracted providers. While some plans have stated that the HR&R funds are embedded in their contracted rates, HCP members have not seen increases in their rates as a result.

The HR&R funds are crucial in helping home care providers address the tremendous challenges they face in recruiting, training, and retaining qualified workers. Home care workers perform difficult jobs, under challenging conditions, at salaries that are at or near minimum wage. In areas where the labor pool is limited, or where the cost of living is high, home care agencies must offer competitive salaries that are higher than minimum wage in order to recruit qualified staff. Additionally, many agencies have had to hire more workers to control overtime costs, which has increased expenses for recruiting, screening and training of additional workers to fill existing service needs. Future trends indicate that as demand for home care workers continues to grow, these recruitment and retention challenges will increase.

Further investment in home care workforce training will also be essential for home care to fulfill its critical role in delivering value-based care. New and collaborative models of care delivery will require home care workers to be trained in new areas, such as the use of technology to collect and transmit clinical data on clients. In addition, HR&R funding can support training and investment in career pathways such as the Advanced Home Health Aide designation that the Governor and Legislature enacted last year.

HCP Budget Recommendation:

HCP supports continuation of the HR&R funding in the FY 2017-18 Budget with $272 million for the New York City Home Attendant Personal Care program and $22.4 million for the Upstate Personal Care program, together with program reforms to ensure greater transparency and accountability. Specifically, HCP urges the Senate and Assembly to include language in their respective Budget proposals that would require managed care plans to distribute the HR&R funds in their entirety, using a reasonable methodology, and to report how the funds were distributed to the DOH. HR&R payments to home care agencies must supplement reimbursement rates, and plans should be required to provide written notification to their network providers indicating the amount of HR&R funds they receive and the purposes for which the funding can be used.

HEALTH CARE TRANSFORMATION FUNDING

The 2017-18 Executive Budget Proposal establishes a new Health Care Facility Transformation Program with $500 million in funding for capital and non-capital projects, of which at least $30 million would be made available to home and community-based care providers.

According to the DOB, this investment will bring the total amount of capital support provided to health care providers for transformation efforts to $3.3 billion since the FY 2014 enacted Budget. Last year was the first time that home care agencies were eligible to apply for the Health Care Transformation funding, but the funding was limited to capital projects that did not fit the needs of most home care providers. Agencies that did apply have not yet been notified whether they will receive awards. The proposed changes to the program in this year's Executive Budget would make this funding available for a much broader range of projects, including investments in health care information technology (HIT), which is a high priority for home care.

Investments in HIT are critically needed in order to participate in performing provider systems (PPSs) through the Delivery System Reform Incentive Payment Program, regional health information organizations (RHIOs), and other integrative care models. Home care agencies must have resources not just for hardware and installation, including tablets or smart phones for home care workers, but also for software development, technical assistance, workforce training, and data consultants. Resources are also needed to support transformations underway within New York's home care industry, which in recent years has seen a marked increase in mergers, consolidations, acquisitions, and efficiencies gained through shared services.

Home care providers have tremendous potential to deliver dynamic cost savings to the State's health care system through their hands-on care of clients in their homes and communities. Early interventions in the home can yield significant savings in avoiding preventable hospitalizations, emergency room visits, and other complications. In an effort to support reduced hospitalizations, as well as increase quality care within home and community based settings, access to new health information technologies and other innovations is imperative.

HCP Budget Recommendation:

HCP supports the $500 million Health Care Facility Transformation Program in the FY 2017-18 Executive Budget Proposal, and requests that at least $100 million of this funding is earmarked for home and community-based care providers to support health care IT and other purposes.

OTHER BUDGET RECOMMENDATIONS

HCP's Budget recommendations listed above would go a long way toward stabilizing the home care industry and positioning it to play an essential role in the evolving health care delivery system without requiring additional State funding. In addition, HCP offers the following comments on the FY 2017-18 Executive Budget Proposal:

Health Care Modernization Team

The Governor proposes to create a 25-member Health Care Regulation Modernization Team and stakeholder engagement process to make recommendations for "a fundamental restructuring of the statutes, policies and regulations that govern the licensure and oversight of health care facilities and home care to better align with recent and ongoing changes in the health care delivery system."

HCP strongly supports the need to modernize and align home care regulations, and has participated in numerous stakeholder processes to advance regulatory reforms. However, the Governor's proposal would bypass the legislative process by authorizing DOH, OMH and OASAS to implement pilot programs that are not permissible under current statute or regulation. The Legislature has worked for years to strike a balance in engaging stakeholders and the public in the development of State health legislation, most recently in the creation of the Advanced Home Health Aide designation last spring, which ultimately garnered broad stakeholder support.

HCP has concerns about the expansive authority given to the Executive in this proposal, the scope of the Modernization Team's responsibilities, and the unrealistic timeframe for meaningful stakeholder engagement.

Workers' Compensation Reform

HCP urges the Legislature and the Executive to advance measures to reduce Workers' Compensation costs for employers, while still maintaining essential protections for workers injured on the job. The home care industry in New York has experienced a whopping 141% increase in Workers' Compensation Insurance rates for home care aides since 2009, and an even higher increase (188%) for nurses and other home care professionals. Loss cost rates for home care workers in New York are among the highest for any industry.

Most home care agencies have taken steps to lower their modifiers by implementing workplace safety training programs and protocols, and many have enrolled in the State's Workplace Safety and Loss Incentive Program to obtain a discount on their rates. Nevertheless, home care agencies Workers' Compensation costs, on average, range from 7-10% of base wages, which is a significant cost factor to employers and to the Medicaid system.

HCP supports including language in the State Budget to modernize the Scheduled Loss of Use (SLU) awards impairment guidelines to reflect 21st century work conditions and health care treatment options. HCP also urges the Legislature to advance the Workers' Compensation reforms that were initiated in 2007 but never completed, particularly closing the loophole in the Permanent Partial Disability (PPD) durational cap.

Plan Insolvency

As the State transitions to Medicaid managed care, the State must establish stronger protections for consumers and providers from health insurance plan insolvency. HCP urges the Legislature and the Executive to advance measures to protect health care providers when Medicaid managed care organizations (MCOs) cannot reimburse their claims due to financial impairment or insolvency, such as through the creation of a health insurance guaranty fund.

CONCLUSION

In conclusion, HCP's recommendations for this year's State Budget will strengthen the financial viability of the home care industry, support investments in the home care workforce and, above all, ensure consumer access and continuity of quality home care services.

Now is the time to invest in home care to meet the growing demands of an aging population and to help hold the line on health care spending. The Legislature's support and action is critical to ensure the State does not further destabilize an industry undergoing massive system changes.

Thank you for this opportunity to comment on the Executive Budget proposal for FY 2017-18. HCP looks forward to continue working with the State Legislature and the Governor to address the critical needs of the home care industry and ensure that families across New York will continue to have access to high quality home care services for their loved ones.