

1199SEIU United Healthcare Workers East
Testimony to Joint Legislative Hearing on Health/Medicaid
February 12th, 2018

Thank you for the opportunity to testify today.

We have spent much of the last year organizing in New York and around the country against the devastating healthcare proposals coming out of Washington, which have posed a severe threat to healthcare funding and access to quality healthcare in our state. While the worst of these – including attempts to slash trillions of dollars in Medicaid spending – have not yet come to pass, real damage has been done and storm clouds remain on the horizon.

Even with the passage of the budget deal last week, which postponed severe cuts to the Medicaid Disproportionate Share Hospital assistance and finally funded Federally-Qualified Health Centers for two years, we have lost the Affordable Care Act's cost-sharing reduction payments and sustained \$700 million in Medicare cuts to New York State institutions. The CSR payments, as you know, provide \$870 million in funding for our State's Essential Health Plan.

These and other actions threaten to reverse the real progress our state has made in expanding access to healthcare under the Affordable Care Act, reducing the uninsured rate from over 10% to 5%. And they come on top of another, more hidden, crisis. The increases in Medicaid spending over the last ten years have paid for increases in enrollment and, more recently, a desperately-needed investment to stabilize the home care workforce and lift workers out of grinding poverty. They have not paid for rate increases for hospitals and nursing homes, and the cracks are starting to show. The more an institution relies on public payors, the larger of a structural deficit they have. That's why we have 28 hospitals on the watch list and an alarming raft of sales and lowering of staffing standards in nursing homes. Our union sees the effects of this problem often, with calls from employers worried they cannot make payroll or will be forced to cut off health benefits for employees.

We recognize that part of the solution is the long-term transformation of the healthcare delivery system into one that is more focused on preventive, community-based care. The Governor and the Legislature have provided needed capital investment in this system reform, building on the resources available through the Federal DSRIP waiver. But we cannot make the mistake of starving the providers that will remain of needed resources without risking the access to quality care that New Yorkers depend on. This structural deficit is doing just that.

We believe the Executive Budget proposal is a strong start towards addressing both the Federal threat and the underlying crisis. It recognizes that even if we were to prevail in Congress and win an appropriation of funding for CSRs, we are too far into the 2018 plan year to see changes until next year. We support the actions the proposal takes to preserve benefits for the 750,000 New Yorkers who depend on the Essential Plan. We also support the creation of the Healthcare Stabilization Fund to

manage future Federal threats as well as provide for needed Medicaid rate increases. The for-profit insurance industry is indeed seeing a windfall from the Congressional corporate tax cuts and the postponement of the ACA's insurance taxes, and it makes sense to recapture a portion of those resources to prevent New Yorkers from losing access to healthcare. We also support the recapture of some of the almost \$4 billion in proceeds of the sale of a large not-for-profit Medicaid plan to a for-profit company. The value of this company was created by public investment and a portion of the proceeds should remain in the public domain.

We strongly encourage the Legislature to add to the resources for the Health Care Stabilization Fund so that at least \$1.5 billion is available. This would be sufficient to guard against additional cuts in federal resources as well as to raise rates enough to reduce the structural deficits at the providers serving the neediest populations.

We would also like to offer testimony regarding the long-term care initiatives in the Executive Budget proposal. Our union supported the move to care management for all as part of the 2011 Medicaid Redesign Team. As envisioned, it had the potential to improve quality for consumers through greater coordination of services and more accountability for outcomes. In order to achieve this higher quality for dually-eligible Medicaid and Medicare recipients, however, care must be managed in both of those programs. Otherwise, Medicaid-only long term care plans do not have the ability to realize savings by keeping people healthier and avoiding unnecessary hospitalizations. Their major opportunities to manage cost are by driving down reimbursement to providers or reducing utilization, actions which are more likely to reduce, rather than improve, quality. The potential savings from keeping people at home rather than in nursing homes has been lowered – properly in our view – by increased wages and a correction to the unsustainable and unjustly low rates of reimbursement in home care. Of course, the other way plans can pursue increased margins is by enrolling low-need and low-cost individuals, but it is hard to see why it would be preferable to pay a plan a full month's capitation for these individuals rather than just paying significantly less for the services that they actually need.

Following the failure of New York's Fully Integrated Duals Advantage fully-capitated Medicare and Medicaid program, the Governor's budget proposal implicitly acknowledges the limitations of partially-capitated Medicaid plans. It makes sense – and realizes significant savings – for Medicaid to reimburse providers directly for services for both low-need community members and stable long-term nursing home residents rather than paying plans a premium for what amounts to very little “coordination”.

The Governor's budget also includes several proposals aimed at addressing the plethora of bad actors in the licensed home care services industry. The sheer number of licensed agencies, many of which operate as labor contractors with minimal infrastructure, make them difficult to police. Surveys of home care employers have consistently found significant labor law violations,¹ and an audit of agencies who signed affirmations that they provided a required level of health care benefits to qualify for a

¹ Annette Bernhardt,, Diana Polson and James DeFilippis, Working Without Laws: A Survey of Employment and Labor Law Violations in New York City (National Employment Law Project, 2008), available at <http://www.nelp.org/content/uploads/2015/03/WorkingWithoutLawsNYC.pdf>.

quality payment subsequently found a number who had falsely attested. Law-abiding home care agencies – like those that have committed through their 1199SEIU contracts to provide comprehensive health and education benefits -- complain frequently about unfair competition from those who are not paying statutorily required wages and benefits.

Requiring plans to contract with fewer providers will not only level the playing field and allow for proper enforcement of existing laws, it will allow providers to achieve the economies of scale necessary to run comprehensive value-based payment and quality improvement programs. It can be done with minimal disruption to the vital aide-client relationship if aides stay with their clients as the case transitions to a new provider, as happened when the New York City Human Resources Administration would rebid its provider contracts. While we strongly support consolidation of Medicaid home care providers, this proposal must be carefully implemented to ensure quality standards are enforced and that there are sufficient providers to meet specialty needs. The number of needed providers may vary by region. Finally, prohibiting provider marketing and restricting referring providers from providing services will assist in ensuring that providers are not being rewarded for generating business for plans rather than for providing quality services.

We are pleased that the Executive has recognized the need for a course correction in our state's Medicaid long-term care program and strongly support the goal of these initiatives. The savings realized will help fund necessary investments, including the increased reimbursement providers need to pay the rising minimum wage.

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