LeadingAge™ New York

2017-18 Health/Medicaid Testimony

Provided by

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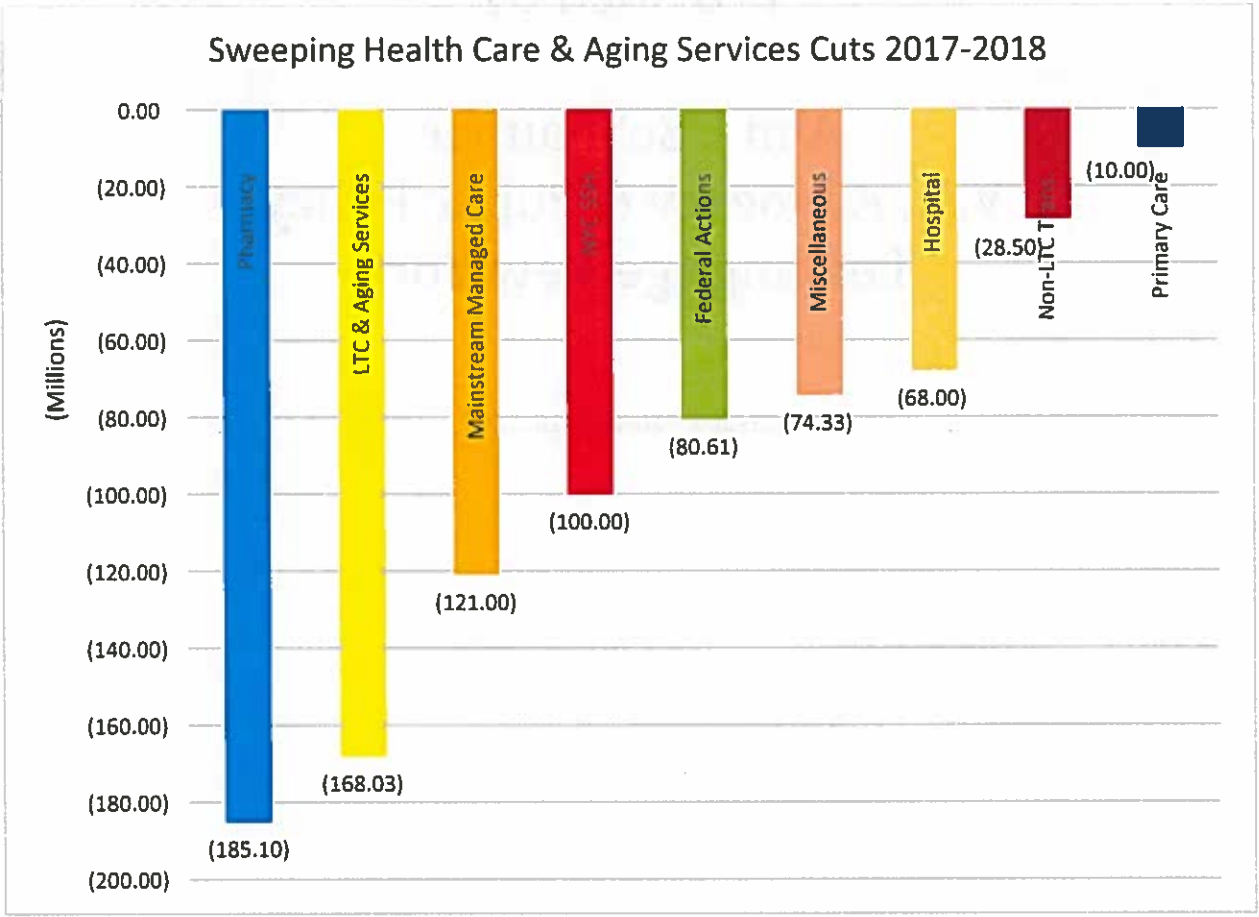
Introduction

On behalf of the membership of LeadingAge New York, thank you for the opportunity to testify on the health, aging and Medicaid aspects of the SFY 2017-18 Executive Budget. LeadingAge NY represents over 400 not-for-profit and public providers of long term and post-acute care (LTPAC), aging services, and senior housing, as well as provider-sponsored managed long term care (MLTC) plans. This testimony addresses the Executive Budget proposals that apply across the continuum of LTPAC, aging, and MLTC services, as well as those that would affect specific types of providers and managed care plans.

LTPAC providers and the people they care for continue to be left behind in many of the reforms and investments that are being provided by the State. Unfortunately, at a time when our over age 65 population is expanding and consumers are already facing gaps in care and services, this year's Budget provides no investments for LTPAC and in fact makes this sector shoulder a disproportionate share of the proposed cuts. These cuts are on top of hundreds of millions of dollars in funding reductions from new and continuing LTPAC cuts over the past several years, as well as new fiscal and operational pressures occasioned by upheaval in Medicaid reimbursement methodologies, home care wage mandates, and the implementation of mandatory managed care enrollment for Medicaid beneficiaries receiving long term care services.



Further, we are disappointed that LTPAC and senior services providers have failed to receive the necessary investments through the State's Delivery System Reform Incentive Payment (DSRIP) program.

Through DSRIP – in which the Department of Health, with federal support, is investing $6.42 billion over five years – providers across the continuum of care and managed care plans are directed to create collaborations in which they share clinical information electronically and enter into value-based payment arrangements with shared risk. LTPAC providers are expected to participate in this health care transformation, implementing innovative models of care and payment and developing the physical, technical, and administrative infrastructure to do so. However, the vast majority of funds made available through DSRIP and other State and federal infrastructure programs have continued to fund acute and primary care providers. Further, although the State's policies assume that people with complex health and long term care needs can be served in community-based settings, it has invested very little money in affordable senior housing with supportive services tailored to the unique needs of seniors.

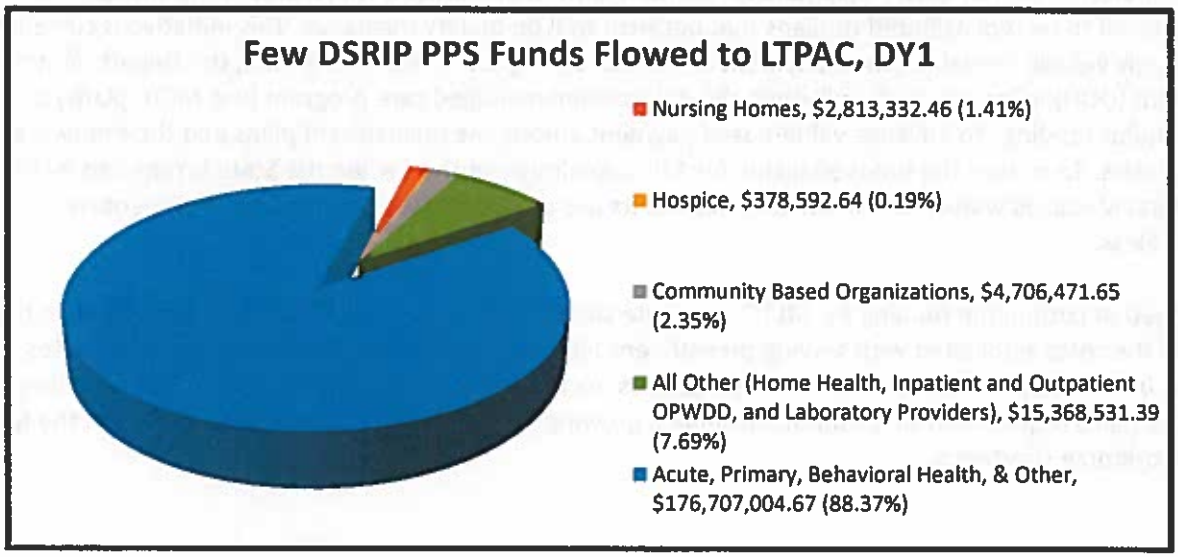
Given this lack of support for services and housing for seniors, we are concerned about the State's readiness to address the needs of aging Baby Boomers. We urge the State to recognize the important role played by aging service providers that furnish long term and post-acute care and social supports to high-risk populations. Investment in these services is essential to the success of efforts to reduce avoidable hospitalizations and ensure better health and better care at a lower overall cost.

I) Cross-Continuum Initiatives

a) Meeting LTPAC Infrastructure Needs

LTPAC providers are in dire need of infrastructure funding to upgrade aging physical plants, rightsize/restructure existing services, add new services, deploy electronic health records and engage in health information exchange, and adopt telehealth and data and analytics platforms, in order to be able to meaningfully participate in DSRIP, managed care initiatives, and value-based payment. In spite of these compelling needs, LTPAC providers have not received State financial support for the critical infrastructure necessary to survive in today's changing delivery system. Funding opportunities available through State grants, DSRIP, and federal meaningful use incentives have overwhelmingly been aimed at acute and primary care providers and sometimes explicitly exclude LTPAC providers.

Our review of the DSRIP performing provider system (PPS) funds flow distributions shows that of the $200 million flowed during DSRIP Year 1, only about 5% went to the LTPAC sector.



Recommendation: *Allocate $200 million of the Governor's $500 million Statewide Health Care Transformation Program funding for LTPAC infrastructure, including health IT and health information exchange, telehealth, assisted living program expansion, and a nursing home renovation and reconfiguration program aimed at upgrading the State's outdated infrastructure and improving quality of life for residents. Furthermore, include language to ensure that the funding is available to all LTPAC providers, including assisted living programs and hospices, who have been left out of the Governor's proposal.*

b) Managed Long Term Care

The future of New York's LTPAC delivery system rests largely on managed care and its promise of "care management for all." This promise has been realized through the comprehensive, high-touch care management approach offered by New York's Managed Long Term Care program, which includes the partially-capitated Managed Long Term Care Plans and the integrated Medicare/Medicaid PACE, FIDA, and Medicaid Advantage Plus (MAP) plans (collectively MLTC plans for purposes of this testimony).

With managed care enrollment of long term care beneficiaries mandated statewide, and approximately 190,000 Medicaid long term care beneficiaries already enrolled in various types of MLTC plans, the overwhelming majority of Medicaid revenue payable to long term care providers is derived from reimbursement by MLTC and other Medicaid managed care plans. To ensure beneficiary access to high-quality services and promote the fiscal health of both providers and plans, MLTC rates must be adequate to cover the costs of delivering services.

We are concerned about the impact on providers and consumers of the Executive Budget's proposed $51.45 million in cuts to the MLTC program. Past and newly proposed cuts are leaving MLTC plan premiums inadequate and putting plans, providers, and frail elderly New Yorkers and people with disabilities at risk. With the enrollment of nursing home residents in MLTC plans, the expansion of benefits, and new wage mandates, the costs of care have outpaced MLTC premium revenue. Specifically, MLTC premiums fail to cover the costs associated with the growing numbers of nursing home residents they serve.

It is particularly surprising and illogical for the Governor to propose cutting the quality incentive funds distributed to MLTC plans. These funds are withheld from already low MLTC premiums and are supposed to be redistributed to plans that perform well on quality measures. This initiative is currently the only vehicle for value-based payment in the MLTC program. At the same time, the Department of Health (DOH) is investing $85 million in the *mainstream* managed care program (not MLTC plans) as "stimulus funding" to advance value-based payment among the mainstream plans and their network providers. To reduce the funds available for MLTC quality incentives when the State is required by its federal Medicaid waiver to dramatically expand its use of value-based payment arrangements is senseless.

Instead of cutting the funding for MLTC, the State should add funds to MLTC rates in order to align them with the costs associated with serving recently-enrolled populations, implementing wage mandates, new benefits, and a steady stream of new policies. As the primary payers for long term care services, MLTC plans require new investments to serve a growing number of frail elderly New Yorkers in the face of workforce shortages.

Recommendation: *We ask that the Legislature: (1) restore $51.45 million to the MLTC program; (2) enact legislation to ensure that all quality pool funds withheld from plan premiums are re-distributed; (3) enact legislation directing DOH to create a nursing home rate cell to reduce the financial uncertainty associated with growing MLTC enrollment of nursing home residents; and (4) require DOH to meet specified financial review criteria related to plan financial health prior to adopting any new administrative reductions in MLTC funding.*

c) Transportation Carve-Out

LeadingAge NY is concerned with the Executive Budget proposal to carve transportation services out of the MLTC benefit package and rates of payment to adult day health care (ADHC) programs. Many plans and providers have invested in their own vehicles to deliver transportation services, and others have long-standing contracts with high-quality transportation providers. They are able to deliver personally-tailored transportation to the frail elderly and disabled individuals whom they serve. These services may include a driver shoveling snow from the beneficiary's walk to ensure a safe passage from door-to-door or carefully timing a route to drop off a beneficiary when an informal caregiver is available to receive him/her. The State's contractors are often unable to deliver the same level of service, resulting in lengthy waits, stranded clients, and missed medical appointments.

Recommendation: *Preserve the ability of MLTC plans and ADHC programs to manage transportation services for the Medicaid beneficiaries they serve by rejecting this proposal and restoring the associated funding.*

II) Nursing Home Services

a) Bed Hold Payments

This year's Executive Budget would eliminate Medicaid payments to nursing homes to hold beds for Medicaid residents who are temporarily hospitalized, go home to visit their families, or receive therapeutic interventions. Bed hold promotes quality of life, since it guarantees that the resident will return to his/her same room following a short absence. Even though a nursing home's costs do not decrease when a bed is vacant, Medicaid pays only half of the daily rate to reserve a bed for a resident who is hospitalized and 95 percent of the rate for a therapeutic leave. This proposal would reduce funding for nursing home care by $22 million per year, and continue a previous $18 million bed hold cut. In 2014, 58% of not-for-profit and 92% of public nursing homes lost money on operations. These facilities simply cannot sustain further funding cuts.

Recommendation: *Restore bed hold payments.*

b) MLTC Rate Cell

Additionally, adult Medicaid beneficiaries who are newly admitted for long term care in a nursing home and are Medicare-eligible are required to join a Managed Long Term Care (MLTC) plan. Faced with inadequate payments for the nursing home benefit and growing numbers of nursing home enrollees, MLTC plans are experiencing mounting financial pressures. Unable to limit the duration of nursing home benefits or reduce the rate they pay to facilities, some MLTC plans have reduced their provider networks, and are under pressure to select network providers simply on price rather than quality or

consumer preference. This will, in turn, adversely affect enrollee choice, nursing home revenues, and cash flow.

***Recommendation:** Ensure MLTC plans are paid based on a separate, adequate rate cell for nursing home enrollees.*

c) Nursing Home Transformation

There is also excess nursing home bed capacity in several areas of the state, many facilities need capital upgrades, and new services and delivery models are needed. Additional incentives are needed for nursing homes interested in decommissioning beds, and to allow more facilities to offer restorative care units (RCU) to minimize avoidable hospital use. Dedicated funding is needed to modernize nursing home facilities and enhance resident quality of care and quality of life.

***Recommendation:** Modify the current nursing home rightsizing law, broaden the RCU law, and set aside grant funding for nursing homes through the proposed Statewide Health Care Facility Transformation Program.*

d) Staffing Ratios

'Lastly, the Legislature is currently considering legislation, A.1532 (Gunther)/S.3330 (Hannon), that would create specific staffing ratios for nurses and other direct-care staff in nursing homes and hospitals. Academic research on the subject has not concluded that high staffing levels produce higher quality of care or quality of life. In fact, the only outcome of this legislation will be higher Medicaid costs and less quality of life programming for nursing home residents. The staffing standards proposed in this legislation would conservatively cost an estimated $1.06 billion annually to implement in nursing homes.

***Recommendation:** Reject proposed staffing ratios legislation.*

III) <u>Hospice Services</u>

The Governor's proposed $4.4 million cut to hospice service is especially perplexing. Hospice utilization in New York is already well below the national average – we have a 40% lower utilization rate and use 53% fewer Medicare hospice days than the national average.[1] Moreover, it is well-documented that hospice provides a better experience of care for patients and their family members and translates into cost savings through reductions in unwanted care.[2] DOH has been unable to explain the nature of this cut to us other than by stating that it requires hospice programs to bill Medicare first. As this is already required by law, we remain uncertain of the source of this savings and how the cut will be implemented. We urge you to reject any proposed cut that would further discourage hospice use.

***Recommendation:** Reject this proposal and restore the associated funding.*

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[1] National Center for Health Statistics, Health Indicators Warehouse, Hospice Report 2013.

[2] Kelley, et al., "Hospice Enrollment Saves Money For Medicare And Improves Care Quality Across A Number Of Different Lengths-Of-Stay," *Health Affairs,* Mar. 2013.

IV) Home and Community-based Services (HCBS)

Home and community-based services are vitally important in supporting frail elderly New Yorkers to remain in their homes and communities for as long as possible. Unfortunately, home care agencies continue to struggle with an untenable level of operational uncertainty as they experience the effects of mandatory MLTC enrollment of many of their patients and unfunded wage mandates. In addition, across-the-board cuts, provider taxes, elimination of inflation adjustments, and unfunded mandates, which would be continued from previous budgets, are exacerbating the operational and financial uncertainty facing many of the State's HCBS providers.

a) Adequate and Timely Reimbursement for Home Care Providers

Medicaid rates paid to managed care plans must be adequate to allow plans to, in turn, pay home care providers adequate rates to cover the costs of providing quality patient care, employee benefit expenses, and operating and administrative costs. The insufficiency of Managed Long Term Care (MLTC) rates has threatened the viability of providers, many of whom rely on plans for the majority of their revenue. Rate updates need to be timely to ensure providers are not waiting to be reimbursed for monies they have expended.

Recommendation: *The Legislature should restore the Governor's proposed $51 million in cuts to the MLTC program, and ensure plans have updated rates to provide needed reimbursement to home care providers.*

b) Nursing Home Transition and Diversion (NHTD) Medicaid Waiver Housing Subsidy

The Executive Budget Proposal moves the Nursing Home Transition and Diversion (NHTD) Housing Subsidy program to the "Health Outcomes and Advocacy" pool of programs, with aggregate funding reduced by 20 percent. The subsidy supports waiver participants to remain in the community for as long as possible with safe, affordable housing. If the housing subsidy were reduced, waiver participants would be at greater risk of nursing home placement.

Recommendation: *Restore the NHTD Housing Subsidy as discrete line item and restore the $2.4 million in funding.*

c) TBI/NHTD Carve-Out of Medicaid Managed Care

A.2442 (Gottfried)/S.1870 (Hannon) would allow individuals with traumatic brain injuries (TBI) or who qualify for nursing home transition and diversion (NHTD) Medicaid waiver services to continue to receive such services outside of managed care programs. There are no cost savings associated with moving TBI/NHTD into managed care. Given the significant programmatic changes absorbed by Medicaid Managed Care and Managed Long Term Care plans in recent years, the interests of all stakeholders would be best served by focusing on current populations and benefits.

Recommendation: *Support this legislation.*

d) Workforce Recruitment and Retention

LTPAC providers are experiencing workforce shortages that have led to thousands of authorized home care hours going unfilled, and ongoing recruitment and retention issues across the long term care continuum. These shortages have resulted in long waiting lists for community-based services, increases in emergency room (ER) visits and hospitalizations, and reliance on overtime and staffing agencies. The Legislature should ensure that the DSRIP workforce funding is distributed to LTPAC providers in need, that other available workforce recruitment and retention funds are made available for LTPAC services, and that a comprehensive plan is developed to meet the demand for LTPAC services.

Recommendation: *Increase the Workforce Recruitment and Retention funding and develop a comprehensive plan across the long term care continuum to meet the demand for long term care services and supports for elders.*

e) Community Services for the Elderly (CSE)

The proposed budget continues a $1 million increase for the Community Services for the Elderly (CSE) program, removes the 25 percent county share exemption, and consolidates transportation funding within the CSE program. Removal of the 25 percent waiver is a cost shift to local governments, who are already constrained under the property tax cap. This could result in the inability to accept the additional CSE dollars that were enacted over the past few years and result in fewer older New Yorkers receiving vital services. Further, moving the $1.1 million from the transportation line to the CSE line now subjects all of that funding to the local match, putting these critical services in jeopardy. There are already over 15,000 older adults statewide on waiting lists for critical community-based aging services. $24 million is needed to meet the demand for these critical services,

Recommendation: *Provide $24 million for CSE and reinstate the 25% county share exemption.*

f) Title XX Funding for Seniors

New York State receives $98 million in annual Federal Title XX funding that is allocated to counties. Of this amount, $66 million is set aside for Adult Protective and Domestic Violence Services, $5 million supports training activities for county and State staff, and $27 million is for all other services, which counties can use at their discretion to fund certain services. The budget would require the $27 million for all other services to be used to support Child Care subsidy costs, enabling the State to maintain the current level of child care subsidies while reducing General Fund costs for the program. Federal Title XX funds have been used to support senior centers for decades. These centers provide vital nutrition, socialization, and health promotion activities to seniors.

Recommendation: *Protect the Title XX funding for senior centers.*

V) Adult Care Facilities and the Assisted Living Program

Adult Care Facilities (ACFs) and Assisted Living provide an option for seniors who can't remain in their own home, but do not need the continual skilled nursing services of a nursing home. These services are cheaper than nursing home care, and have a more 'home like' environment than a nursing home. Such options are thus becoming increasingly important in the context of state and federal priorities as well as consumer preferences.

ACFs and Assisted Living facilities that serve low income individuals are struggling in the face of rising costs and increasing responsibilities. They serve a critical function, and if these facilities close or can't afford to continue to serve Medicaid-eligible seniors, we will see an increase in unnecessary nursing home placement, with a significant cost to the State. We urge the legislature to provide more support to these facilities to ensure their viability in the years to come.

a) SSI Increase

We are extremely disappointed that the Executive Budget Proposal failed to include an increase in the State portion of the Congregate Care Level 3 Supplemental Security Income (SSI) rate. The SSI rate of approximately $41 per day falls far short of what it costs to provide the services that ACFs are, by regulation, required to provide. We conducted a cost analysis of facilities that serve predominantly the low income population, and the average cost—based on 2013 data –was approximately $69 per day. It is important to note that the 2013 data does not take into account the impact of minimum wage, and these facilities did not receive any funding to help implement that mandate. Thus, these facilities on average experience a $30 per day shortfall daily for each SSI recipient they serve. The State has not increased the SSI rate in *nine years*.

Some of our not-for-profit ACF members are having difficult discussions with their boards now about *whether or not to close this year*. One facility began the closure process until some community entities helped to keep them operational, but this is a short-term solution. The consistent financial loss, year after year, is unsustainable. It is critical that the Legislature understand that if the State fails to take action this year, facilities will close and low income seniors will be displaced. Because these seniors are Medicaid-eligible and can't live in their own home, most will go to nursing homes at greater cost to the State. Clearly, this makes no financial sense-but it doesn't make for good policy, either. All State and Federal initiatives point to keeping people in the lowest level of care possible. The decision not to increase SSI is also incongruous with the direction that the system as a whole is moving. But most of all, it's not fair to the 13,000 New Yorkers who rely on SSI to pay for the services they receive in ACFs and assisted living.

Recommendation: *To support ACF and assisted living facilities to serve low income seniors in the most integrated setting possible, we recommend an increase of at least $20 per day in the State's Supplemental Security Income (SSI) Congregate Care Level 3 rate.*

b) Enriched Housing Subsidy

We are very concerned about the budget proposal to move the Enriched Housing Subsidy program to the "Health Outcomes and Advocacy" pool of programs, with aggregate funding reduced by 20 percent. The subsidy supports low income individuals to remain in as independent a setting as possible, and these enriched housing programs are struggling financially. Cuts to the program over the years have made the subsidy to each provider shrink over the years, and this proposal chips away at it further. If the programs close, these Medicaid-eligible residents are at risk of nursing home placement.

Recommendation: *Restore the Enriched Housing Subsidy as discrete line item, funded at last year's level of $475,000.*

c) Enhancing the Quality of Adult Living (EQUAL)

We appreciate that the Executive Budget Proposal maintains level funding for the Enhancing the Quality of Adult Living (EQUAL) quality program for ACFs at $6.5 million. EQUAL supports quality of life initiatives for residents of ACFs that serve SSI recipients; as discussed above, these ACFs operate incur daily losses.

Recommendation: *We urge the Legislature to support the Governor's proposal to include EQUAL funding at $6.5 million.*

d) ALP Expansion

The Assisted Living Program (ALP), which is the only Medicaid assisted living option in the state, is an alternative to a nursing home for lower-acuity seniors. The ALP Medicaid rate is approximately half the cost of a nursing home. This cost-saving program should be expanded to allow eligible applicants that can demonstrate need to develop ALP beds, as opposed to the recent competitive processes. In addition, existing ALPs should be able to expand their programs by nine or fewer beds through an expedited process. Developing greater capacity will help the system to better respond to the growing consumer demand for these services, while saving money.

Recommendation: *Include language in the budget to expand the ALP by allowing a need-based application process, and allow existing ALPs to expand by nine or fewer beds through an expedited process.*

e) Capital Funding for ALPs

ALPs, like many other Medicaid providers, are struggling financially and need financial support to address infrastructure and workforce needs. In addition, if ALPs could access capital funds to update their environment to better serve people with Alzheimer's and other dementias, this could save Medicaid dollars by preventing nursing home placement. Allowing ALPs access to the Health Care Facility Transformation Program and Vital Access Provider (VAP) program are ways in which the ALP can remain financially viable and better serve Medicaid-eligible seniors, at *no new cost* to the State.

Recommendation: *Include language from A.1612 (Magnarelli) and A.1650 (Magnarelli) in the final budget, to enable ALPs to be eligible applicants for the Health Care Facility Transformation Program and Vital Access Provider funding programs.*

VI) Affordable Senior Housing and Services

Providing low income seniors with access to affordable housing with support services can have a significant impact on their ability to remain in the community and not have to move into institutions settings at significant cost to the State's Medicaid program.

We are very pleased that the proposed budget includes a five-year, $125 million capital appropriation for the construction and rehabilitation of senior housing. We ask that the Legislature support this proposed funding, but go a step further by creating a new Affordable Senior Housing and Services program. As part of this effort, we would like an additional $10 million to be appropriated from the

housing funding for the Senior Housing Resident Service Coordinator program, to be administered through the State Office for the Aging (SOFA).

Service coordinators in independent senior housing work with elderly residents to ensure that they have access to, and make appropriate use of, services that keep them healthy and independent. Service coordinators have proven to be very cost-effective investments because they help keep seniors focused on their health and wellness. A pilot program in Vermont demonstrated that seniors who live in a building with a resident service coordinator made substantially less use of Emergency Departments and were re-hospitalized 22% less frequently than their counterparts in similar housing without a coordinator.

Most importantly, service coordinators are our most effective method for avoiding premature entry into costly Medicaid-funded nursing homes. The annual cost of a nursing home can be $60,000 to $100,000, depending on the region of the state. The annual grant for the proposed program would be $70,000. So if a service coordinator can help two residents avoid nursing home placement for one year, that grant has more than paid for itself. A $10 million program would fund upwards of 140 new service coordinators around the state. Thus, the savings potential is substantial.

Recommendation: *Support the $125 million capital appropriation for senior housing and create a dedicated Affordable Senior Housing and Services Program, including a $10 million service coordinator program to be administered through SOFA.*

Conclusion

As this testimony illustrates, there are a number of concerns and unanswered questions relative to how the Executive Budget would affect elderly and disabled New Yorkers, and the not-for-profit and public providers that serve them. We are very concerned that the Executive Budget offers little opportunity or investments for LTPAC providers and plans, while imposing new cuts, costs, and mandates. We urge the Legislature to remedy this by ensuring that the final enacted budget includes infrastructure investments and additional Medicaid funding to accommodate increased costs to providers and the MLTC plans that pay them. LeadingAge NY looks forward to working with the Legislature and Executive on the 2017-18 budget and the State's ongoing reform initiatives.

Founded in 1961, LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission-driven, and public continuing care including home and community-based services, adult day health care, nursing homes, senior housing, continuing care retirement communities, adult care facilities, assisted living programs, and Managed Long Term Care plans. LeadingAge NY's 400-plus members serve an estimated 500,000 New Yorkers of all ages annually.