17

Consumer Directed Personal Assistance Association of New York State

272 Broadway Albany, New York 12204
PH: 518-813-9537 FAX: 518-813-9539
www.CDPAANYS.org

Testimony of the Consumer Directed Personal Assistance Association of New York State

on

2014-15 State Fiscal Year Executive Budget

Submitted to:

The Senate Committee on Finance

and

The Assembly Committee on Ways and Means

Submitted by:

Anthony Caputo,

President, CDPAANYS

518-813-9537 | bryan@cdpaanys.org

February 3, 2014

Hello Chairman DeFransisco, Chairman Farrell, Chairman Hannon, Chairman Gottfried and all of the Senators and Assembly Members here today. My name is Anthony Caputo, President of the Consumer Directed Personal Assistance Association of New York State, and I appreciate this opportunity to address you today about the impact of the Governor's budget proposal on fiscal intermediaries and consumers running and using consumer directed personal assistance.

The Consumer Directed Personal Assistance Association of New York State, or CDPAANYS, is the only statewide organization representing fiscal intermediaries and consumers that utilize the consumer directed personal assistance program. Our 17 members represent approximately 70% of consumers in the program and consist of leading experts.

The consumer directed personal assistance program is a form of community-based long term care that allows consumers to take control of their care from an agency. It empowers the consumer to take control of their health related services by putting them in charge of recruiting, training, hiring, supervising, and , if necessary, terminating their own workers. Fiscal intermediaries provide support for purposes of payroll, taxes, insurances and more. They also provide critical support to the consumer in his or her efforts to run their program, as needed.

The Consumer Directed Personal Assistance Association of New York State (CDPAANYS) represents fiscal intermediaries and consumers in the state's Consumer Directed Personal Assistance Program. We have analyzed Governor Cuomo's proposed budget for the 2014-15 State Fiscal Year (SFY) based on its impact on Consumer Directed Personal Assistance, with a focus on how it will impact consumers' ability to access and use the program.

The analysis also takes place with additional criteria in mind. First, Governor Cuomo and the Department of Health filed a State Plan Amendment to implement the Community First Choice Option (CFCO) later in 2013. This amendment to the state plan will allow the State to use Consumer Directed Personal Assistance as the base to draw down an additional six percent in federal matching funds. When all of the services that qualify are taken into account, an aggressive implementation would allow the State to realize a net revenue increase of at least $90 million.

Second is the unveiling of Governor Cuomo's Olmstead Plan in late 2013. The plan details how the State will meet its obligations to allow people with disabilities the right to live in the least restrictive setting. As part of this, we lauded the Governor for his proposal to remove 10,000 individuals from long term nursing home placement over the next five years. We also applauded the decision to save the State considerable money, draw down increased federal matching funds and increase consumers independence by strengthening the role that Consumer Directed Personal Assistance plays in the managed care system.

While some of the goals from CFCO and the Olmstead Plan will be implemented administratively, we are troubled by how little this budget does to advance either. The State shows a renewed commitment to funding and rebuilding our State's nursing homes while Consumer Directed Personal Assistance, which has faced decreased funding for years, is left untouched. In addition, the failure to take steps to build the infrastructure necessary to fully meet the promise of Community First Choice has resulted in the State sacrificing approximately $100 million in additional Federal funding.

CDPAANYS strongly supports Governor Cuomo's elimination of the across the board 2% reduction for all Medicaid providers. Across the board cuts are imperfect tools for achieving reductions, and this one was particularly harmful to fiscal intermediaries in Consumer Directed Personal Assistance, who were already struggling with reimbursement that did not allow them to meet their operating costs or meet consumers' expectations on reimbursement for their workers.

This restoration will prove essential as FIs continue to balance the needs of working with ever tighter budgets and its elimination is critical to moving fiscal bottom lines back in the right direction.

Another positive is the continuation of the Workforce Recruitment and Retention (R&R) money within the Health Care Reform Act (HCRA). These funds provide a vital line of support for FIs as they seek to maintain PA salaries. By incorporating these funds into the base rate for fiscal intermediaries and other providers, efficiencies will be created by eliminating some of the myriad of paperwork that is necessary.

Unfortunately, because the level is flat, the mid-year 1.35% cut in R&R payments that recipients of the Upstate R&R pool realized last year will now be formalized. This cut, made 5 months after rates were released by the Department, caused significant financial distress to FIs last year. While it is not as damaging as the 2% across the board cut, the formalized loss does offset some of the gain from the elimination of that cut.

The 2% across the board cut and the R&R cut for Upstate providers are reflective of the course of CDPA for the last several years. Consumers have had increasing difficulty hiring and retaining workers, as the wage gap between CDPA and traditional services and institutions has increased. Therefore, despite the Governor's commitment to CDPA, the service will suffer and grow if more investments are not made.

This is why CDPAANYS calls on the Legislature and the Executive to fund a $1.35 per hour increase in pay for fiscal intermediaries outside of New York City to offset the increases in costs that they have experienced over the last four years of depressed reimbursement and cuts._ For fiscal intermediaries in New York City, this amount needs to be approximately $1.94, accounting for the numerous expenses that the Human Resources Administration paid for directly and which was never a part of the rate, such as worker's compensation.

When the Department of Health issued regulations for Consumer Directed Personal Assistance in 2011, it noted that the program costs $2.16 less than personal care. These savings increased when more costly forms of home care or skilled nursing were measured. Therefore, even by this conservative measure, this small increase in funding will still make Consumer Directed Personal Assistance the most cost efficient service the State offers for community-based long term care.

Without it, the continued viability of the program is in question, and I am happy to share my own cost sheets with you to demonstrate this.

This funding is estimated to cost the State $26.5 million, which we feel is much less than the savings the State will realize from the increased six percent in federal matching funds that the program will bring. Unfortunately, the State is currently valuing Community First Choice at only $19 million. Based on estimations done by the Center for Disability Rights and New York Association on Independent Living, who you will hear from later today, we are confident that even with the limited implementation that is proposed as a result of the failure to seek an amendment to the nurse practice act, the savings potential is dramatically higher. With the amendment to the Nurse Practice Act, the State will receive a net revenue increase of $90 million. If Administrative actions were taken to eliminate the arbitrary limitation on personal care to people with physical disabilities, leaving it open to anyone with a disability, physical or mental, these revenues would increase even further.

For our state, which has turned the word Medicaid into a verb in order to draw down as much money as possible from the Federal government to leave additional money on the table for services we are already providing not only does not make sense, we feel it is irresponsible to the taxpayers and program recipients.

Another threat to the viability of not only CDPA; but, all community-based long term care are two provisions that would create long term favoritism of institutions, creating Olmstead issues by favoring nursing facilities over people's own houses. CDPAANYS is strongly opposed to any proposal that would send us backwards to a time when people with disabilities were sent to nursing homes because that is what was easiest. **However, the unprecedented guarantee in this budget that nursing homes' receive their fee-for-service rate forever would do just that.**

As every industry has transitioned into managed care and managed long term care, it has been granted a transitional period where it is guaranteed its Medicaid fee for service rate for a period of time ranging from one to three years. If a similar provision were enacted for nursing homes, CDPAANYS would not take issue with it. However, without a sunset, this language would establish an unprecedented negotiating tool for the nursing homes. The State has previously been unwilling to enter into the negotiations between providers and plans. We hope that this is an error and corrected in the 30 day amendments.

CDPAANYS also opposes strongly a provision that would require nursing home workers to be paid at a rate set by the Commissioners of Health and Labor, with managed care required to pay enough to allow nursing facilities to pay this rate and we feel that this language should exist for community-based providers, to ensure consumers have access to a high quality, stable workforce when it comes to the people they invite into their home.

The nursing home provision, on without identical language for community-based providers, including Consumer Directed Personal Assistance, would force the State out of compliance with the Supreme Court's Olmstead ruling. It would drive workers into facilities, creating shortages in the community. Further, over time, if capitated rates did not keep pace with the mandated salaries for workers, services and hours in the community would suffer as facilities consume more and more of each managed care dollar.

There is already a wage gap in Consumer Directed, making it difficult for consumers to hire or retain workers. These proposals would only increase this wage gap and exacerbate the shortage that already exists.

CDPAANYS is strongly opposed to the Governor's proposal to allow the Commissioner of the Office for Temporary and Disability Assistance to contract with an outside entity to conduct fair hearings and we encourage the full restoration of due process rights Medicaid beneficiaries have enjoyed, including the right to a fair hearing without the need to go through the managed care plan's appeal process and the right to aid continuing.

The fair hearing is the basis of a Medicaid recipients due process rights under the Constitution. In many instances, it is the only thing standing between a consumer and an institution. For decades, the fair hearing, combined with aid continuing, protected consumers.

In its implementation of the Fully Integrated Dual Advantage (FIDA) program, the State realized this. Advocates applauded the Governor and the Department of Health for restoring full rights to fair hearings and aid continuing as a part of this program, which will pilot in New York City, Long Island and Westchester.

After this victory, it is upsetting that the Administration has not chosen to protect all Medicaid recipients statewide equally. This is particularly true given the fact that, in a presentation prepared by DOH to the managed care industry, it was noted that between April 1 and June30 of 2013, 3 out of every 4 involving personal care and managed care were decided in favor of the consumer. 75% of the time, an ALJ determined that the managed care company improperly cut consumers hours or services.

In light of this, it is even more troubling that consumers throughout the State will have to go before a private organization when their Medicaid claim is heard. The impartiality of the State cannot be contracted away and is a fundamental right bestowed upon us. It is imperative that this misguided proposal be rejected and the full due process rights of consumers be restored.

As the move to managed care continues, CDPAANYS is renewing its call for licensure or certification of Fiscal Intermediaries. This first arose for us when the State began the move to managed care for CDPA two years ago. We were repeatedly told that the Department did not have staff or resources for more licensure. In light of the fact that the Executive is proposing to license urgent care centers and credential office based surgery providers, we can only assume that resources for this activity have been identified. **In light of that, we renew our calls for the urgency of a licensing or credentialing process for Fiscal Intermediaries.**

Historically, counties served as the gate keepers for who could or could not be a fiscal intermediary. In some instances, this worked. In others, it did not. However, in the era of managed care, when Consumer Directed Personal Assistance is being prioritized, the failure to have a central entity setting standards for who can – and cannot – serve in this capacity is an oversight that verges on neglect.

Technically, the Department maintains that Fiscal Intermediaries must first retain a contract from a county, then obtain a rate from the Office for Health Systems Management, to be a Fiscal Intermediary. In the new world of Medicaid, this is impractical. Counties are increasingly uninvolved in the provisions of long term care services and unwilling to contract, as it is not necessary. Those seeking to become Fiscal Intermediaries are traveling the State looking for any county, regardless of whether they want to provide services there, that will offer them a contract so that they may then contract with managed care plans.

Meanwhile, consumers are suffering. Fiscal Intermediaries that are unfamiliar with the program seek to run it is as a licensed agency, forcing their workers on consumers. We know that some agencies in the wage parity counties have sought to become Fiscal Intermediaries solely because they know the program is not subject to wage parity.
We must ensure that entities that serve Medicaid recipients are doing so in a manner that serves consumers and the public. Licensing or credentialing procedures are necessary to make sure that those who wish to operate as Fiscal Intermediaries are doing so in a manner that is consistent with the regulations. Basic character and competency requirement, along with policy and procedure reviews are necessary not only to protect consumers, but taxpayers as well.

To end with brevity on some topics we know other organizations will talk more about, I want to support the Governor's proposal to increase the size of the Medicaid Managed Care Advisory Review Panel, particularly as it relates to expanding it for dual eligibles. CDPAANYS also joins with other advocates and providers in opposing the Governor's spousal refusal rules as a misguided proposal that will have strong negative consequences for many vulnerable New Yorkers. Finally, we stand in opposition to the blanket exemption to the Nurse Practice Act being offered to the Office for People with Developmental Disabilities and ask that it be modified to more precisely exempt the programs and services that they wish to exempt.

Thank you very much for your time and I am happy to take any questions.

Summary of Consumer Directed Personal Assistance Association of New York State (CDPAANYS) Budget Recommendations

- CDPAANYS strongly supports the proposal to restore the 2% across the board cut.
- CDPAANYS strongly supports continued funding for Workforce Recruitment and Retention monies, and their move to the base payment.
- CDPAANYS strongly urges that $1.35 be added as a pass through to fiscal intermediaries rates, and $1.92 in New York City, to offset increases in costs directly related to the provision of services.
- CDPAANYS calls on the Legislature and Executive to fully and aggressively implement the Community First Choice Option in order to realize, at a minimum, a net revenue increase of $90 million.
- CDPAANYS is strongly opposed to an open-ended guarantee to nursing facilities of their fee for service rate within managed care.
- CDPAANYS is opposed to the mandate of a required salary for nursing home workers unless an identical provision is included for community-based workers. We have identified this as a critical Olmstead issue that will force people back into nursing facilities and out of their homes, at greater cost to the State.
- CDPAANYS calls on the Legislature to protect consumers by restoring their due process rights and aid continuing in Medicaid managed care, recognizing that 75% of personal care related fair hearing are decided against the managed care plan and in favor of the consumer.
- CDPAANYS is strongly opposed to the privatization of the fair hearing process.
- CDPAANYS calls on the Legislature to provide stability and controls to the fiscal intermediary industry by introducing licensure or certification.
- CDPAANYS supports expanding the MMCARP by four members, particularly the addition of a dual eligible consumer and a dual eligible representative.
- CDPAANYS opposes the elimination of spousal refusal.