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.

Presented Before the Joint Legislative Budget Committee on Health/Medicaid
SFY 2018-19 Executive Budget Proposal

February 12, 2018

INTRODUCTION

On behalf of the New York State Association of Health Care Providers, Inc. (HCP) membership, thank you for the opportunity to provide comments on the State Fiscal Year (SFY) 2018-19 Executive Budget Proposal. As is detailed below, HCP believes many of the proposals put forth in the Executive Budget put New York's home health care system and the patients it serves in jeopardy.

HCP is a trade association representing approximately 350 offices of licensed home care services agencies (LHCSAs), certified home health agencies (CHHAs), and related health organizations throughout New York State.

New York has followed through on its commitment to develop a comprehensive regulatory and oversight system for home care agencies. Home and community-based care has been recognized as a central component for new models of health care delivery aimed at achieving the State's triple aims of improving care, improving health, and reducing costs within the Medicaid system. Home care is the patient-preferred option, enabling disabled, chronically ill and elderly New Yorkers to remain with their families and be cared for with dignity in the comfort of their own homes.

New York State is home to the fourth-largest elderly population in nation. Currently there are approximately 3.7 million New Yorkers over the age of 60, and that number is only expected to grow; by 2030, 5.2 million people in New York will be over 60. 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.

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.

Home care agencies are currently reeling from a perfect storm of challenges due to inadequate levels of reimbursement, spiraling labor costs, and burdensome regulatory requirements, while simultaneously working to navigate the complex and rapidly changing health care transitions underway in New York. On December 31, 2017, the State's minimum wage increased for the second time, absent adequate reimbursement from managed care organizations and a dysfunctional minimum wage implementation process.

In addition to mounting reimbursement issues, a large number of home care providers remain in legal limbo and financially exposed due to recent New York State Supreme Court rulings on 24-hour live-in care. There is a retroactive component of the 24 hour ruling that could cost the industry upwards of $6 billion – forcing providers to shut their doors and leaving patients without access to care. HCP maintains that providers that have adhered to the New York State Department of Labor's (DOL's) longstanding guidance on payment for 24-hour live-in cases where providers have compensated aides for 13 hours of work during a 24-hour shift, provided three hours are spent on meal periods and eight hours are devoted to sleep time, should not be legally held liable for six years of retroactive payments to workers. HCP is appreciative that the Industrial Board of Appeals recently rejected a petition challenging DOL's Emergency Rule related to payment for 24 hour live-in shifts, and DOL's participation in filing a brief supporting its Emergency Rule. HCP urges the State to continue to support the home care industry throughout this unresolved process.

HCP and the providers the Association serves are not unfamiliar with the purpose of Medicaid Redesign Team (MRT) initiatives nor those of the New York State Department of Health's (DOH) Regulation Modernization Initiative (RMI). HCP has long supported DOH's initiatives and continues to educate providers on the Delivery System Reform Incentive Payment (DSRIP) Program as well as the Value Based Payment (VBP) Program. However, HCP believes that many of the proposals included in the Executive Budget are contrary to MRT and RMI initiatives, and would actually disrupt home care services and create significant access to care issues for consumers who rely on these services every day.

After careful review of the Executive Budget Proposal and receiving valuable input from home care providers Statewide, HCP believes that the majority of the proposals undermine the home care system in New York State to the detriments of its workers and patients. Many of the proposals included in the Executive Budget are without justification and will impact providers' negotiating ability, which will undoubtedly put some home care providers out of business and leave patients without access to essential care. As previously mentioned, home care providers across the State are struggling due to inadequate reimbursement for State-imposed minimum wage increases and numerous other unfunded mandates, in addition to complying with stringent State and Federal health and labor regulations. For these reasons, HCP urges the Legislature to take the following recommendations into consideration when negotiating a final Budget agreement.

MINIMUM WAGE FUNDING & IMPLEMENTATION PROCESS

The Executive Budget Proposal includes $703 million for SFY 2018-19 to support the direct care cost of minimum wage increases for Medicaid funded services provided by home health care agencies and other providers.

HCP Budget Recommendation
HCP supports this proposal, but seeks clarifying language to ensure that these monies, along with other public funds to address statutory Federal and State requirements, be fully allocated to providers in a timely manner to allow providers to pay workers for such requirements.

The home care industry is by far the largest component of the health care sector impacted by the minimum wage increase. Home care agencies in New York employ more than 300,000 full and part-time home health aides and personal care aids 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.

December 31, 2017 was the effective date for the second minimum wage implementation. During the time leading up to the December 31 deadline, many insurers and providers struggled to come to agreement on contract amendments and adequate rates. To date, many providers are still struggling to reach a negotiated rate with their contracted MLTC due to differing rate methodologies amongst plans and an unwillingness of plans to negotiate.

This year's minimum wage process was the second year in a row that many providers and plans did not meet the December 31 effective date. Without contract amendments and monies disbursed to home care providers from plans by the implementation date, providers are still expected to meet the statutory wage obligation and pay home care workers – whether or not plans distribute funds as they are instructed to do by the State Department of Health. As a result, many of these home care providers have been forced to reduce services to the State's most vulnerable populations as they await the resources from their contracted insurer.

In order to ensure that monies appropriated by the State are distributed by plans to providers so that they can pay their workers the increased minimum wage, HCP urges the Legislature to implement a process by which plans must disburse funds to providers 90 days prior to the effective date in order to avoid late contracts and rates, and ensure that insurers provide the funds in an amount that supplements any current contracts. HCP also urges the Legislature to disallow risk adjustment on managed care providers to ensure that the full dollar amounts given by the State to the plans are disbursed in their entirety to home care providers as it relates to all statutory wage obligations.

LIMITING LHCSA CONTRACTS WITHIN A MANAGED LONG TERM CARE PLAN

The SFY 2018-19 Executive Budget Proposal includes limiting the number of LHCSAs an MLTC can contract with to ten effective October 1, 2018. This is included as an administrative proposal, and is not included in Health/Mental Hygiene Article VII language. However, there is a savings of $13.71 million to the State for the fiscal year. At this time industry stakeholders are unaware of the methodology by which this savings is calculated. Simply put, there is no reasonable justification for the limiting of LHCSA/MLTC contracts to ten.

This proposal would provide additional leverage to MLTC plans over home care providers in negotiations where providers are already severely disadvantaged. Also, at a time when MLTC plans continue to be underfunded, many will be left with little option but to contract with providers offering an unsustainable rate borne by non-compliance with State labor and public health rules and regulations. Moreover, MLTC plans hold the majority of the power during plan/provider negotiations. An MLTC does not have to contract with a particular agency if they choose not to; therefore, there is no need for a restrictive number of contracts.

In addition, this proposal would go into effect October 1, 2018 – leaving little time to shift provider/plan contracts and little time to place the consumer into a different network if necessary. This proposal would be incredibly disruptive to all parties involved.

HCP is supportive of recent proposals regarding VBP and rewarding MLTC plans for improved quality based on provider performance measures. However, by placing an arbitrary statutory cap on the number of LHCSAs an MLTC plan can contract with, elderly and disabled Medicaid enrollees would be forced into a severely limited home care provider network that would significantly restrict consumer choice. This would particularly restrict access to essential care regionally and predominantly in niche markets where smaller providers may thrive.

HCP Budget Recommendation
HCP urges the Legislature to outright reject this proposal, as it would lead to the closure of many home care business in New York, particularly smaller home care providers, and severely limit access to essential and specialized care for consumers.

12 MONTH LOCK-IN

The SFY 2018-19 Executive Budget Proposal restricts MLTC enrollees from changing plans for 12 months after initial enrollment. Much like the limiting of LHCSA/MLTC Plan contracts to 10, this proposal and its $5.23 State savings calculation remains unjustified. This proposal would also take effect October 1, 2018.

This proposal limits consumer choice and eliminates the few options a provider has during contract negotiations with an MLTC. In light of the recent closures, mergers and purchases of MLTC plans, such a requirement could leave consumers without access to care, and providers unable to negotiate contracts. For example, during the last few months, a number of MLTCs refused to sign timely contracts for the provision of minimum wage monies. In this case, one possible option was the movement of patients to an alternative plan that was providing these monies in a timely manner consistent with the State's intent and guidance. If this proposal were to be adopted, providers would lose an alternative solution that allows them to sustain timely payments from plans and ultimately provide continuous, uninterrupted care to consumers. A considerable number of home care patients suffer from cognitive impairments such as Alzheimer’s disease or dementia; therefore, continuity of care is particularly important for these patients, with routine treatment being critical to their health and well-being.

HCP Budget Recommendation

HCP urges the Legislature to reject this proposal, as it would further disadvantage providers during contract negotiations, eliminate consumer choice within the 12 month period, and risk creating harmful gaps in patient care.

CONTINUOUS MLTC ELIGIBILITY REQUIREMENT

The SFY 2018-19 Executive Budget Proposal would raise the eligibility threshold for MLTC from a Uniform Assessment System (UAS) score of five to a score of nine, effective April 1, 2018.

Significantly increasing the UAS score in such a short-time frame is potentially harmful to a significant population who are depending on receiving cost efficient and comfortable care in their home. No reasonable justification has been given for this increase. The proposal further restricts MLTC enrollment to those who require home care for more than 120 days, which will negatively impact consumer choice, and create barriers to care.

HCP Budget Recommendation

HCP recommends the retention of current MLTC eligibility policies. This would retain the consumer’s choice to receive appropriate care, would not add extra administrative costs to providers, and would not significantly disrupt MLTC care for patients.

PROVIDER MARKETING AND REFERRAL BAN

The SFY 2018-19 Executive Budget Proposal includes a ban on MLTC contracted provider marketing and prohibits referring providers to become the service provider of the referred member.

HCP rejects the referral ban because it infringes upon consumer choice and access. If implemented, this proposal would disrupt many existing aide-patient relationships. The client-patient relationship is crucial to effective home care service, and this proposal would potentially end beneficial relationships developed over many years.

HCP also rejects the ban on marketing ban on providers. The original vision of the MRT was to move to a managed Medicaid system where the State allows a semi-free market place between providers and plans. Part and parcel of any market place is marketing and advertising. Without advertising, providers will not reach as many consumers, negatively impacting their access to effective care. Moreover, no other health industry has a total ban on marketing. This proposal could prove to be fatal handicap on the home care industry.

HCP Budget Recommendation
HCP recommends the retention of current MLTC marketing and referral policies. The current advertising and referral ban proposal would undermine consumer access and choice, and would severely handicap the home care industry.

STATEWIDE HEALTH CARE FACILITY TRANSFORMATION PROGRAM (SHCFTP)

The SFY 2018-19 Executive Budget Proposal allocates up to $425 million in SFY 2018-19 to fund the SHCFTP program. Of this, $45 million is earmarked specifically for residential health care facilities, and a minimum of $60 million is allocated to community-based providers, including home care.

Historically, the long term care sector, in particular home care, has been unrepresented and grossly underfunded compared with other providers. For example, during the last grant cycle, providers invested months of time to apply for these funds, however less than one percent of home care providers received any SHCFTP funds.

In addition, as health information technology (HIT) becomes prevalent among health care systems and providers, home care providers specifically are in need of funding to address their lagging HIT access. This proposal would allow community-based health care providers to update their HIT infrastructure by streamlining databases, including phone systems and other means of communications that home health aides use throughout the day to care for patients. Funding could also be used for HIT analysis through shared services and/or consultants. With access to updated technologies, home care agencies and their staffs would have a greater opportunity to provide better care for consumers in a more efficient manner.

HCP Budget Recommendation
HCP is proposing a minimum of $25 million for LHCSAs and a minimum of $25 million certified home health agencies (CHHAs) for the purpose of HIT. These funds would help facilitate the implementation of the telehealth initiative, which deliver services to patients in rural areas in a cost efficient and timely manner.

HOME CARE WORKFORCE RECRUITMENT AND RETENTION FUNDING

The SFY 2018-19 Executive Budget Proposal continues funding for Home Care Recruitment and Retention (HR&R) with $272 million for direct care workers in New York City and $22.4 for Upstate workers.

The home care industry values its workforce and seeks innovative ways to recruit and retain their staff. This funding also allows providers to stay competitive with other industries that are paying the State minimum wage such as the fast food industry. This funding allows providers to incentivize their employees, with the end goal of keeping home care aides with their respective clients. HCP supports this funding to assist providers who continue to struggle to meet statutorily obligated financial obligations, such as minimum wage increases, spiraling Workers' Compensation costs, Federal overtime compensation, and other county-specific wage mandates.

In addition, HCP seeks clarifying language within a final State Budget to assist with the distribution of workforce related expenses. Currently, there is still little to no oversight as to how MLTCs distribute these funds. There is no transparency after the funds are disbursed from the State to the plans, leaving providers in the dark and uninformed as to how much HR&R funding, if any, has been distributed to them, or what methodology the plans used in determining their allocation. In addition, there is no requirement for a plan to submit HR&R funding reports to DOH or providers. Despite plan claims that the HR&R funds are embedded in their rates, many HCP members have yet to receive HR&R funding. Providers are grateful for this appropriation and would use this money towards staffing expenses and incentives. However, from an accounting perspective, it is difficult to implement financial incentives for their workforce if it is not evident how much money is actually being disbursed to them for that specific reason.

HCP Budget Recommendation

HCP urges the Legislature to support the HR&R funding included in the SFY 2018-19 Executive Budget Proposal, as it is crucial in helping home care providers address the tremendous challenges they face in recruiting, training, and retaining qualified direct care workers. However, without proper oversight and transparency, it is difficult to measure how much of this funding is actually being distributed to providers. Without knowing the HR&R dollar amount extended to them, providers find it difficult to actually use reimbursement funds for the purpose of recruiting and retaining employees. HCP supports this funding, but recommends creating a mechanism that requires Medicaid managed care plans to submit records of how much HR&R funding, if any, is being disbursed to providers.

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 SFY 2018-19. 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.