



**Testimony of the New York Health Plan Association**

to the

**Senate Finance Committee  
and the Assembly Ways & Means Committee**

on the subject of  
**2018-2019 Executive Budget Proposals on Health Care**

**February 12, 2018**

## **INTRODUCTION**

The New York Health Plan Association (HPA), comprised of 28 health plans that provide comprehensive health care services to more than eight million fully-insured New Yorkers, appreciates the opportunity to present its members' views on the Governor's budget proposals. We are here today specifically to address the Governor's proposal to create a new tax on health insurers.

Our member health plans have long partnered with the state in achieving its health care goals, including collaborating on efforts to develop affordable coverage options for individuals, families and small businesses, providing access to care that exceeds national quality benchmarks for both commercial and government program enrollees, and improving access to quality care in its government programs. HPA members include plans that offer a full range of health insurance and managed care products (HMO, PPO, POS, etc.), public health plans (PHPs) and managed long term care (MLTC) plans. The New Yorkers who rely on these plans are enrolled through employers, as individuals, or through government sponsored programs — Medicaid Managed Care, Child Health Plus — and through New York's exchange, the NY State of Health (NYSOH).

We appreciate the opportunity to offer our view on the proposed 2018-2019 Executive Budget in relation to its application for health care spending in New York.

## **GOVERNOR'S HEALTH CARE PROPOSALS**

In his recent budget address, Governor Cuomo equated the changes to the federal tax law to a missile aimed directly at New York. Faced with a \$4 billion budget deficit, we recognize the significant fiscal challenges facing the state. However, the answer is not adding new costs that make it more difficult for health care companies to operate in

New York and ultimately threaten the affordability of and access to health coverage for millions of New Yorkers. Yet, that is exactly what the Governor's proposal would do. The Governor is targeting his own missile on health plans, as a way to close the gap. In total, the taxes, increased assessments, fines and other proposed actions applied to health plans add up to more than \$1 billion to fund state programs.

### *Health Care Insurance "Windfall Profit" Fee*

Among the Governor's proposals is a new 14 percent surcharge that would be imposed on health plan earnings.

The Governor justifies this surcharge – or, more simply put, tax – on health insurers' profits arguing those companies are receiving a "windfall" due to changes to the corporate tax code. The new tax is intended to generate \$140 million that he claims he would use to offset possible reductions in federal funding to the state.

The reduction in the federal corporate tax rate from 35 percent to 21 percent applies to all corporations, regardless of industry. It makes little sense to tax just one sector of the state's economy when many others also benefit from the federal tax change. Additionally, taxing a specific industry with the intention to support state health care programs, simply because it is related to their line of business, is bad public policy. It sets a dangerous precedent to shift additional government costs to the private sector when the state faces its next budget deficit.

In reality, the federal health care "reductions" the Governor is seeking to guard against are largely not going to occur. Funding for the Child Health Insurance Program (CHIP) and community health centers was included in the recently approved federal budget deal, which also restored cuts made to Disproportionate Share Hospitals. Given these federal actions, the Governor's proposed tax is unnecessary.

In addition, the 14 percent tax proposal also fails to take into account other changes in the federal tax law that mitigate the corporate tax reduction. Numerous federal base broadening provisions – such as a cap on the business interest expense tax deduction – will offset the supposed benefit of the corporate tax cut.

In his recent budget address, Governor Cuomo equated the changes to the federal tax law to a missile aimed directly at New York. However, the best missile defense would be a strategy aimed at reducing taxes not creating new ones.

It is important to note that this new tax is on top of New York's existing health plan taxes, which are already significant. Health care taxes in New York include:

- Nearly \$5 billion collected annually through Health Care Reform Act (HCRA) patient services assessment, a tax on inpatient and outpatient hospital charges as well as numerous other health care services (\$3.8B), and covered lives assessment, a sales tax placed on every policy sold in New York State (\$1.1B);
- A 1.75 percent premium tax on commercial health insurance policies that is directed to the general fund, which raised an estimated \$350 million in 2015; and
- Section 206 "assessments" that fund the Department of Financial Services' operations, proposed to total \$366 million in this budget, which is an increase of \$15M.

These taxes do not include the hundreds of millions of dollars in taxes health plans pay such as payroll taxes on wages to employees, and state and local withholdings taxes. Adding a new tax is troubling enough, but adding to the concern is the fact that at this time it is unclear how this new tax interacts with other taxes on plans, and what the basis is for the 14 percent rate.

Additionally, the revenues from the 14 percent tax would be deposited into HCRA. The problem with this, however, is the continued lack of transparency about how HCRA dollars are spent. We have serious concerns with putting more money into a budget line absent clearer information of where or how that money will be allocated.

Collectively, among all of the taxes collected by New York State, taxes on private health insurance rank third highest. Only personal income taxes and sales taxes are higher, which means the taxes imposed on the privately insured rank as the single largest business tax in New York. Looking at overall tax burden, the “2018 State Business Tax Climate Index” by the Tax Foundation, the nation’s leading independent tax policy research organization, New York is ranked 49th with only New Jersey being worse. The Governor’s proposal will only exacerbate this situation.

#### *Not-For-Profit “Excess” Reserves*

The Executive Budget also includes a provision to reduce the Medicaid rates to non-profit health plans if their reserves exceed the minimum required level. HPA opposes this provision as it may undermine the financial stability of the state’s non-profit health plans and fails to recognize the ongoing investments these plans have made to ensure that the state’s most vulnerable citizens continue to have access to high-quality care.

Reserves are an important protection for consumers and providers, ensuring that doctors, hospitals and other providers get paid if an unexpected or catastrophic event occurs that would result in an unpredictably high level of claims, such as a pandemic, bad flu season (like this year), or a natural or a man-made disaster. They also protect against unexpected financial losses or unanticipated costs like when a high-cost prescription drug (such as Sovaldi) comes to market.

The statutory reserve requirements — established through regulation by the Department of Health (DOH) for Medicaid managed care programs and by the Department of Financial Services (DFS) for commercial products — represent the bare-bones minimum needed before state regulators get involved and the marketplace starts to panic. Not-for-profit health plans need more than the minimum reserves in order to protect against unforeseen events. Moreover, the statutory reserve requirements are minimum amounts and typically are only enough to pay about one month of claims. These standards were never intended to imply that health plans above the minimum level as having “excess reserves.”

Reducing reserves to fill budget gaps or to finance ongoing state expenses by underfunding Medicaid rates to health plans is risky, potentially destabilizing, and misses the point for why reserves exist in the first place.

#### *“Health Care Shortfall Fund” from Conversions*

The Governor has also proposed creating a “Health Care Shortfall Fund” that would enable the state to ensure the continued availability and expansion of funding for quality health care services to New York residents. His proposal calls for funding this new pool from the proceeds when a not-for-profit health plan converts to for-profit status. HPA has serious concerns about this and opposes the proposal.

We are concerned about the precedent this creates and its potential it could have on the marketplace. Allowing the state to seize the proceeds from a private business transaction when a not-for-profit company converts to for-profit status — essentially imposing an assessment on health care conversions — makes New York a less attractive place to do business. Moreover, it does nothing to address the underlying factors driving health care costs.

More specifically, we are concerned that the HCRA financial plan includes \$750 million in each of the next four years from “conversions. Counting on monies that may never materialize is not sound budgeting practice.

### *Other Budget Proposals*

A number of other proposals in the Executive Budget that are troubling include:

- DFS Penalties Increased – The proposed budget expands authority for DFS to increase penalties from \$1,000 per offense to the greater of \$10,000, or two times the aggregate damages or economic gain attributable to the offense. This is similar to last year’s proposal – which was rejected – and, like last year, it lacks any safeguards, criteria and standards or adequate due process procedures to protect health plans that would be subject to fines. At current fine levels, plans are already incurring fines totaling hundreds of thousands and in some cases millions of dollars for technical or paper violations. (It is worth noting that New York State law permits the Department of Health a maximum fine of \$2,000 per violation for hospital violation that could risk patient safety and/or cause death.)
- Reforming Managed Long Term Care – The MLTC program is experiencing unanticipated growth, which has caused spending on this program to grow as well. HPA is aware of the challenges created by this tremendous growth, and we have been requesting a “summit” with DOH since just after last year’s budget was enacted to jointly evaluate data and develop real solutions to understand the source of the growth and get better control over the program – without negatively impacting services to Medicaid members who need them. DOH has neither provided any data to plans nor agreed to meet with plans to engage in a rational discussion. HPA opposes the Executive’s proposal to reduce the MLTC administrative rate by nearly \$40 million with the vague promise of future regulatory relief – which the department cannot articulate. We welcome the

opportunity to discuss regulatory relief, but do not believe the cut should be implemented before the regulatory changes are made. In addition, while HPA agrees with the goal of consolidating the number of licensed home care services agencies (LHCSAs) in the market, the proposal to limit the number of LHCSAs an MLTC may contract with to ten is impossible to implement and would create massive disruption in care to thousands of people. It was DOH, not plans, who approved licenses for more than 1,400 LHCSAs, and the burden to reduce that number cannot fall solely onto plans now. Both of these proposals are nothing more than cuts masquerading as reforms. HPA strongly supports the proposal to ban marketing by certain long term care providers, but recommends that the policy be implemented immediately instead of waiting until October and that penalties for non-compliance be considered. HPA has also been pressing DOH for over a year to begin collecting detailed cost reports from LHCSAs and fiscal intermediaries in the consumer-directed personal care program (CDPAP), as the state currently has no line of sight into the financial operations of these providers — which is particularly critical as the impact of the minimum wage law is felt in the MLTC program. In collaboration with other health plan trade associations, HPA has shared a list of reform proposals that we believe would reflect a more rational way to control growth in the program and would be happy to discuss them with the Legislature in greater detail.

- Health Homes – HPA strongly opposes the initiative to set plan-specific health home enrollment targets and penalize plans who do not meet them. The health home program has a proposed two year all funds appropriation of \$170 million in the proposed Executive Budget, but actual spending is anticipated to total \$512 million in the current year. Despite more than two years of efforts on the part of plans and the state, less than one third of Health and Recovery Plan (HARP) members are enrolled in a health home — mostly because they have said



“no.” To date, performance data on health homes has been questionable at best, with a recent chart indicating that one half of the existing 32 health homes failed to show improvement in prevention of avoidable emergency room visits for the population they cover for the past two years. Only two showed improvement in both years. Health homes were an interesting experiment to undertake while the federal government was paying 90 percent of the costs. However, the existing data show they have failed to prove their value and plans should not be penalized in yet another effort to justify spending more than a half-billion dollars a year on health homes.

- Program Integrity Provisions — The Executive’s budget authorizes the Office of Medicaid Inspector General (OMIG) to fine plans \$5,000 per day per violation for failing to comply with statute, rule, regulation, directive or state contract provision of the Medicaid program, which is unmanageable and excessive and does not account for the many instances where the problem is with state systems or processes. The Governor’s proposal also requires plans to report all cases of “potential” fraud, waste and abuse to OMIG and would fine any plan that “willfully fails to promptly” make a referral by up to \$100,000 for each determination. HPA strongly opposes these provisions as overreach by OMIG. The OMIG was created at a time when the Medicaid program was mostly in fee-for-service and its current efforts are largely duplicative of those of plan special investigation units. HPA and its member plans are happy to work collaboratively with OMIG, but the budget provisions are unreasonable.
- Essential Plan Proposals — The Department of Health has proposed to cut Essential Plan rates by 4.4%, effective April 1st, and to apply a medical loss ratio (MLR) rebate provision as far back as 2016 in order to make up for underfunding of the program resulting from federal policy changes. HPA members have been

partners in and supporters of the Essential Plan, and plans also recognize that actions of the federal government create anxiety for the State in terms of future funding for the program. However, we do not believe the State should rely on plans alone to cover financing gaps. In light of federal policy changes affecting program funding, HPA urges the Legislature to consider adjustments to the Essential Plan benefit package and consumer cost-sharing and premium levels.

- Contraception Coverage – The Governor’s budget proposal expands the existing mandate for coverage of contraceptives. The expanded coverage would require that health insurance policies in New York cover all Food and Drug Administration (FDA) approved contraceptive drugs, devices and products, as well as voluntary sterilization procedures, contraceptive education and counseling, and related follow up services while prohibiting any cost-sharing requirements or other restrictions or delays with respect to this coverage. This new contraception coverage would also allow for the dispensing of twelve months’ worth of a contraceptive at one time. HPA opposes this coverage expansion as it will greatly increase the cost of providing contraceptive coverage, which in turn will make health insurance less affordable for individuals, families and small businesses. Additionally, as there are no savings projected as a result of this provision, it is not a budget issue and should not be considered as part of budget discussions.

We do not want to suggest that we oppose everything in the Governor’s spending plan. Budget provisions we support include eliminating “prescriber prevails” policies in the Medicaid fee-for-service and managed care programs and extending the pharmacy pricing cap for an additional year. These efforts will help to reduce inappropriate prescribing and curb unjustified escalations in drug costs. However, these proposals alone will not preclude the need to ensure adequate funding of the Medicaid pharmacy

benefit. Therefore, we request that the Legislature not only support the elimination of “prescriber prevails” and other proposals to control pharmacy costs, but also require DOH to fully fund Medicaid pharmacy costs.

#### **HEALTH PLANS’ CONTRIBUTIONS TO NEW YORK’S ECONOMY**

The proposals in the Governor’s health budget ignore the important role that health plans play in the state’s economy and the billions in economic activity annually they contribute to New York. Health plans employ tens of thousands of residents throughout the entire state, including in many upstate communities where New York has struggled to attract good paying jobs. These companies and their employees make a direct impact on the economic vitality of their local communities. At the same time, health plans support local organizations and their community-based initiatives while also investing in programs that improve the health and wellness of New York residents.

#### **CONCLUSION**

We recognize the significant fiscal challenges facing the state. However, the answer is not adding new costs that make it more difficult for health care companies to operate in New York and ultimately threaten the affordability of and access to health coverage for millions of New Yorkers. Instead, the focus needs to be on reforming state programs to make them more efficient, sustainable and innovative, and addressing the underlying factors driving health care costs.

HPA and its member plans are proud of the role they continue to play in helping New York improve access to affordable health coverage and quality of care for its residents, and plans remain committed to working with you and your colleagues on initiatives that keep New York moving forward on this course.

We thank you for the opportunity to share our views today.