CONTINUING CARE LEADERSHIP COALITION CCLC

TESTIMONY OF SCOTT AMRHEIN

PRESIDENT, CONTINUING CARE LEADERSHIP COALITION

JOINT LEGISLATIVE PUBLIC HEARING

ON THE SFY 2018-19 EXECUTIVE BUDGET PROPOSAL

INTRODUCTION

Good Afternoon. I am Scott Amrhein, President, Continuing Care Leadership Coalition (CCLC), which represents not-for-profit and public long term care providers in the New York metropolitan area and beyond. Our members represent the full continuum of long term care services including skilled nursing care, home health care, adult day health care, respite and hospice care, rehabilitation and sub-acute care, senior housing and assisted living, and continuing care services to special populations. We appreciate the opportunity to provide testimony to the Senate and Assembly Health committees, the Senate Finance Committee, and the Assembly Ways and Means Committee regarding Governor Cuomo's Executive Budget Proposal for State Fiscal year (SFY) 2018-19.

A QUALITY LONG TERM CARE SYSTEM IS ESSENTIAL TO NEW YORK'S CHANGING POPULATION

The need for quality long term care services – vital not only for meeting individual needs, maximizing ability and independence, and alleviating suffering, but also for the optimal and cost-effective functioning of our State's health care system – will grow in parallel with the needs of a Statewide population that, over the next 25 years, is becoming older, will have increased rates of disability, and will drive greater needs for formal care options as the share of the working age population diminishes relative to that of the population most likely to need long term care services. These three trends are charted in the graphs below. Their implications are clear: we must be doing all we can to sustain and develop the providers and programs best equipped to manage and address the growing needs of the State's older and disabled populations.

Table 1

NYS Population Growth: 2015 - 2040 (over 65 and 85+)

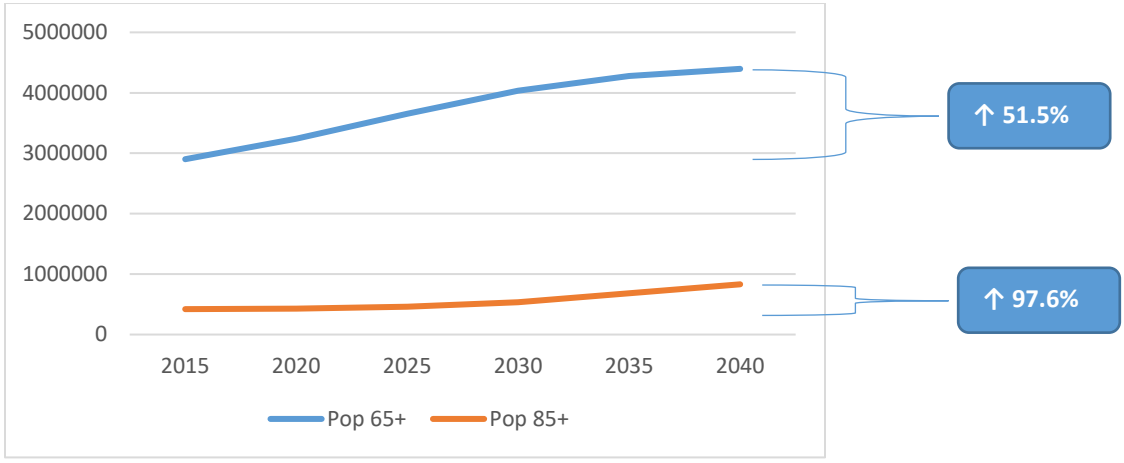


Table 2

NYS Disabled Population, Aged 65 and Older: 2015-2040

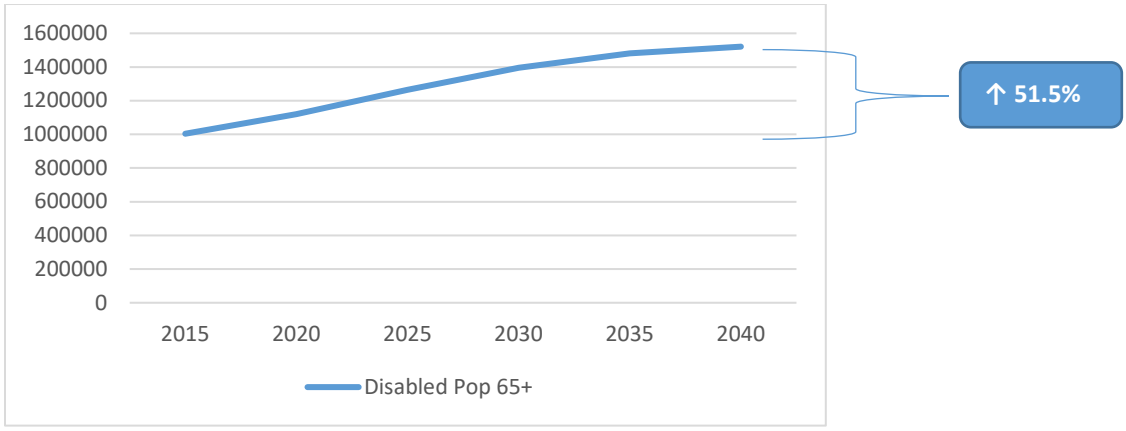
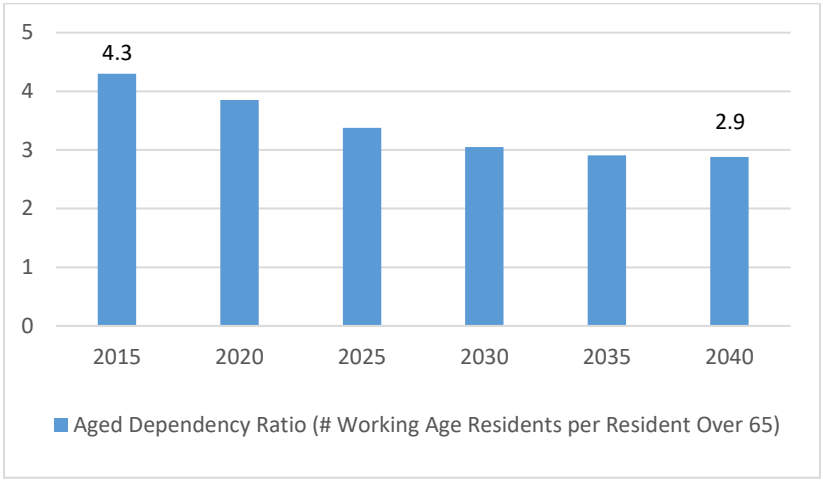


Table 3

NYS Dependency Ratio: 2015-2040



SUSTAINING A STRONG NOT-FOR-PROFIT PROVIDER BASE IS CRITICAL TO THE HEALTH OF NEW YORK'S LONG TERM CARE INFRASTRUCTURE

Not-for-profit nursing homes and home care agencies – vital to the growth and sustainability of New York's health care system – are also central to keeping quality levels high and to innovating new approaches responsive to the needs of the State's most vulnerable citizens. The mission-driven character of not-for-profit care encourages cohesion between the residents and staff, and promotes person centered care leading to better health outcomes. We see this in data demonstrating that not-for-profit providers achieve exceptional overall quality outcomes, place great emphasis on person-centered care, and outperform on measures – such as preventing avoidable hospitalizations and minimizing use of antipsychotic medications – deemed central to New York State DSRIP goals and Centers for Medicare and Medicaid Services (CMS) priorities, as shown in the tables below.

Table 4

Downstate Not-for-Profit Nursing Home Performance: Overall (NHQI)

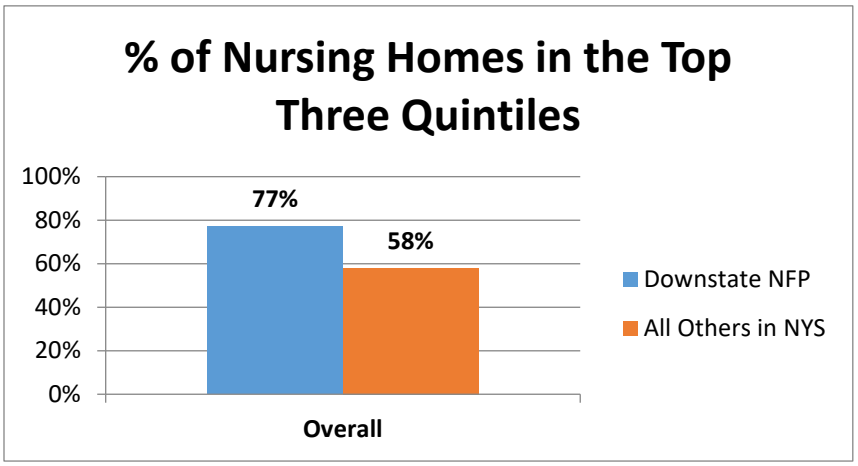
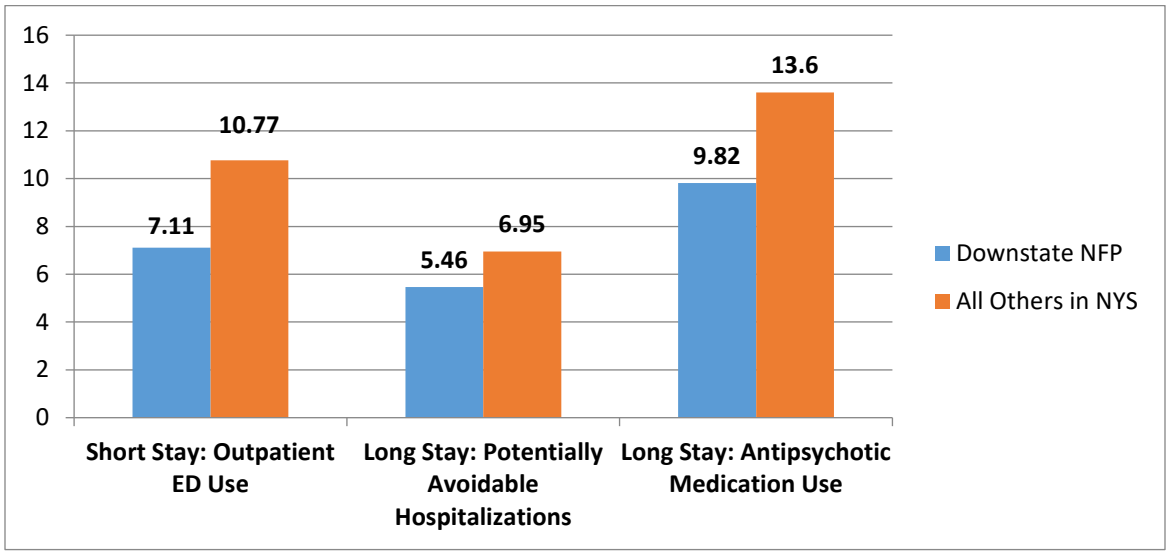


Table 5

Downstate Not-for-Profit Performance: PAH, Outpatient ED Use, Antipsychotic Med Use



Researchers, including Harvard University's David Grabowski, as documented in *Competitive Spillovers Across Nonprofit and For-Profit Nursing Homes*, have found that not-for-profit long term care providers uniquely have an effect on the overall community's quality of care, as their mere presence has been shown to elevate the care quality of all long term care providers in a region. Consequently, their diminishment in communities creates a risk of overall quality deterioration for those residing in such communities.

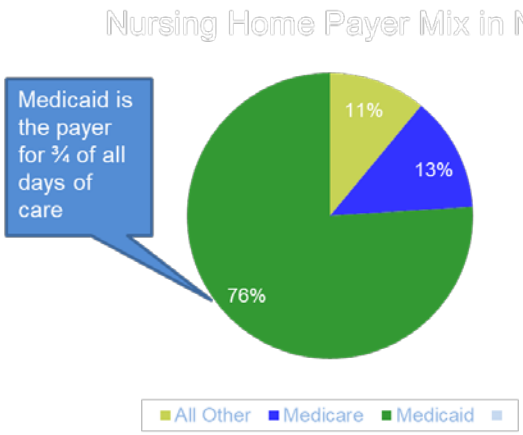
UNIQUE PRESSURES FACING THE STATE'S LONG TERM CARE SYSTEM AND THE NEED FOR ENHANCED MEDICAID RATE ADEQUACY

Several factors have combined over the last decade to place increasing pressure on the State's long term care providers. The consequences of these are seen in the growth of the proportion of financially distressed home health providers (with fully 78% of certified home health agencies reporting negative margins in 2016) and in the alarming acceleration of nursing home closures and conversions that the State has experienced since the mid-2000's – a trend that has already begun to alter the balance of providers in ways that threaten the State's standing on measures of quality, and that will fundamentally alter the range of care choices available to New Yorkers in their own communities. The most significant of these pressures are the following:

Near total dependency on public reimbursement sources. If one were to use dependency on Medicaid (or the percentage of Medicaid beneficiaries served as a proportion of total patients or clients served) as the measure of "safety-net" provider status, virtually all long term care providers in the State could be seen as safety-net providers. As the table below shows, New York nursing homes are 76% dependent on Medicaid. When Medicare is added to the mix, the State's nursing homes are, on average, dependent on public sources for more than 89% of their operating revenue.

Table 6

Nursing Home Payor Mix in NYS



As a result of this dependency – and the pressures that have come to bear on both Medicaid and Medicare over the last ten years – the long term care sector has struggled to operate even at a break-even level. In the nursing homes sector specifically, New York State providers have, on

average, lost 3% on operations over the last four years – with losses in the not-for-profit and public portions of the sector exceeding 4.5% during the same period.

The gap between Medicaid payment and costs. Several factors contribute to a significant structural gap that exists between Medicaid rates of payment at the individual provider level and the actual costs of delivering needed services to Medicaid beneficiaries. These include the move in 2011 to the current price-based reimbursement model (which largely severed the direct relationship between an individual provider's costs and the "Statewide price" that forms the basis for the Medicaid rate; the annual practice of reducing the Statewide price by a factor designed to achieve targeted budget savings; and – very significantly – the absence of a trend factor adjustment reflecting Medical CPI cost growth over the last 10 years. As a result of these factors, the gap between payment for a day of care for a Medicaid beneficiary in a New York nursing home and the costs of delivering that day of care – as calculated by Eljay LLC and Hansen Hunter & Company in its annual report, *"A Report on Shortfalls in Medicaid Funding for Nursing Center Care,"* now stands at $40.54, the largest such gap among the states.

Continuing efforts to curtail Medicare rates to long term care providers – and other Federal pressures. The ability to make a small margin serving patients who are covered by Medicare Part A, and who require long term care services following a hospital stay, is essential to the ability of long term care providers in New York to operate sustainably in the face of the financial pressures involved in serving Medicaid beneficiaries in New York. Unfortunately, Medicare payment levels have been under constant assault at the Federal level. Annual payment rules for nursing homes and home health providers routinely seek to achieve budgetary savings by reducing "market-basket" increases below estimated rates of cost growth. Pressures for further reductions will mount in future years as a result of the tremendous increase in the national deficit driven by provisions of the Federal Tax Cuts and Jobs Act and the requirements of Federal PAYGO rules that – in the absence of a Congressional waiver vote – will trigger drastic cuts to mandatory spending, including Medicare. As recently as last week, Congress included provisions in its Continuing Resolution – passed to avert a government shutdown –that would curtail Skilled Nursing Payments by $2 billion over ten years, and home care payments by $3.5 billion over the same period. On top of these dynamics, New York faces significant budget risks, which by extension entail risks to the Medicaid program, in the form of uncertainties surrounding the resolution of Federal funding issues, including the risk of New York losing close to $1 billion if the loss of cost-sharing reductions for the State's Essential Plan is not addressed in Congress. In the face of these risks, it is of paramount importance that New York acts to assure the adequacy of Medicaid payments to preserve access to care for the most vulnerable.

Cash flow pressures. Beginning in February 2015 in New York City, Medicaid began requiring those over the age of 21 who are dually eligible for Medicaid and Medicare, and who enter a nursing home for extended, long-term services, to enroll in a Managed Long Term Care plan, or MLTC plan. We are now seeing a range of unintended consequences, which include payment delays and denials, and consequent marked growth in the Medicaid days in accounts receivable of providers across the State. Compounding these factors, providers have experienced delays in the receipt of rate components – including the 1% percent rate supplement for nursing homes discussed below – and delays as well in the distribution of incentive payments associated with superior quality performance under the Nursing Home Quality Initiative (NHQI) program. These latter delays go back to the 2013 inception of the NHQI program, and CCLC is pleased that DOH is undertaking to pay out the retroactive amounts on an expedited basis.

RECOMMENDATIONS

Against the backdrop of the issues described above – the proposed Executive Budget for SFY 2018-19 contains both welcome provisions that would mitigate against pressures faced by quality providers, and provisions that CCLC would oppose, as they would exacerbate challenges that threaten providers and beneficiaries alike. Below, CCLC provides comments on specific budget provisions that we support, oppose, or to which we would recommend modification.

Broad-based Provisions that CCLC Supports (As Proposed, or with Modification)

The Healthcare Shortfall Fund

CCLC strongly supports the creation of the proposed Healthcare Shortfall Fund, employed flexibly to mitigate the risks associated with the potential loss of Federal healthcare funds *and* to provide Medicaid rate relief to ensure more adequate coverage of actual service delivery costs. New York's health care system could be severely impacted by adverse actions in Washington D.C. – or by inaction where interventions are needed to address problems such as the nearly $1 billion loss to New York from the loss of Cost Sharing Reductions (CSRs) for our State's Essential Plan. In the face of these risks – and the known need for rate relief across the provider sectors – the Healthcare Shortfall Fund is critical. **We support this fund, and call on the Executive and Legislative branches to work together to increase its funding – to at least $1.5 billion. We further urge the Legislature to work with the Executive Branch to utilize Shortfall Fund resources – or other resources as applicable – to provide a trend-related rate increase or otherwise enhance the long term care Medicaid benchmark rates to mitigate the existing gap between payment and costs.**

One Percent Nursing Facility Rate Supplement

CCLC supports the commitment contained in the budget proposal to establish a repayment schedule to pay out the four years of positive nursing facility Medicaid rate adjustments contemplated in the SFY 2014-15 State Budget, but not effectuated to date. Given the large accumulated retroactive balance of funds (totaling $280 million) that were not received by providers during the calendar years 2014-2017, **CCLC urges the Legislature to explore accelerating the payment schedule for implementing the one percent rate supplement, and to work with DOH to ensure that related regulations are issued in a timely manner, and that every effort is made to secure prompt approval from the Centers for Medicare and Medicaid Services (CMS) of any State Plan Amendment (SPA) needed to implement the payments.**

Limiting Duration of MLTC Plan Enrollment of Individuals Permanently Placed in Nursing Homes

The Executive Budget contains a provision that would limit the time period during which a person expected to reside permanently in a nursing home would remain enrolled in a managed long term care plan, prior to converting to coverage under Medicaid fee-for-service, to six months. This provision has merit from a care management and efficiency perspective, and, as well, will address pressures at the provider level by providing a more predictable structure for billing and payment for those patients who are deemed as permanently placed. **CCLC supports this provision, and urges the Legislature to consider reducing the six-month interval to a shorter time frame, such as 90 days.**

$425 Million in New Capital Funding

CCLC supports the inclusion in the Executive Budget of $425 million in new capital funding to support facility transformation, life safety and quality investments, VBP participation, and information technology and telehealth investments, among other purposes. CCLC commends the State for establishing minimum thresholds of funding targeted for nursing facilities and community-based providers, whose capital needs are extensive and vital to meeting the needs of those they serve. **CCLC supports new capital investments in the Executive Budget, and encourages the Legislature to support equitable allocations of funding to residential and community-based providers of long term care services.**

<u>Budget Provisions that CCLC Opposes</u>

New 2% Nursing Home Penalty

The Executive Budget proposes reducing Medicaid revenues in a payment year by 2% in nursing facilities if in each of the two most recent payment years the New York State nursing home quality initiative data was ranked in the lowest two quintiles. **CCLC opposes this proposal as it structured. Quality incentive provisions should not be used as mechanisms for budget savings; at minimum, any new penalties for low performers should be redirected as rewards to high-performing organizations, and optimally, the State should identify new funding to populate a pool to enhance quality incentives for exceptionally high quality long term care providers.**

Nursing Home Case Mix Cut (Case Mix "Rationalization")

The Executive budget proposes to reduce Medicaid payments related to resident case mix by $15 million in SFY 2018-19. In a dynamic and evolving health care system – in which long term care providers are expected to successfully manage the care of increasingly complex patients, both short and long term – it is essential that providers are fairly and fully compensated for the costs associated with greater patient acuity. **CCLC opposes this proposal.**

1% Capital Rate Cut

The Executive Budget proposes to impose a 1% cut to capital payments across all provider types. This proposal is predicated on the formation of a workgroup to identify ways to achieve $13.4 million in total capital savings – approximately $7.6 million of which would be derived from cuts to long term care providers. This proposal would be highly destabilizing to providers that have invested – or will in the near future need to invest – in their physical infrastructures to improve safety and create a better environment for patient care, and who are dependent on capital reimbursement under Medicaid for payment of debt related to these investments. **CCLC strongly opposes this proposal.**

Cuts Targeting Managed Long Term Care Programs

The Executive Budget contains a large number of proposals to achieve savings associated with managed long term care (MLTC) programs. Of particular concern to CCLC, the proposed budget would reduce MLTC administrative funds – which we are concerned will negatively impact the ability of plans to manage the care of their enrolled populations – and it would also impose premium reductions on plans that accumulate reserves in excess of the minimum reserve levels required by the State. **CCLC encourages the Legislature to reconsider these proposed cuts, and to work with CCLC and others representing the MLTC plan community to review to totality of the budget**

recommendations affecting MLTC plans and come up with revisions that avoid unintended consequences that could undermine the effectiveness of this program.

OTHER ISSUES

Nursing Home Bed Hold Payment Policy

Prior to the Adoption of the final budget for SFY 2017-18, nursing homes with vacancy rates below 5% were paid a component of the Medicaid rate to reserve a resident's bed during a brief hospital stay. This provided assurance to residents that they would be able to return to their room and to the facilities that have become a surrogate family. The SFY 2017-18 budget eliminated this assurance, and the corresponding payments to providers for maintaining an open bed for temporarily hospitalized residents. **CCLC strongly encourages the New York State Legislature to restore the bed hold policy that existed prior to April 1, 2017 by including statutory language defining bed hold and related payment policy in any final budget agreement for SFY 2018-19.**

Nurse Staff Ratio Legislation

In 2016, the Centers for Medicare and Medicaid Services (CMS) undertook extensive research – weighing the appropriateness of alternate models to ensure that nursing facilities employed staff with the skill mix, experience and coverage appropriate to the unique characteristics of each facility's resident population. This process led the agency to reject a staffing approach based upon strict numeric standards, supporting, in lieu of such a model, one based on an expectation that facilities take a "competency-based approach" to ensure that the ability of facility staff to meet the needs of resident populations is aligned with those needs. CCLC strongly holds that this is a more appropriate model than that set for in the proposed Assembly and Senate measures A.1532 and S.3330 – one that better allows facilities to meet the needs of the residents in a person-centered care model, and one that aligns with current practice among not-for-profit skilled nursing facilities, which are highly focused on aligning staff resources with resident acuity, with a range of diagnoses, and with the content of care plans. **Although staff ratio legislation is not contemplated as part of the proposed budget legislation, it is of sufficient concern that CCLC here urges the Legislature to reject it as inappropriately inflexible, costly, and inefficient.**

CONCLUSION

I appreciate the opportunity to provide these perspectives and recommendations. CCLC looks forward to working in partnership with the Senate, Assembly, and the Office of the Governor in ensuring that essential long term care services remain strong and available to our State's older and disabled citizens as the demand for these services grows in the year ahead.