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TESTIMONY

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JOINT FISCAL COMMITTEES
BUDGET MEETING ON HUMAN SERVICES
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STATE BUDGET ISSUES IMPACTING OLDER NEW YORKERS AND THEIR FAMILIES

State Fiscal Year (SFY) 2019-2020

(Proposed by Governor – January 15, 2019)

Thank you for the opportunity to testify today. My name is Gail Myers and I am the Deputy Director of New York StateWide Senior Action Council ("StateWide.") We are a grassroots organization with chapters throughout the state. In addition to the input of our members, we learn about problems in the aging and health care delivery systems from the two helplines that we operate through contracts from the NYS Office for the Aging as a result of state budget appropriations, the Managed Care Consumer Assistance Program and our Patients' Rights Hotline and Advocacy Project. These cases inform us on how the aging and healthcare systems' policies and practices are affecting residents; we then can inform policymakers to see if system corrections can be made.

Our testimony today will focus on the NYS Office for Aging budget, specifically on programs and services that help older New Yorkers who want to remain in their homes and communities as they grow older. Our analysis of the rest of the budget and its impact on older residents is ongoing, and will certainly inform our discussions with the committees of jurisdiction in the weeks to come.

A. STATEWIDE'S PROGRAMS:

Patients Rights Helpline: Since 1987, we have received state budget funding through the NYS Office for the Aging (NYSOFA) to educate and empower seniors to uphold their health care consumer rights. StateWide's Patients' Rights Hotline and Advocacy Project originally was funded in SFY 1987-88 at $180,000 annually. Funding was reduced during economic crises, to a low of $31,500. However, need has increased with more calls related to health system changes, rights of dual eligibles (Medicare and Medicaid joint enrollees), the increased demographic of older New Yorkers, the use of observation status in hospitals, and the shortage of home care workers. In SFY 2017-18, funding was increased to $63,500.

In SFY 2018-19, the Legislature added $100,000 to *StateWide*'s Patient Rights Helpline to enhance the program, for total program funding of $131,500. This additional appropriation was much appreciated and has been used to provide thorough, personalized assistance to the increasing amount of callers, to provide more community education throughout the state, to upgrade our web site, and to add staff to support the program, including opening a Buffalo office to supplement the work done in our Albany, Tompkins County and NYC offices. The Governor's current budget proposes $31,500 for the StateWide's Patients' Rights Hotline and Advocacy Project.

> ***Recommendation:*** *StateWide requests the Legislature maintain the program at the SFY 18-19 level by adding $100,000 to the current appropriation. (Aid to Localities budget A2003/S1503, Page 6 – Lines 22-25).*

Managed Care Consumer Assistance Program (MCCAP): Since 2004, we have received state budget funding through NYSOFA to provide Medicare enrollment and pharmaceutical assistance program counseling to New Yorkers under the Managed Care Consumer Assistance Program. Under the Governor's proposal, *StateWide*'s Medicare and pharmaceutical insurance coverage counseling services will continue to be funded by the state without any gap in services and all six groups that provide MCCAP services will continue to be funded at the same level as last year. StateWide's current funding is $354,000 and appears as a specific line item in the SFY19-20 proposed Executive budget, (*Aid to Localities budget A2003/S1503, Page 5 Lines 40-41.*) This funding enables StateWide's Counselors to assist older New Yorkers in: choosing the Medicare coverage that best meets their needs; with billing problems; with enrollment and benefit information on other initiatives including the Elderly Pharmaceutical Insurance Coverage program (EPIC); and provides updates to the community on coverage issues. Counselors also provide enrollment assistance in the Medicare Savings Program (MSP) that gives low income Medicare enrollees premium relief and prescription drug assistance.

Additional resources are needed to increase outreach and provide enrollment assistance for the Medicare Savings Program. According to the Congressional Budget Office, failing to enroll in these programs costs these low-income New Yorkers, on average, $5,200 every year in out-of-pocket expenses. Only 38% of eligible New Yorkers are receiving the benefit – far under the national average of 51%, making New York one of six states with the lowest enrollment.

> ***Recommendation:*** *Increase funding for the Managed Care Consumer Assistance program by $1m, with the increase proportionately distributed. This would increase StateWide's MCCAP program by $200,399 so that it could increase its capacity in reaching more underserved and hard to reach seniors who are not accessing all of the benefits programs for which they rightfully qualify.*

B. NYS Office for the Aging (NYSOFA)

There is an escalating need for services due to the increased number of older New Yorkers and the public policy push to encourage people to receive services in the community rather than in residential institutions. The NYS Office for the Aging's programs delivered by the local offices for aging, including EISEP (Expanded In-Home Services for the Elderly), CSE (Community Services for the Elderly), Wellness in Nutrition (formerly called Supplemental Nutrition Assistance Program) and Transportation funding are vitally important. Additional funds were added by the Legislature in SFY 2018-19 to the Community Services for the Elderly program, giving flexibility to local Areas Agencies on Aging Commissioners (AAAs) to determine where there is greatest need to address local issues, including use of the additional funds for EISEP.

StateWide was pleased to see that the Governor's proposed budget maintained the SFY 2018-19 level of funding for CSE. Constituents continue to report unmet needs, particularly in home care services throughout the state, regardless of the ability to pay or source of payment. With cost constraints due to the tax cap at the local level where Aging services are optional, local dollar investments in aging services are stagnating or facing reductions and is important that any additional state resources invested in aging services not require a local match above baseline funding.

The Governor's Executive Budget proposed two new budget items related to services for older New Yorkers through the NYS Office for Aging that are of concern: the creation of an optional private pay model and adding $15m to the EISEP program while granting expanded authority to NYSOFA to adjust budget lines.

1. Create an Optional Private Pay Model (Article VII, Part U)

This language allows NYSOFA to implement private pay protocols for all programs administered by the office whereby individuals above 400% of the Federal poverty limit (Household size 1 = $48,560, 2018 guidelines) pay the full cost of the services they receive. Counties would have the discretion to opt-in to the program. The Governor's message claims that middle income New Yorkers "have limited access to government programs under the SOFA network" and that this language "authorizes counties to work with SOFA to allow middle-income New Yorkers to purchase SOFA services with private dollars to expand access to services in their communities."

StateWide is concerned that the message to middle-income residents is that they are not being served, when many do receive services. Missing from the narrative is that any limitation has been two-fold – the government's unwillingness to adequately fund services to keep pace with demand and the inability to provide EISEP in-home services due to a home health worker shortage that is unaddressed by this proposal.

Furthermore, if the proposal continues case management services provided as they currently are without cost sharing, the case load will increase exponentially without an increase in COLA adjustment for the workforce (which the budget once again defers) and yet no additional home care services will result. Middle-income residents might have increased hope that their needs can be met if they are willing to privately pay the AAA, but without addressing the home care worker shortage, the biggest barrier to care will remain for all populations served by the network of aging services providers.

Recommendations:

We support initiatives to incentivize innovations for improving access to services for all older residents. We recommend that since the Optional Private Pay Model language is so permissive, and so vague, it might be better examined as a free standing bill with public hearings and debate. Alternatively, the proposal might make more sense as a demonstration project, for a two year period, with review by the Legislature to continue or expand the proposal after reviewing the protocols developed and receiving assurances that the cost shift onto middle income residents was not burdensome, and the change in accessing services does not impede the ability of lower income residents from receiving services in a timely matter.

Additional Concerns and Questions regarding the Optional Private Pay Model:

a. What services would be included in this proposal?

The federal government allows for a private pay model, but precludes cost sharing for: Information and assistance, outreach, benefits counseling, or case management services, Long Term Care Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services, congregate and home delivered meals, and any services delivered through tribal organizations.

What services offered by NYSOFA remain as viable under this option? The Article VII language continues to allow cost sharing for the programs established pursuant to section two hundred fourteen of the Elder Law (Community Services for the Elderly program) for individuals below four hundred percent of FPL. Is there a conflict between the intent of the Private Pay option and the Older Americans Act prohibitions on private pay and cost sharing?

It would appear that EISEP in-home services (except for case management), respite, transportation, fitness/wellness programs, discharge navigation assistance and family caregiver supports could be subject to cost sharing for those above 400% of FPL. Note: EISEP already requires clients above 250% FPL to bear the full cost of home care services.

There may be some other innovative services that would be supported as a result of this new initiative and new models of delivery should be explored, tested and evaluated.

b. What data supports this proposal?

The proposal claims to "expand access to SOFA programs to those above 400% of the Federal poverty limit who chose to purchase these services using private funding." How has it been determined that this is an expansion of services when currently all older New Yorkers above Medicaid eligibility and family caregivers are eligible for NYSOFA services. What data shows the current use of services by older residents above 400% FPL; are they being turned away because there is insufficient funding by state and local governments to meet need? Is there sufficient capacity locally to meet the current need; is there sufficient capacity to expand services?

The state cannot be truly successful in adopting strategies that support aging in place without addressing the shortage of home care and personal care workers, as evidenced in the Assembly's 2017 hearings on the home care worker shortage and the Governor's intent, as stated in the 2018 State of the State Message, to launch a Long Term Care Planning Council that will be charged with examining New York's long-term care system. The Council was expected to analyze, evaluate, and identify the existing service gaps in New York's long-term care system, determine the most cost-effective evidence based interventions, and prepare a strategic plan to meet the emerging needs of New York's aging population over the next decade. Is this proposal part of that strategic planning, and if so, how does it impact access to services in light of an ongoing home care worker shortage?

c. Implementation questions:

i. How will this proposal impact lower income applicants for aging services? Are any steps needed to ensure that priority for services are given to those most in need? How can this be assured when data collection currently does not adequately capture unmet need?

How will the income assessment process be implemented so that persons who may receive services for no or partial cost share are given the opportunity for the reduced cost? (How will private pay options be coordinated with existing cost sharing requirements for EISEP services.) EISEP clients currently pay cost-sharing for in-home, ancillary, and noninstitutional respite services received under the client's care plan according to a sliding scale, reflecting the cost of such services and client income so that the full cost of services will be charged clients whose income is at or above 250 percent of poverty levels.

ii. How will service capacity improve to meet the demand?

Regardless of payer source - Medicare, Medicaid, EISEP, Long Term Care Insurance or even private pay – there is a current workforce shortage of home care workers. While NYSOFA has testified previously that no needs go unmet, the local Area Agencies on Aging (AAA) and consumers have documented that there is unaddressed need for EISEP home care services and transportation. EISEP home care services are not currently being fulfilled because of a home care worker shortage throughout the state. Some county AAAs are returning state funds because home care hours cannot be fulfilled.

iii. What type of plan will NYSOFA and AAAs need to put into place to assure that uniform procedures are implemented across the state so that data is reportable and comparable?

iv. Will older persons have the right to appeal the amount they are billed?

v. What entity(ies) will be allowed to bill the private pay client (the AAA, their subcontractor, a billing agency/collector, an insurance company, or other)?

vi. How will the financial assessment process be handled? What documents will be required to provide evidence of income? Will there be an asset/resource test as well as an income assessment? Will immigrants and legal residents be eligible?

vii. Is the state going to allow AAAs to offer private pay as an option only when their state/local/federal dollar allocations for a service are exhausted. (for example telling clients on a waiting list that they can get the service if they private pay). Or will older residents who are eligible for services with incomes >400% FPL be automatically offered private pay model to get these services (recognizing that current recipients are protected under proposal) and how will the private pay option impact waiting lists.

viii. How will administrative costs, including client billing and payment collection be charged? Who will pay for labor intensive case management services?

ix. What type of evaluation will be used, if any, to determine the success of this initiative? What way can the Legislature provide oversight for these changes?

2. Adding $15m to the EISEP program while granting expanded authority to NYSOFA to adjust budget lines. (Aid to Localities, Page 3, Lines 13-37)

This proposal adds new funding for Expanded In-home Services for the Elderly (EISEP). EISEP provides non-medical in-home services, case management, non-institutional respite and ancillary services. EISEP assists older adults (non-Medicaid enrollees) who want to remain at

home and need assistance with Activities of Daily Living (ADLs) such as dressing, bathing and personal care, and Instrumental Activities of Daily Living (IADLs) such as shopping and cooking. This funding is providing based on the assumption that Medicaid will achieve savings by clients using Aging services and preventing or delaying Medicaid eligibility, a philosophy that we support.

Recommendations:

We support additional funds to access community-based services for all older residents. We recommend that the $15m be moved to the CSE section, giving local Aging Commissioners the ability to determine how to spend the funds to address the highest level of needs. Appropriating the enhanced funding instead to CSE will keep decisions about unmet need in local hands, will prevent money from being returned to the state due to home care capacity issues, and will have the funding equitably distributed based on formula. Furthermore, we do not support current language that expands the ability of NYSOFA to allocate funds differently than the Legislature has adopted in its deliberations on appropriations.

Additional Concerns and Questions regarding the addition of $15m to the EISEP program and expansion of NYSOFA's authority to adjust budget lines.

a. How will unmet need be determined? Budget language indicates the funds shall be used to address the unmet needs of the elderly as reported to the office for the aging through existing reporting requirements or through any other reporting mechanism recognized by the director of the office for the aging.

Current concerns exist about reporting, and consistency between AAAs on how information is reported. Some AAAs have waiting lists, some do not maintain lists in spite of unfilled calls for service. Will there be a new data reporting system developed to identify unmet need? The NYSOFA has previously indicated that there is no unmet need because the aging network finds solutions to capacity issues, even when the aging network reports severe gaps in capacity for EISEP, including counties returning unspent state funding due to inability to provide home-based services to clients assessed as in need. How can a standard picture of unmet need be established to distribute these funds?

b. Why is NYSOFA given new authority to use this funding for other purposes, or to take funds from other budget lines to meet need? Budget language grants NYSOFA authority to adjust the appropriation without Legislative review or approval, "up to $15,000,000

hereby appropriated may be increased or decreased by interchange or transfer with any other general fund appropriation within the office for the aging to address the unmet needs of the elderly."

What safeguards can be utilized to ensure that funding is not taken from other programs with goals that do not relate to EISEP services approved for funding in the budget by the Legislature?

How will NYSOFA determine need, when current reporting is inadequate to define unmet needs?

How will AAAs receive funding on an equitable basis from this funding? Would it be distributed based on formula as the baseline EISEP funds are currently distributed? If a AAA returns funds to NYSOFA due to lack of capacity (from either the baseline funding or the new infusion of funding) how will NYSOFA be able to fairly reallocate those funds to AAAs with unmet needs for EISEP services?

c. Where is the effort needed to address capacity issues in EISEP?

AAAs report receiving and returning EISEP funds because they cannot fulfill home care services due to home care worker shortages. How can capacity issues be addressed by the infusion of new funds? Are there different strategies needed for rural vs. nonrural communities?

d. Why is this funding being put into EISEP rather than Community Services for the Elderly (CSE) which has been the preferred option for enhanced funding of the Legislature and the community advocates for aging, including the AAAs, in the recent past?

For the past several years, the Legislature has added additional funding for the CSE program, rather than the EISEP program. CSE gives flexibility to the AAA (rather than to NYSOFA as proposed here) to determine what and where there is local need, and to apply the funds accordingly. This flexibility to use CSE funds allows the AAA to devote the money to EISEP and/or other critically important services that allow older New Yorkers to continue to live in their community home and not seek institutional care. In so doing, CSE funding helps create savings in the Medicaid budget by preventing or delaying Medicaid eligibility for older residents. Appropriating the enhanced funding instead to CSE will keep decisions about unmet need in local hands, will prevent money from being returned to the state due to home care capacity issues, and will have the funding equitably distributed based on formula.

C. Budget Issues Impacting Older Residents outside of NYSOFA budget

Our budget analysis of issues impacting older residents in other areas of the budget is still underway.

Health

We are concerned that the Governor has proposed a commission to study "universal access to high-quality, affordable healthcare....including strengthening our commercial insurance market..." rather than moving forward to establish Improved Medicare for All, as articulated in the model NY Health legislation.

Furthermore, we are concerned that Governor would delay action on establishing safe minimum nurse to patient ratios in hospitals and nursing homes by directing the Department of Health to conduct a study to evaluate the impact of staffing on patient safety and the quality of health care delivery.

Medicaid

We repeat our concerns in previous years about the elimination of spousal impoverishment protections in the Medicaid program.

EPIC

We oppose cuts to the Elderly Pharmaceutical Insurance Coverage (EPIC) program, as proposed by the Governor. The Governor's budget reduces Aid to Localities EPIC funding by about 9%, reducing program benefit funding by $11,223,000. Justification for this cut is that the Affordable Care Act continues to phase-out the Medicare Part D coverage gap. The funding cut does not take into consideration the increased population to be served as each year a new wave of older New Yorkers age in to the EPIC benefit.

Furthermore, rather than cut the funding, we ask you to include all Medicare enrollees in the program to offset Medicare prescription drug costs by including persons with disabilities younger than age 65, so that EPIC works for everyone on Medicare regardless of age. Finally, we urge you to cover medical marijuana under the state's EPIC program.

Thank you for the opportunity to testify today.