Kathy Febraio, CAE
President and CEO
febraio@nyshcp.org

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 to the Joint Legislative Budget Committee on Health
January 29, 2020
Presented by Kathy Febraio, CAE
President and CEO

Introduction

On behalf of the New York State Association of Health Care Providers, Inc. (HCP), thank you for the opportunity to provide testimony on Governor Cuomo's 2020 – 2021 Executive Budget Proposal.

Now more than ever, HCP strongly believes that it is essential for New York State to INVEST in and protect the economic viability of the Home Care Industry in order to ensure individuals with disabilities, those with chronic illness and elderly populations continue to have access to services that allow them to remain in the comfort and safety of their own homes.

HCP is a statewide association representing licensed home care services agencies (LHCSAs), certified home health agencies (CHHAs), fiscal intermediaries (FIs), and related health organizations throughout New York State. Our members are reeling from the perfect storm of increases in direct care costs, severely inadequate reimbursement rates, and lack of adequate and timely contract amendments from Managed Long Term Care (MLTC) organizations to cover increases in costs.

Providers of Home Care services have been cut to the bone in recent years and are operating on razor thin margins. Many of our members report that this is all compounded by holding accounts receivable from MLTCs far too long, for hundreds of thousands of dollars and more, leaving our provider members facing personal financial crises and needing to secure personal loans and lines of credit to make payroll. This scenario is currently playing out for a member of ours that has been operating in some form or fashion since before World War II. More than 50% of our members report late and delayed payments from MLTC plans. This brings into question the viability of the MLTCs, the providers and the entire long term care infrastructure.

In the past weeks and months much has been written about Home Care and specifically "Personal Care" provided under the New York State Medicaid program as if Home Care providers were simply corralling elderly and disabled individuals out on the streets and providing care to individuals who had not been assessed to be eligible for Medicaid, nor evaluated for the appropriate services.

Nothing is further from the truth! Services under the personal care program are provided pursuant to federal and state regulations under the Medicaid program. Persons receiving services must be eligible for Medicaid and must comply with income and asset tests.

Recipients of Home Care/Personal Care first undergo a conflict free assessment by New York State. Personal Care services are then only provided after, first a physician's order and second, after a detailed assessment by a registered nurse, which must detail what personal care services are necessary for the "maintenance of the patient's health and safety in his or her own home." These assessments are done every six months. The services pursuant to the assessment include assistance with toileting, bathing, transferring, feeding, grooming, preparing meals with special diets and assistance with administering medications.

These patients are our parents and grandparents, aunts, uncles, children, siblings and neighbors. To be clear, however, each and everyone one of them has specific needs and are assessed to provide for those needs under New York's home care programs.

Has the program grown? Yes, it has but not due to increased rates to providers. It is critical to point out that the personal care program existed long before the Managed Long-Term Care Program. These recipients transitioned in waves into the program starting with almost 100,000 in 2011 and thereafter, from the existing Medicaid fee for service program. Interestingly, the program growth in the last ten years has grown consistent with the rate of growth in the elderly population in NYC.

New York State is home to the fourth-largest elderly population in the 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.

Have home care providers had an increase in their basic costs or a trend factor in ten years? No, they have not.

Have State subsidies for the living wage and minimum wage covered all of the costs of paying for these mandatory labor costs? No, they have not.

All the while the Home Care industry has been faced with a multi-year licensing moratorium, the prospect of a new Certificate of Need (CON) process as part of licensing, contract limits with managed care organizations, increases in labor costs, and preparations for the implementation of electronic visit verification due at the end of this calendar year, among others.

Our members could not be prouder of the work they and their staff do on a daily basis to help our frail elderly and disabled citizens.
Today, long term care spending in Medicaid is almost identical to the percentage of Medicaid spending ten years ago, around 45%. Yet today the only answer talked about appears to be cuts in Long Term Care and Home Health Care.

Cuts are not the answer. The Medicaid system needs revenue. The alternative is people needing service with no way to provide it. That is not a viable alternative to investing in Home Care.

Background

New York has developed a comprehensive regulatory and oversight system for home care agencies designed to ensure the safe and effective delivery of home care services. Home and community-based care is recognized by New York State as a critical component of health care delivery. Moreover, home care is recognized as the patient-preferred option, enabling individuals with disabilities, those with chronic illnesses and elderly New Yorkers to remain with their families and be cared for with dignity in the comfort of their own homes.

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 providers deliver services to New York's most vulnerable populations through a number of programs such as Managed Long Term Care (MLTC), the Consumer Directed Personal Assistance Program (CDPAP), Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs, the Medicaid Fee-For Service Program and other Managed Care Organization (MCO) services.

Home care has played a major role in achieving cost savings for the State of New York and has the potential to provide greater value with the proper investment in workforce development and adequate reimbursement rates. However, in order for home care to remain a viable option for New York, there are a number of significant issues that must be addressed, as well as investment in this essential health care sector.

Addressing the Medicaid Budget

While HCP would like to provide helpful feedback on our position with respect to the proposed Medicaid budget, alas we cannot. It is difficult to react to or analyze Medicaid proposals in the Governor's budget given that he has not provided the necessary details other than to raise significant concerns with the growth in Medicaid spending. Instead his approach is to redeploy the Medicaid Redesign Team (MRT II) tasking *it* with restructuring Medicaid and finding $2.5 billion dollars in Medicaid spending in time for the April 1 State budget deadline.

This is alarming to our member providers in the Home Care Industry for a number of reasons, not the least of which is that during MRT I the home care industry sustained 36% of MRT cuts. At that time, Home Care represented only 12% of the State's Medicaid budget bearing a disproportionately large percentage of cuts.

If the Home Care Industry is a focus of MRT II then the only appropriate and sensible thing to do is to include HCP and our member providers as full members of the MRT II to take part in those discussions to ensure fair representation in the process. Anything less would be farce.

In considering the factors that contribute to the increase in Medicaid spending we cannot overlook the rapid increase in the aging population in need of long-term care supports and services, increases in utilization, increases in minimum wage and wage related payments, and lack of planning, among the factors.

While growth in the need for long term care and, in particular, home care services increases, the reimbursement for those services has illogically stagnated or even decreased. All the while, the number of adults age 65 and over is expected to increase by 50 percent between 2015 and 2040; that number is expected to double for adults over the age of 85 during the same time frame.

The current and obvious need for long term care is sizable and will continue to grow. That New York's population is aging is a truism, as is the strong preference for aging in place in one's home. The growth in the aging demographic, which has in large measure driven the growth in long term care, is clearly and most definitely beyond the control of the Home Care Industry, a factor we strongly urge policy makers to consider as we all face very difficult fiscal circumstances in the coming fiscal year.

Some have actually said that the growth in the Medicaid program is due to Home Care. However, the drivers of utilization in the program are not the Home Care providers, but the managed care organizations that assess and determine the number of hours of care to be provided. Again, something well beyond the control of the Home Care industry, but firmly in the hands of others not the least of is the managed care organizations. Likewise, it is not the Home Care industry making Medicaid eligibility determinations for long term care. Therefore, while there has been growth in the use of home care services in recent years, that growth is attributable to factors largely beyond the control of the home care industry.

Home Care has been shown time and again to be far less costly than hospitals, nursing homes or other care options. Moreover, people overwhelmingly prefer to age in their home. It is critical now more than ever, for New York State to invest in Home Care! Given the savings associated with Home Care we are confident that a properly funded Home Care industry can provide the critical and necessary savings the state needs in light of the massive and unsustainable growth of the Medicaid budget, while at the same time, providing fulfilling employment opportunities for New Yorkers.

Home Care and those who depend on it cannot, should not, and will not be overlooked.

As leading policy makers have said, we need a clear plan to deal with the deficit. The Medicaid funding "crisis" is caused by the artificial Medicaid Cap created 8 years ago, with no recognition of or relationship to the demographics of the population. That is clear, today, more than ever. It becomes painfully more clear every passing day.

Other Issues Facing the Home Care Industry

Recruitment and Retention and other Workforce Related Challenges

Future trends indicate that as demand for home care workers continues to grow, recruitment and retention challenges will increase. According to the U.S. Bureau of Labor Statistics, home health care is on pace to be the fastest-growing industry in the nation, with an average growth rate of 4.8% each year, and home health aides and personal care aides are among the top five fastest growing occupations. These projections do not factor in the increased demand for home care services that is expected as Americans live longer, and the availability of family caregivers decreases.

Across the State home care agencies are experiencing significant challenges recruiting and retaining home health aides, personal care assistants, and nurses. This creates obstacles in their service areas and impacts their ability to provide patient care and meet the growing demand for home care services due to New York's aging population. Home care workers perform difficult jobs, often under challenging conditions, at salaries that are at or near minimum wage.

Specifically, inadequate reimbursement in Medicaid managed care is impeding agencies' ability to offer more competitive salaries. Overall reimbursements in Medicaid managed care fail to adequately cover the cost of compliance with existing mandates, and the gap between agencies' costs and managed care reimbursement rates has grown significantly wider in recent years.

Some have recommended that the State eliminate funding for recruitment and retention of the home care workforce. This is not a viable solution. First, our workforce is dedicated and has a special drive to care for those wishing to remain living in their homes and communities. These are demanding, critically important jobs that provide cost savings to the State when compared to institutional care. Second, the rate of workforce turnover being experienced is at an all-time high and is cited as the top challenge for home care agencies across the country. When you consider that caregiver turnover has been reported at 82% in a recent study, now is not the time to cut recruitment and retention funding!

In fact, turnover was so severe in 2018 that more than half of the study participants had to turn away new clients because they didn't have enough caregivers.

The Governor's budget proposal provides nearly $147 million for Workforce Recruitment and Retention (R&R). However, there has been a dire lack of transparency under Medicaid managed care as to how the R&R funds are used once they have been disbursed to the managed care plans. This was not the case under Medicaid fee-for-service, when home care agencies would receive a separate line item on their remittances.

This State funding is intended to be used solely for purposes of recruitment, retention and training of home care aides and other direct care personnel. The R&R funds are critically needed to help home care providers address the tremendous challenges they face in recruiting, retaining, and training qualified workers, such as offering competitive salaries and other incentives in areas experiencing labor shortages.

Further investment in training and workforce development is also essential to help home care workers participate in new and collaborative models of care delivery, such as training in the use of technology to collect and transmit clinical data, and new career pathways. Such investment will greatly enhance the value that home care workers provide to the health care system in New York.

Rate transparency in payment to agencies is critical to knowing how much R&R funding, if any, is being disbursed to agencies. Without knowing what R&R funding is being paid it is difficult to effectively maximize R&R dollars.

Likewise, Home Care agencies have difficulty competing with hospitals, nursing homes, behavioral health service providers and state agencies to hire staff, because home care agencies are unable to afford the wages, benefits, and signing bonuses that may be offered by these other employers.

In response to this workforce shortage, agencies expend more resources to find potential workers. Agencies invest time, money and resources into training and other requirements needed to become home care workers.

Having an adequate workforce to provide care is essential to ensuring that home care services remain available. Without home care workers, access to home care services will be limited. New York State must address workforce shortages to ensure the provision of high-quality home health care in the future.

Inadequate Reimbursement and Cost Controls Impacting the System

Home Care agencies are currently facing 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. Enabling the State's elderly populations to age independently and safely within their homes starts with defending New York's financially stressed home care infrastructure and matching the inevitable increase in elderly populations and home care demand with an increase in investment.

Rate adequacy and inadequate reimbursement levels for home care services provided under Medicaid managed care continues to threaten the long-term viability of the home care industry. In recent years, home care agencies have seen their labor costs dramatically increase across the State, due to statewide minimum wage increases, wage parity increases on Long Island and Westchester, and double digit increases in workers' compensation rates. There have also been changes in the Federal Fair Labor Standards Act (FLSA) rule that significantly increased overtime, travel and live-in costs, and triggered inclusion of home care workers in the State's Domestic Worker Bill of Rights law.

Since 2016, HCP and its members have worked with the New York State Department of Health and industry stakeholders to assist the State in the development of a minimum wage implementation process, as well as the formulation of reimbursement rates. Each year since the minimum wage increase went into effect in December 2016, home care providers have struggled to receive timely contract amendments and/or adequate rates of payments from their contracted managed long-term care (MLTC) plans in advance of the new wage level going into effect.

Without timely contract amendments and monies fully disbursed to home care providers, providers must still meet statutory wage obligations and pay home care workers – whether or not plans distribute funds as they are instructed to do by the State Department of Health. Absent the payment by the plans of State minimum wage funds, the majority of home care providers do not have the financial resources to pay for the wage increase. The result is that agencies must reduce or eliminate home care services, reducing the availability of these essential services to dependent consumers. It is essential that the State improve its oversight of the distribution of minimum wage funds to home care providers so that these disruptions in care or elimination of home care services does not occur.

Consumer Directed Personal Assistance Program (CDPAP)

Looking to the Consumer Directed Personal Assistance Program (CDPAP) as an example of challenges faced by the industry, HCP urges the Legislature to consider the monumental changes that have been taking place in that program since the enactment of the last budget. These changes have led to grave uncertainty in the future of the program and are undoubtedly going to lead to a self-created and totally avoidable catastrophe on the part of the Department.

In the last year, the Department has announced grossly inadequate reimbursement rates for FIs providing services in CDPAP, was challenged in court for doing so, rescinded the rates, filed a notice of appeal in the case—which it has failed to prosecute to date—released a request for offers (RFO) late in the year, long after it was expected, which began the procurement process for FIs wishing to continue providing services in CDPAP,

and published in the *State Register*, as the Judge in the Court challenge required, a proposed rule that for all intents and purposes is identical to the proposed rate structure that was successfully challenged and that attempts to change the rate retroactive to September 1, 2019.
Moreover, the recently released RFO is very complicated. HCP submitted dozens of questions on behalf of its membership seeking clarity on a number of issues, for which we continue to await answers. While the Department did accede to our request to extend the deadline for submission of responses to the RFO, it has now twice extended the deadline within which it has to provide answers to the questions that have been submitted to it.

All of this is to say, the Department's actions with respect to CDPAP, left unchecked, will undoubtedly result in a self-created and totally avoidable catastrophe that will have severe consequences for Consumers, their personal assistants, and the FIs that provide services in the program.

Conclusion

Thank you for this opportunity to comment on the state of home care. HCP looks forward to working with the State Legislature to address the critical needs of the home care industry across the State, to ensure access to high quality home care services.

Individuals with disabilities, those with chronic illness and the elderly want to have access to health care services in their homes. Many of the difficulties experienced by home care agencies cannot be resolved without State investment. Now is the time to invest in home care.