

CDPAP Watch

Joint Budget Hearing on Health

Testimony

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Founder

January 27th, 2020

Dear

Honorable Liz Krueger - Chair, Finance Committee
Honorable Helene E. Weinstein, Chair, Committee on Ways and Means
Honorable Richard N. Gottfried, Chair, Committee on Health
Honorable Gustavo Rivera, Chair of Committee on Health
All Honorable State Legislators participating in the Joint Hearing on Health,

Thank you for the opportunity to provide testimony for the Joint Budget Hearing on Health.

CDPAP Watch is a grassroots organization representing consumers, designated representatives and personal assistants in the Consumer Directed Personal Assistant (CDPAP) program.

Our mission is to protect the rights of all CDPAP participants (senior citizens, people with disabilities, children with special needs) through advocacy and education programs.

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In his 2020 State of the State address, Governor Cuomo depicted New York as a ship sailing past the "reefs of greed" towards a progressive, "enlightened" future.

There are indeed "reefs of greed" - and on these rocks live **Managed Long Term Care**.

Governor Cuomo's first Medicaid Redesign Team (MRT) forced many families (including mine) into Managed Long Term Care.

Now, almost 20 years later he is reconvening a new MRT. He even depicted them as a group of superheroes saving the world. But does his rhetoric match reality?

As you will read, it most certainly does not.

Below please find a brief background on CDPAP and MLTC including questions we respectfully ask the legislature to consider during the Joint Budget Hearing on Health.

Why CDPAP Works

CDPAP is known as the "hidden gem" in the long term care community.

A lifeline to New York's most vulnerable, CDPAP:

- Enables senior citizens to age-in-place at home
- Allows people with disabilities to live and thrive in the community
- Offers support to keep in children with special home with family and out of group homes

Under, CDPAP the following benefits apply:

- Consumers or their representatives can recruit their own home aides, ensuring the appropriate level of skill, compassion and “patient-aide” cultural fit
- Caregivers to train home aides in the personal and medical tasks they know best
- Home aides are able to perform nursing-level tasks that are critical for people to remain in the home – i.e. administering medications, wound care, and more

All of the above encompass what is known as “consumer directed” model of care. This simply means the consumer has the ability to control their own care.

Under the "traditional" model of home care, the home health agency dictates who and how the consumer will be care for.

Eager to keep loved ones at home, families are seeking an alternative to traditional home care. They are embracing the promise of CDPAP.

The Menace of Managed Long Term Care

Managed Long Term Care (MLTC) is a Medicaid service for the chronically ill or disabled who wish to stay in their homes or communities.

In 2011, Cuomo convened the Medicaid Redesign Team (MRT). The goal of the MRT was to create a plan that will limit spending while increasing quality. The plan forced many of New York's most vulnerable into MLTC companies.

MLTC companies are "in-between" entities that exist between the State and providers. States fund MLTCs a fixed amount per consumer— regardless of the level of care required.

As an example, a MLTC may receive \$3800 per month per consumer. That amount would pay for any level of care — i.e. consumers that need 7 hours / day or 24 hours / day of home care.

Under this model, MLTCs earned more profit from enrolling consumers with less care.

Serious problems immediately surfaced from this system of "privatized Medicaid". In a July 16th, 2014 New York Times article "Medicaid Home Care Cuts Are Unjust, Lawsuit Says" health reporter Nina Bernstein writes

"... advocates for aged and disabled people have complained that in the scramble for the most lucrative enrollees, companies are shunning frail people with the greatest needs and signing up those who could be given minimal services."

Unfortunately and shockingly - these problems are still occurring today.

I know because our family was the victim of predatory practices by MLTC companies as described in the 2014 New York Times article.

The Hard Questions

Since the MRT has yet to convene there is substantial uncertainty about their agenda.

CDPAP Watch respectfully requests that the legislature consider the following questions during the Joint Budget Hearing on Health:

1. Why is Governor Cuomo targeting CDPAP and long term care jobs as cost burdens?

Throughout his budget address and briefing book, Governor Cuomo commends the billions that will be invested in infrastructure and education - and the many government paid jobs that will result from such efforts.

Yet he labels home aide jobs as an unsustainable cost.

What is the difference? Are jobs that care for the elderly and disabled less important? Home aides deserve a living wage for their invaluable service to the community.

Our country is facing a crisis in home care.

Great leaders often frame tackling such crises as challenges to overcome with innovative ideas. They do not begin by stating they are talking about unsustainable, rising costs. That sets the tone of a burdensome expense rather than a critical and compassionate investment to care for our most vulnerable.

2. Will there be consumer representation on the Medicaid Redesign Team?

In 2011 the MRT did not include any members of the long term care community.

How can the MRT truly understand the consequences of their actions without direct feedback from those on long term care?

3. Will there be public hearings?

Last year, the DOH attempted to drastically reduce CDPAP Fiscal Intermediary (FI) reimbursement rates. In its judgment, the courts stopped this action and ruled the DOH did not follow proper SAPA guidelines, including accepting public comment.

Let me very clear:

Even though the new rate formula was struck down - it injected massive "instability" into the home care market. Some MLTCs (whose contracts with FIs allows them to change rates at any time), proceeded with the cuts nevertheless.

And FIs that contract directly with the State, fearing a long trial (the DOH has indeed appealed) – proceeded with service and benefit reductions as well.

As a result, home aides were slapped with lower wages, reduced overtime or the complete elimination of overtime. This, in turn, placed increased burden on the consumer to recruit quality home aides - who rely on a living wage and overtime for financial survival.

This year, the DOH is trying again to reduce FI funding. But this time as a regulatory change (see 12/30/19 State Register HLT-53-19-00012-P).

The public can only comment via email or mail. The DOH offered no public hearings.

Is this acceptable?

Will the MRT follow the DOH and simply offer an email with no option for a public hearing?

4. What assurances do we have the MRT will be fair and impartial?

Although we do not yet know the full makeup of the team – we do know its leadership. And we also know the first MRT to have a history of questionable proposals:

In 2011, the Center for Justice and Democracy submitted a formal ethics complaint to the Public Integrity Commission, which regulates ethics laws over New York state agency employees. In a [March 9, 2011 article published by the Wall Street Journal](#), reporter Jacob Gershman writes:

“The complaint focuses on four hospital-affiliated members of Mr. Cuomo's team, including the heads of state's two major hospital associations. It claims that those groups inappropriately benefited from the team's final recommendations to cap pain-and-suffering in malpractice awards at \$250,000 and to create a medical indemnity fund to help hospitals pay for the costs of treating brain-damaged infants.”

Given this information, what measures will be taken to ensure the MRT will proceed in a fair and impartial manner?

5. Is there a backdoor in the Governor's budget?

In his [FY2021 proposed Aid to Localities appropriations bill](#) (p. 504 – 505), it seems as if a "failsafe" mechanism exists to ensure a \$2.5B cut regardless of legislative action:

Provided further however, that notwithstanding any provision of law to the contrary, if, on or before April 1, 2020, the legislature fails to achieve \$2,500,000,000 in aggregate savings from the appropriations enacted as part of any chapters of the laws of 2020 making appropriations for aid to localities and/or state operations for the department of health state funds Medicaid spending, excluding payments for medical services provided at state facilities operated by the office of mental health, the office for

people with developmental disabilities and the office of addiction services and supports and further excluding any payments which are not appropriated within the department of health, uniform across the board reductions shall be applied to such appropriations to achieve \$2,500,000,000 in aggregate savings from such appropriations. Provided however, that any such uniform reductions may be increased or decreased at the discretion of the director of the budget to conform with federal rules and regulations. To the extent any individual or entity is otherwise entitled to any cash disbursement authorized by one or more of such appropriations or reappropriations for the department of health state funds Medicaid spending, excluding payments for medical services provided at state facilities operated by the office of mental health, the office for people with developmental disabilities and the office of addiction services and supports and further excluding any payments which are appropriated within the department of health, such entitlement shall be superseded and reduced commensurate with any such across the board reductions.

Is this accurate? And, if so, why are facilities excluded and not any community-based service organizations?

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In closing, thank you for reading and considering our testimony.

Many families around the state will be watching the budget hearing in fear of what is to come. However, we are confident your leadership and compassion will protect us.

Respectfully,

Andrew Heller

Founder, CDPAP Watch