STATE WIDE
New York StateWide Senior Action Council, Inc.
275 State Street, Albany, NY 12210 • (518) 436-1006 • Fax (518) 436-7642
www.nysenior.org

TESTIMONY

GAIL MYERS, DEPUTY DIRECTOR
NY STATEWIDE SENIOR ACTION COUNCIL

JOINT FISCAL COMMITTEES
BUDGET MEETING ON HUMAN SERVICES
JANUARY 30, 2020

STATE BUDGET ISSUES IMPACTING OLDER NEW YORKERS AND THEIR FAMILIES

State Fiscal Year (SFY) 2020-2021

(Proposed by the Governor – January 21, 2020)

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. We also are informed by our Senior Medicare Patrol helpline, funded by the federal government, to protect, detect, and report Medicare and Medicaid fraud. 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. We also will highlight some benefit programs for older residents that are funded in the Department of Health.

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 & SFY 2019-20, 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.

Recommendations:

- *StateWide requests the Legislature restore the program to the SFY 2019-20 level by adding $100,000 to the current appropriation. (Aid to Localities budget S7503/A9503 Page 8, Line 27-30).*
- *StateWide requests that the Legislature reappropriate $100,000 from SFY 2019-20 due to delays in contracting with NYSOFA.*

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 S7503/A9503 Page 7, Lines 30-49.*)

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 the federally funded Low Income Subsidy (LIS)/Extra Help for prescription drug insurance assistance.

Only 38% of eligible New Yorkers are receiving the MSP benefit – far under the national average of 51%, making New York one of six states with the lowest enrollment.

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 MSP 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 providers 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.

The Governor's proposed budget maintains the SFY 2019-20 level of funding for CSE. In SFY2019-20, the Governor added $15m to NYSOFA programs, designed to address unmet need. We are pleased that the Governor has again proposed an investment of $15m in NYSOFA programs to address past waiting lists.

Waiting Lists The money is being distributed to counties that showed a 2017 waiting list for services, a situation that is complicated by the fact that as a matter of policy, some counties do not maintain waiting lists when their capacity to deliver services is exhausted. (Ten area agencies on aging received no additional funding in SFY19-20.) There are some services, such as congregate meals, where there are no functional waiting lists. Congregate meal providers are instructed not to turn any senior away, yet providers report that costs of the meal service is exceeding the funding allowed by their contracts with the AAA, which is funded by a combination of federal, state, local and voluntary contributions. So, what we see for some of the aging services programs is underfunded services that are not addressed by the current appropriations, nor captured in waiting lists.

Unmet Need The US House Committee on Education and Labor produced a fact sheet during its deliberations on reauthorizing the Older Americans Act (OAA) noting that "as the population of Americans age 60 and over has grown, funding for OAA is not keeping pace….. As a result, 83 percent of low-income older

83% LOW INCOME OLDER AMERICANS WHO EXPERIENCE FOOD INSECURITY DO NOT RECEIVE ANY MEAL SERVICES THROUGH OAA

Americans who experience food insecurity do not receive any meal services through OAA," according to a 2015 report by the Government Accountability Office (GAO). The same report found that two-thirds of older Americans who struggle with daily activities received limited or no homebased care services."

2/3 OF OLDER AMERICANS WHO STRUGGLE WITH DAILY ACTIVITIES RECEIVED LIMITED OR NO HOMEBASED CARE SERVICES

Additional descriptions of unmet need from the same GAO report show that an estimated 27 percent of people age 60 and older likely need home-based care like the services provided by Title III programs because they report difficulties with one or more daily activities. [GAO's analysis of 2012 Health and Retirement Study (HRS) data.] They further identify that between 67 - 78 percent of older adults who likely need home-based care receive limited or no help with their difficulties. GAO estimates that about one in five people age 65 and older potentially need transportation services. "Specifically, about 20 percent of people age 65 and older are potentially at-risk for needing transportation services, such as those provided by Title III programs, according to GAO's analysis of 2012 HRS data."

20 PERCENT OF PEOPLE AGE 65 AND OLDER ARE POTENTIALLY AT-RISK FOR NEEDING TRANSPORTATION SERVICES

[Source: https://www.gao.gov/products/GAO-15-601R]

A study published in the April 2019 edition of Health Affairs found that half of middle income elders won't be able to afford housing and medical care. On a national basis, they projected that of residents ages seventy-five and older in 2029, 60 percent will have mobility limitations and 20 percent will have high health care and functional needs. They also projected that 54 percent of seniors will not have sufficient financial resources to pay for the level of services they will need in the growing senior housing marketplace.

HALF OF MIDDLE-INCOME ELDERS WON'T BE ABLE TO AFFORD HOUSING AND MEDICAL CARE.

[Source: https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05233]

Recommendation: *Increase funding for core NYSOFA programs by a minimum of 7%, reflecting Congress' report on the funding increase needed to address unmet need. This includes CSE (this program allows local aging offices to determine priority for allocating the funds,) Transportation, Caregiver Respite, Long Term Care Ombudsman, and Wellness in Nutrition. 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.

Program	2019-20 funding	Governor's 2020-21 proposal	StateWide recommends increase over Exec. Budget - minimum +7% over 2019-20
CSE	31,183,000	31,183,000	**+$2,182,810**
Transportation	1,121,000	1,121,000	**+$83,300**
Caregiver Respite	656,000	656,000	**+$45,920**
Long Term Care Ombudsman	1,190,000	1,190,000	**+$83,300**
Wellness in Nutrition	27,483,000	28,281,000 An increase of 798,000	**+$1,125,810**

Home Care Worker Shortage

Constituents continue to report unmet needs, particularly in home care services throughout the state, regardless of the ability to pay or source of payment (EISEP, Medicaid, Medicare, long term care insurance or private pay.) In part, this is due to the shortage of personal care home care workers and in some areas, reported shortages of case managers. It will be interesting to review the SFY2019-20 budget report that you required be completed by September 2020 on how the $15m of new funds were used in the NYSOFA budget, since it was not required that they be used exclusively for EISEP services. We recommend that this year you also request a review of the barriers to spending resources on the EISEP home care program. To do so, we recommend incorporation of A7504/S6586, requiring an annual report to the Legislature on unmet need due to insufficient resources or *capacity*.

Recommendation: *Require a report by NYSOFA that addresses unmet need due to insufficient resources or capacity.*

The state cannot be truly successful in adopting strategies that support aging in place without addressing the shortage of workers, as evidenced in the Assembly's 2017 hearings on the home care worker shortage. We urge you and your colleagues to address the capacity issues in a comprehensive manner so that the traditional medical/health home care worker shortage and the aging/EISEP home care worker shortage are addressed together, and that solutions for one sector do not create further problems for the other. As New York's home care providers struggle to recruit and retain workers, they unfortunately lack the resources to test innovative solutions to this problem.

> ***Recommendation**: This year's budget should include funding to support pilot projects throughout the state that boost the number of home care workers that enter and remain in the field. Set aside funding to develop innovative pilot projects to incentivize the growth of the home care workforce, which would be tested and replicable throughout different areas of New York State. We recommend that a new Home Care Jobs Innovation Fund is funded at $15 million over three years.*

Long Term Care Ombudsman Program (LTCOP)

LTCOP is a vitally important program that is funded largely by the federal government through Older American Act funds and partly by the state to supplement that funding. LTCOP functions as an independent agency and is hosted by the NYSOFA. According to the NYS LTCOP website, its goals are to be an "advocate and resource for older adults and people with disabilities who live in nursing homes, assisted living, and other licensed adult care homes. Ombudsmen help residents understand and exercise their rights to good care in an environment that promotes and protects their dignity and quality of life. The Ombudsman Program advocates for residents by investigating and resolving complaints made by or on behalf of residents; promoting the development of resident and family councils; and informing government agencies, providers, and the general public about issues and concerns impacting residents of long-term care facilities."

In October 2019, the NYS Comptroller released an audit of the LTCOP. Below are the Key Findings and Recommendations:

Key Findings:

1. Certain system-generated Office data (complaint records, number of volunteers and paid staff, and number of LTC facilities and associated beds) may not be sufficiently reliable for NYSOFA's use for analysis at the facility, regional program, or complaint level, which may limit its usefulness in decision making.

2. Many residents of LTC facilities in the State lack regular access to ombudsman services, due in part to a decline in the number of volunteers combined with a lack of paid regional program staff. As of January 2019, about 600 of the approximately 1,500 LTC facilities in the State – about 40 percent – have an assigned volunteer ombudsman, leaving the remaining 900 facilities to be covered by only 50 paid local staff, which is about half the recommended minimum number. Eleven of the 15 regional programs fell short of the recommended minimum number of staff for the federal fiscal year ending September 30, 2018, and about 30 percent of facilities were not visited by an ombudsman, leaving residents with reduced access to these important services.

Key Recommendations:

1. Improve the reliability of system-generated Office data by working with the existing vendor to address unresolved issues and by implementing ways to prevent and detect input errors.

2. Take steps to identify and understand reasons for the decline in volunteers and differences in regional program results. Use the resulting information to develop and implement strategies to improve access to ombudsman services.

THERE WAS A 37 PERCENT DECREASE IN THE NUMBER OF VOLUNTEER OMBUDSMEN

The LTCOP's restructuring to a regional model was intended to provide LTC residents with *improved access* to volunteers and to paid staff who could provide training and technical assistance to volunteers in each region. *Eleven of the 15 regional programs fell short of the recommended minimum number of staff* for the federal fiscal year ending September 30, 2018. *There was a 37 percent decrease in the number of volunteer ombudsmen* during the three-year period ending September 30, 2018. The audit notes that after the LTCOP program was regionalized, there was a significant drop in the number of volunteers - and therefore a reduction in the presence of the ombudsman in Long Term Care facilities across the state. Of 1,500 LTC facilities in the State, only 40% had an assigned volunteer. Hundreds of LTC facilities are not being regularly visited by an ombudsman.

OF 1,500 LTC FACILITIES IN THE STATE, ONLY 40% HAD AN ASSIGNED VOLUNTEER. HUNDREDS OF LTC FACILITIES ARE NOT BEING REGULARLY VISITED BY AN OMBUDSMAN.

The ombudsman told auditors that the LTCOP needed more revenue to recruit and retain staff and volunteers. In NYSOFA's response to the audit, they acknowledge the need for increased funding for LTCOP and will be pursuing *various avenues* to enhance funding for the program in order to improve access by residents to advocacy services and to address the system issues and quality of life concerns being expressed by residents. Yet, the Executive budget does not increase funding.

Recommendations:

- *Given the audit findings that the goal of improving coverage has failed, review and determine if administration of the LTCOP through regional contractors should be restored to county by county process rather than the broad regional model.*
- *Examine what "various avenues" are available to supplement federal and state funding.*
- *Along with other NYSOFA core programs, StateWide recommends a minimum 7% increase in state funding.*

C. Budget Issues Impacting Older Residents in the Department of Health budget

Medicaid

StateWide has been reporting on the rapidly growing population of older New Yorkers, including those most likely to need long term care services and supports (LTCSS). The 2019 Census Bureau's American Community Survey reports on the degree that older New Yorkers are a) living with disabilities b) have difficulty in self care (having difficulty bathing or dressing) or c) have difficulty in Independent Living (because of a physical, mental, or emotional problem, having difficulty doing errands alone such as visiting a doctor's office or shopping.)

Age 65+ living with disabilities	1,012,667 or 33%
Age 65+ difficulty bathing or dressing	263,836 or 8.9%
Age 65 + difficulty in Independent Living	849,762 5.6%

It should, therefore, be no surprise to the state that the portion of the Medicaid budget related to LTCSS would be experiencing rapid growth. We are disturbed that the Governor points to this sector as the problem causing the structural deficit, implying that programs and services need to be cut. Based on the demographics, this population should be planned for, and capacity to deliver care as well as funding for same, must be supported.

The Governor proposes to put the burden on local Social Services departments to provide cost control strategies when their only option is to reduce processing of new applications. That will result in enrollment delays and inappropriate denials that will impact applicants to an *entitlement* program.

> ***Recommendation****: When the Medicaid Redesign Team is formed to make recommendations to reduce Medicaid's structural Medicaid budget gap, we strongly recommend that consumer advocates have a place at the table*.

Medicaid Savings The Medicare Savings Program (MSP) is funded through a state and federal partnership, administered and budgeted within the state's Medicaid program. The federal government allows for several state options that will *allow the state to save money*. The Medicare Savings Program should take advantage of all federal options to streamline its enrollment and reapplication processes. The Centers for Medicare & Medicaid Services (CMS) reminds states of the existing opportunities to simplify the eligibility and enrollment processes for applicants and eligibility workers, especially for the Medicare Savings Programs.

ACCORDING TO CMS: *A NUMBER OF STATES HAVE USED THE AUTHORITY DESCRIBED IN SECTION 1902(R)(2)(A) OF THE SOCIAL SECURITY ACT TO BETTER ALIGN THE LIS AND MSP INCOME AND/OR ASSET CRITIERA.* ***DOING SO CAN HELP ACHIEVE SUBSTANTIAL EFFICIENCIES IN THE ENROLLMENT PROCESS, BOTH FOR APPLICANTS AND GOVERNMENT ELIGIBLITY WORKERS, AND SIMPLIFY OUTREACH TO POTENTIAL BENEFICIARIES.***

> ***Recommendation***:

- Align the eligibility standards between the MSP (135% FPL) and the federally funded Low Income Subsidy/Extra Help (<150% FPL.)
- Increase the standard income disregard
- Offer full Medicaid benefits through QMB (adopted by NE, SC)
- Raise the income limit to any level (adopted by CT, DC, IN, ME, MA)
- Share data with Medicare Advantage plans, who can assist enrollees with renewal
- Make automatic renewal the norm by sending a letter directing the beneficiary to take action only if there was a significant change in circumstances (adopted in ND, OK, TN, TX)

- Use data-sharing to verify that there is no change in status, obviating the need for action by the beneficiary, ex parte renewal (adopted by AL, AZ, LA, MD) Note: According to a report by the National Council on Aging, Louisiana reported savings of $1.7 million a year due to instituting ex parte renewal, while also greatly increasing retention rates for the benefits.

LOUISIANA REPORTED SAVINGS OF $1.7 MILLION A YEAR DUE TO INSTITUTING EX PARTE RENEWAL

Elderly Pharmaceutical Insurance Coverage (EPIC)

EPIC is part of the Elder Law, but administered by the NYS DOH that contracts out the implementation of the program. The current contractor is Magellan Health. The EPIC program has been a vital resource for older New Yorkers, has helped individuals afford their prescription drug out of pocket costs – thus removing cost disincentives to adhering to a prescribed medical regimine – and has helped to lift many out of poverty by supplementing their Medicare Part D coverage. In SFY 2019-20, the Governor reduced EPIC funding by about 9%, or $11,223,000. Justification for this cut was that the Affordable Care Act continues to phase-out the Medicare Part D coverage gap, and therefore the program would be able to achieve savings. At the time, we expressed concern that the funding cut did not take into consideration the increased population to be served as each year a new wave of older New Yorkers age into the EPIC benefit at 65. We were assured by the Administration that there would be no impact on beneficiaries or future enrollees.

SFY 2019-2020, THE GOVERNOR CUT THE EPIC PROGRAM BY ABOUT 9%, OR $11,223,000.

SFY 2020-21, THE GOVERNOR PROPOSED AN ADDITIONAL CUT OF $16,944,000.

However, we have discovered through our MCCAP counseling, that there have been benefit cuts in the current SFY made administratively. We are also concerned that these changes are made without consumer advice and input.

- EPIC's premium assistance benefit had included the Part D premium amount plus any Late Enrollment Penalty (LEP) amount - up to the monthly benchmark amount ($39.33 in 2019). Beginning October 1, 2019, new EPIC members and current members who have not had LEP assistance are no longer entitled to such assistance. Starting January 1, 2020, grandfathered LEP assistance EPIC enrollees must call

EPIC to reapply if they switched Part D plans, but have received no notice to do so. EPIC presumes they will ultimately notice an increase in their premium due to the LEP and will call EPIC on their own.

- A new EPIC application has been posted on https://www.health.ny.gov/forms/doh-5080.pdf. The new form is off-putting – it is like filling out a tax form. It shifts the burden from the EPIC program, as has been past practice, to the applicant, in order to determine if an EPIC applicant could qualify for LIS/Extra Help. The applicant needs to use a web site to look up income levels that determine their need to complete additional income and asset requirements. Given that many older residents are not computer savvy, and that the information on income levels and when assets must be reported is difficult to understand, it is likely that there will be a resulting decrease in EPIC applications submitted. This should be removed from the application and left to the current process where EPIC notifies an applicant (after receiving their initial application) if more information is needed to enroll them in Extra Help.

Another problem reported by our MCCAP clients, is that they have no way of knowing if a drug, which is on their Medicare Part D formulary – and therefore meets the criteria for EPIC coverage – will actually be covered by the EPIC program. The EPIC program requires manufacturers to participate in the state rebate program, but the consumer has no way of knowing if the manufacturer of a drug being dispensed to them has met the rebate mandate. New bill needed –Doing so will allow enrollees to truly understand their benefit and anticipate costs during open enrollment.

Recommendations:

- ***Oppose cuts to the Elderly Pharmaceutical Insurance Coverage (EPIC) program, as proposed by the Governor for SFY 2020-21 of $16,944,000.***
- ***Reinvest savings to expand EPIC by including persons with disabilities younger than age 65, so that EPIC works for everyone on Medicare regardless of age.***
- ***Improve the transparency and accountability of the EPIC program by reinstating the consumer advisory panel and once again, require an annual report to the Legislature.***
- ***Require the EPIC program to make publicly accessible those manufacturers & drugs that are participating in the rebate program.***
- ***Reject the new EPIC application.***

Thank you for the opportunity to testify today.