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Testimony of the New York State Association of Health Care Providers, Inc.

Presented to the Joint Legislative Budget Committee on the issue of Public Protection Portion of the Executive Budget Proposal

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On behalf of the New York State Association of Health Care Providers, Inc. (HCP), thank you for the opportunity to provide written testimony on the Public Protection portion of the Executive Budget Proposal. HCP is a statewide association representing the spectrum of home care providers in the state, most of whom primarily serve Medicaid beneficiaries.

The home care industry employs hundreds of thousands of caregivers who are unsupervised as they provide services in the most intimate health care setting: people's homes. These workers tend to the personal needs of the most vulnerable aging and disabled New Yorkers.

The Clean Slate Act

We are deeply concerned about the Clean Slate Act as proposed in Governor Hochul's Public Protection and General Government Article VII bill. Although it extends the waiting period for sealing convictions as compared to the similar proposed bill in the legislature, the executive's proposal does effectively seal most criminal records, rendering them inaccessible for criminal history and background checks by employers.

Home and community-based services providers have long advocated for criminal history record checks to be part of the routine hiring practices for the home care workforce, given the particularly exposed nature of the population being served and the setting in which the care occurs.

Current Law

NYS Public Health Law states that a criminal history record check (CHRC) is required for any unlicensed person employed by or used by the provider who provides direct care or supervision or has access to a resident's/client's property and belongings. The NYS Department of Health (DOH/the Department) outlines the requirements for criminal history record checks in DHCBS 20-01. This process is in place to prevent caregivers with nefarious intentions from access to patients and residences and is a critical tool for providers as they put the safety of their clients – and their workers- first and foremost.

It is important to note that a negative result on a CHRC does not preclude employment as a home care worker. In fact, quite the contrary is true. A 2018 DOH presentation indicated that of 1 million individuals, about 17% of applicants have a "hit" in the CHRC process. Of these, less than 30% are denied employment. Applicants are given the opportunity to provide evidence of rehabilitation in a meaningful exchange with the employer. The Department states that CHRC "Balances the safety of vulnerable people against the need to reduce criminal behavior through gainful employment".



Best Practice

Not only is CHRC a best practice, but it helps home care providers compete for quality workers while providing protections to the public. Additionally, background checks that are required by law offer providers protection from liability and protects their reputation in the community. For these reasons, criminal background vetting is a requirement for home care workers in the majority of states. Finally, and perhaps most striking, is that a rehabilitated applicant often turns out to be a superior caregiver. The willingness to overcome this barrier shows dedication to the responsibility of caring for New Yorkers in their homes.

The NYS legislature and Governor Hochul are well aware of the myriad of ways vulnerable people are open to abuse, as evidenced by the recent expansion of the state's definition of elder abuse in S7779/A8799. Personal care is specifically named as a covered service for purposes of this important law. By removing providers' ability to conduct thorough background checks on applicants, the state would be negating the very protections afforded by this and other elder abuse laws.

With good reason, New Yorkers are instructed to only utilize licensed providers for home care, rather than hiring aides via the "gray market". The assurance of the quality and high standards of these registered caregivers relies on the existence of the mandatory CHRC. By removing that protection, the state would eliminate this safety net for those seeking care.

Conclusion

The relationship of a home health care aide or professional caregiver to their client must be one of trust. That trust is predicated on the promise that provider agencies mitigate risk through background checks. Given the vulnerability of consumers of home and community-based services, including the high degree of social isolation and cognitive decline, it does not make sense to send workers who have not been vetted through a full criminal background check into their homes. The executive proposal will do exactly that and should be rejected.