

# STATE WIDE

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## TESTIMONY

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**JOINT FISCAL COMMITTEES  
BUDGET MEETING ON HUMAN SERVICES  
FEBRUARY 13, 2023**

**STATE BUDGET ISSUES IMPACTING  
OLDER NEW YORKERS AND THEIR FAMILIES  
State Fiscal Year (SFY) 2023-2024  
*(Proposed by the Governor – February 1, 2023)***

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 through a “social model” of services that can stand alone or supplement the “medical model” of care. We also will highlight some budget issues that impact older residents that are part of Medicaid.

### **Master Plan for Aging**

As part of an alliance of advocates that identified a compelling need for an investment in care and a comprehensive roadmap for meeting the needs of aging New Yorkers, we are pleased to see the Governor included \$1m her budget for the Master Plan for Aging.

We urge the Legislature’s involvement and assurances that the process is an open one with opportunities for community input and that the stakeholders committee and workgroups are broadly representative to address the diversity, equity and inclusion of older community members so that they are heard and their needs are addressed in the Plan.

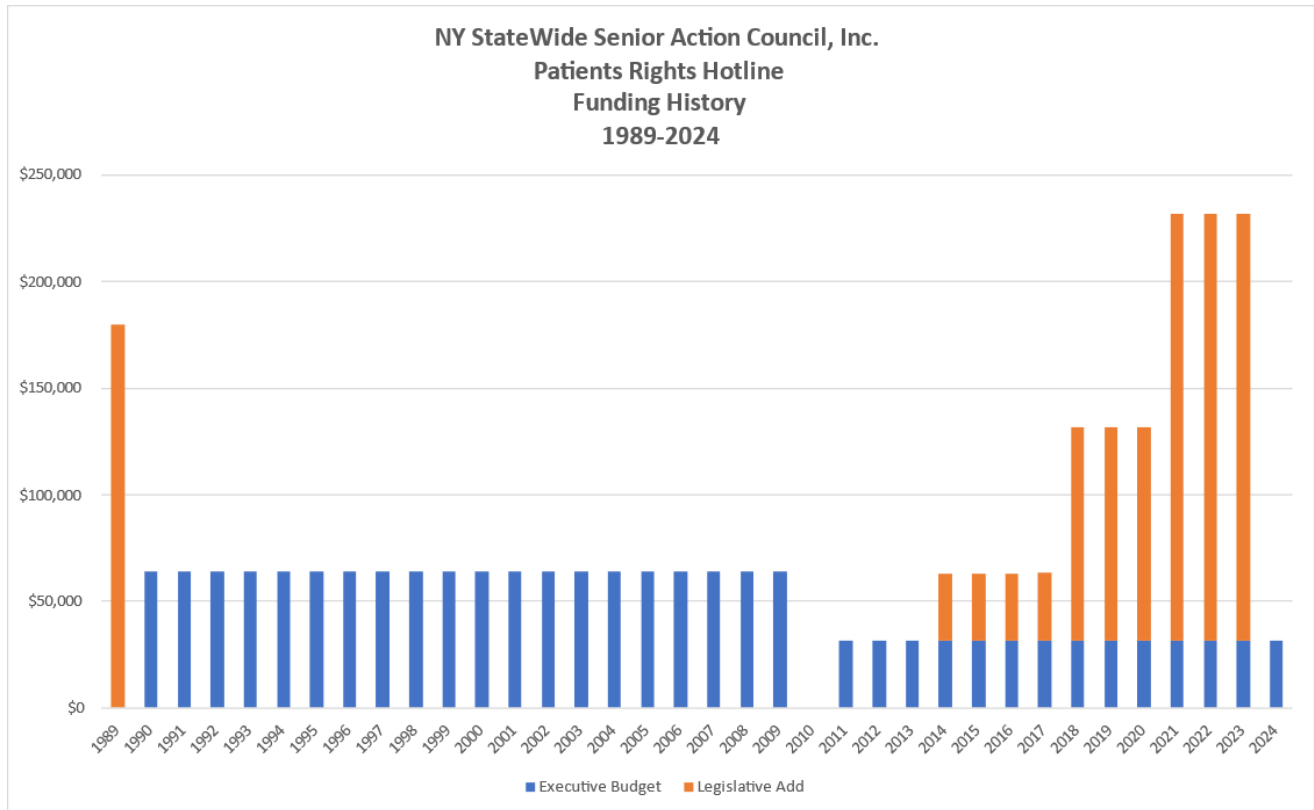
While we anticipate reports expected from the Plan as well as the Task Force on Reimagining Long Term Care after these budget negotiations are completed, we do not believe that expanded funding to meet current demand and prepare the network of aging providers for forecasted need in the immediate future should wait. Investments are needed now to ensure access to services that are vital to preserving the dignity of older New Yorkers and their ability to age in their community homes.

### **A. STATEWIDE’S PROGRAMS:**

**Patients Rights Hotline and Advocacy Project:** 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 the coronavirus/Public Health Emergency, 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, the shortage of home care workers, and nursing home quality of care concerns. In SFY 2013-14, funding was increased to \$63,000. From SFY 2017-18 through 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. From SFY 2020-21 through SFY 2022-23, the Legislature added \$200,000 annually, for total program funding of \$231,500. This additional appropriation was much appreciated, especially with the extraordinary amount of questions and concerns during the pandemic years which we have worked hard to address. The Executive proposes \$31,500 for the Project.

Our budget history is reflected in the chart below. 2024 represents the Executive Budget proposal of \$31,500.



**Request: Restore StateWide’s Patients Rights Hotline and Advocacy Project program to the SFY 2022-23 level by adding \$200,000 to the current appropriation. (Aid to Localities budget A3003/S4003 Page 7, Lines 35-38).**

**Managed Care Consumer Assistance Program (MCCAP):** Since 2004, we have received state budget funding through NYSOFA to provide Medicare enrollment and pharmaceutical assistance 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 SFY23-24 proposed Executive budget. (A3003/S4003 Page 6, Lines 39-58)

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.

Additional resources are needed to increase outreach and provide enrollment assistance for the Medicare Savings Program. Failing to enroll in these programs costs these low-income New Yorkers, on average, \$7,200 every year in out-of-pocket expenses. With the increase in income eligibility for MSP included in the SFY 2022-23 adopted budget, and effective January 1, 2023, there is much work that we need to do to educate the community, find eligible Medicare enrollees, provide application assistance and follow up to ensure expanded benefits are being secured. We estimate that an additional 300,000 NYers are newly eligible for MSP.

**Request:**

***Increase funding proportionately for the program providers by \$1m, (which would increase StateWide's MCCAP program by \$200,399) so that we can increase capacity to reach more underserved and hard to reach eligible New Yorkers 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 necessary 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 and Transportation, are vitally important.

We are pleased that the Governor’s proposed budget maintains the SFY 2022-2023 level of funding to reduce waiting lists, including the additional \$8m added by the Legislature to address waiting lists. However, additional funding is needed to allow the programs to build the capacity to meet the needs of a growing aging population.

**Recommendation:**

- *In order to budget to meet the needs of the population a report should identify anticipated need based on population demographics, not only looking at the number placed on waiting lists. Require a report by NYSOFA that projects need based on a percent of the population expected to need services, compared to the sufficiency of resources or capacity. Current reporting only identifies the services and the number of residents on the Area Agency on Agency waiting list.*

**EISEP** (Expanded In-Home Services for the Elderly)

The additional funds transferred from Medicaid and allocated to NYSOFA to meet waiting lists are contained in the EISEP section of the Aid to Localities Budget bill, but are not limited to EISEP services. While it is important to address waiting lists for all services to older residents, there is a clear need to invest in home care. An analysis of which services were funded is needed, since it was not required that the funds be used exclusively for EISEP services. Further, a report is needed to understand the existing barriers that are the root cause for waiting lists for unaddressed EISEP home care services.

Medicaid expansion and relation to EISEP services and wait lists.

In the budget for SFY2022-3, the Medicaid income limit for the ABD (Aged Blind & Disabled) eligible NYers was increased from 87% FPL to 138% FPL.

<b>MEDICAID INCOME LIMIT AND ASSET INCREASES</b>	
<b>2022</b>	<b>2023</b>
<ul style="list-style-type: none"> <li>• Current Income: \$954/month individual, \$1,387/month couple</li> <li>• Current assets: \$16,800 individual, \$24,600 couple</li> </ul>	<ul style="list-style-type: none"> <li>• Estimated Income: \$1,677/month individual, \$2,268/month couple</li> <li>• Estimated assets: \$30,180 individual, \$40,820 couple</li> </ul>

This change to direct Medicaid eligibility for a population previously served among the highest priority for EISEP services (based on economic need) should reduce the EISEP case burden and waiting lists. In reviewing the current budget proposal to determine the need for funds to address need in NYSOFA funded services, it is important to understand how the increase in Medicaid eligibility impacts the EISEP case load and also reduces the burden/wait lists or impacts other programs and services where there are Medicaid covered benefits, such as transportation, home delivered meals, and case management. Finally, it is important to understand the process being used to ensure that people newly eligible for Medicaid due to the increased income thresholds are being assisted with Medicaid applications, transitioned to MLTC (Managed Long Term Care) and are being able to receive home care services under Medicaid, given the home care worker shortage.

**Recommendations:**

- **Require NYSOFA review the barriers to spending resources on the EISEP home care program to meet the needs of an aging older population and recommend solutions.**
- **Incorporate A241, requiring an annual report to the Legislature on unmet need due to insufficient resources or capacity.**
- **Request and review data on changes in capacity of the EISEP program resulting from moving clients between 87% FPL and 138% FPL to Medicaid services.**

**Private Pay Program**

The Governor proposes to expand the private pay program (adopted in SFY19-20) by lowering the income level from the current authorization for persons with income at 400% FPL or higher to those with income at 250% FPL or higher. *A3007/S4007 HMM Article VII - Part G.*

*StateWide* is concerned that the message to middle-income residents is that the aging services network cannot serve them, short of charging them 120% for services. People in the income limits proposed under this bill can already access services. While many do not receive services, it is in large part due to lack of awareness about the services provided. Significantly, many do not receive services due to lack of capacity. Missing from the narrative is that any limitation has been two-fold – the government’s unwillingness to adequately fund services to keep pace with need/anticipated demand and the inability to provide EISEP in-home services due to a home health worker shortage that is unaddressed by this proposal or a shortage of case managers that are needed for assessment to gain access to many services.

**StateWide opposes this proposal and asks you to reject it.** The concepts embedded in the proposal deserve a full hearing on their own; more data on utilization of the current private pay is needed and should be provided by NYSOFA. The Governor’s bill memo indicates that enactment of the language “will not result in any fiscal impacts during FY 2024 or FY 2025.” Since there is no related impact on the SFY2023-24 budget, we urge you to tackle this proposal outside of the context of the budget. Furthermore, it is unconscionable that the justification for moving this forward rests on the unwillingness to provide needed resources to ensure that the services are available to all older NYers in need.

1. Currently, aging services are designed for older New Yorkers (in many cases regardless of income) and many (such as transportation) accept a suggested, voluntary contribution. For EISEP services, people with incomes under 150% FPL receive free services, from 150-250% FPL cost sharing is on a sliding scale, people with income above 250% are above the sliding scale used to determine cost share – but they are entitled to receive services at 100% cost. The proposal would allow counties to charge 120% of cost and keep the surplus revenue to reinvest in programs for people with incomes below 250%. Lowering the income level for private pay is a defacto 20% service charge on the current population eligible to receive services at full cost. Essentially – this is a tax on residents who need services and whose income is above 250% FPL – to support the local office for the aging.
2. The NYSOFA program instruction (2020-PI-2) for the current authorization states: Creating a private pay model “recognizes that federal/state/local funds are not sufficient to meet current demand for services and provides the statutory authorization to offer services in a fee-for-service model for higher income individuals and families.”

If there is a need for funding – this should be the responsibility of the broadly taxed population, and funded through state dollars. Allowing for a decrease in the income threshold for this program should not be justified to offset the need for investment in care delivery.

It should be noted that in the P.I the private pay model also removes the minimum age to receive services under this model. In so doing, especially with the possible expansion to all New Yorkers above 250% FPL, there will be even more demand for services that are at or near capacity already.

Data is needed to justify an expansion of the program.

NYSOFA requires Area Agencies on Aging that currently request to implement this

option to provide data, which should be examined before a program expansion is considered:

1. The unmet need, if any, for all programs and services offered.
  2. The number of participants that privately paid for each program or services for that year.
  3. The rates participants were charged for each program or service provided as well as the total amount of revenue generated via private pay for each program/service for each state fiscal year.
  4. How revenue generated by this program was reinvested back into AAA programs and for what program and services they supported.
3. The bill language also changes the income level used to determine priority for services, from 400% to 250%. *A3007/S4007 HMM Article VII bill (P. 104, Lines 47-54)* Area Agencies on Aging must place priority on providing programs and services to individuals with the greatest economic **or** social needs. Currently, that priority includes people below 400% of the FPL. StateWide recognizes that the change in this section is well intentioned to mean that someone who privately pays cannot take priority over those who do not. We are concerned that its application could result in someone in the income bracket between 250-399% FPL not having their social needs (isolation, lack of family supports, special language or cultural needs, etc.) assessed to determine their eligibility for services, which is a change in current practice.

The change in prioritizing services is simply stated as an income threshold. While it was important to include this language in the original law so that private pay service recipients would not displace people with less income, this threshold to define priority for receiving services must not be lowered further.

Reducing the threshold to just a monetary level at 250% FPL represents a shift in the responsibility of the local office for aging to provide services to all older NYers. It could change the determination of greatest need to one that is based solely on financial need and not take into account social need for those at or above 250% FPL and below 400 FPL. Currently, services are to be provided to older residents at zero, partial or full cost (except where the private pay option has been implemented allowing a 20% of full cost surcharge.)

Rather than amending the language to reduce the income level that would allow for an assessment of social needs, there could be a simple statement inserted in the Private Pay law to state that those participants in private pay services cannot have preferential waiting list placement.



## **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.

The state cannot be truly successful in adopting strategies that support aging in place without addressing the shortage of workers. We urge you to address the capacity issues in a comprehensive manner so that the traditional medical/health home care worker shortage and the social model aging/EISEP home care worker shortage are addressed together, and that solutions for one sector do not create further problems for the other. This cannot be a Medicaid only solution.

### **Recommendations:**

- ***Provide a livable wage to the home care workforce, including those that work for state funded EISEP services, by paying 150% of regional minimum wage through the “Fair Pay for Home Care Act” (S3189) and adjust for salary compression within programs that may result.***
- ***Reject the Governor’s proposal that caps wages for home care workers at \$18 an hour until the minimum wage in each region exceeds that amount.***
- ***Reject the Governor’s proposal to end pay equity provisions for the Consumer Directed Personal Assistance Program. While the state should ensure that workers have health insurance coverage, the process to do so should not impact the worker’s income as proposed.***

## **Long Term Care Ombudsman Program (LTCOP)**

LTCOP is a vitally important program to provide resident advocacy. The program investigates and works toward resolution of complaints made by or on behalf of residents. In October 2019, the NYS Comptroller released an audit of the LTCOP; key findings included the lack of presence in facilities 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 – had 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 an advocate working on their behalf.

A strong LTCOP would have improved communication during the pandemic with family members, ensured residents rights were respected, and enhanced efforts to maintain a regimen of infection control. Currently, LTCOP does not have the capacity to have a presence in all adult facilities or to respond to the many requests for help.

**Recommendations:**

- *Increase program budget, but tie the appropriation to annual reports that detail the progress toward increasing the number of paid staff to the recommended minimum number of staff.*
- *Support recruitment and retention of volunteers to ensure that the program meets national standards for facility visitation.*
- *Require that annual LTCOP reports include the degree of effort to increase the number of family councils in long term care facilities.*
- *Add language to any final agreement on A3007/S4007 HMM Article VII - Part Z, related to the Assisted Living facility ratings and survey process, to ensure the LTCOP assigned to the facility provides input into the determination of quality indicators, in comport with their role under Chapter 759 of the Laws of 2021, the "long-term care ombudsman program reform act."*

**C. Protecting and Improving Benefits for Older Residents**

**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 regimen – and has helped to lift many out of poverty by supplementing their Medicare Part D coverage and providing premium assistance to the lowest income members.

We seek improved transparency of the program, and that any administrative changes are made only following consumer advice and input. We have proposed legislation to address the concerns that have been brought to our attention by consumers that call our Helpline. The bill would keep the application a simple process, have the income brackets adjusted regularly and allow Medicare Part D enrollees under age 65 to apply. Further, it would improve transparency of program operations and provide enrollment data. Lastly, it would require the program to provide referral/assistance for enrollment in MSP rather than only enrollment in federal Extra

Help. By doing so, more people would qualify for Extra Help and costs to the EPIC program would be lowered as they are offset by federal funds for lower income New Yorkers.

**Recommendation:**

***Support legislation (S3005) 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, restore the requirement for an annual report to the Legislature and reverse administrative changes that resulted in a new and onerous EPIC application.***

## **Medicaid**

*StateWide* urges improvement in policies that enhance the ability of people to obtain and retain home- and community-based long-term services and supports, which provide for higher satisfaction, lower cost, and abide by the right to live in the most-integrated setting (and uphold the *Olmstead v. LC* decision.)

**Recommendations:**

- **Repeal SFY 2020-21 Medicaid cuts to home care services that extended the resources look back from 30 days to 2 ½ years for new community Medicaid enrollees, implementation of which has been temporarily delayed due to the federal Maintenance of Effort requirements during the Public Health Emergency, but will soon be in effect.**
- **Repeal SFY2020-21 Medicaid cuts to home care for new enrollees that limits access to home care coverage by increasing the number and type of activities of daily living requiring assistance, implementation of which has been temporarily delayed due to the federal Maintenance of Effort requirements during the Public Health Emergency, but will soon be in effect. (S328)**

We also support the proposal to submit a waiver to the federal government to expand eligibility for Medicaid coverage to certain incarcerated individuals. (A3007/S4007 HMH Article VII bill Part K.) It is important to provide assistance with Medicaid enrollment prior to parole to ensure that upon release, individuals have health insurance coverage.

We are disappointed that the Governor seeks to delay enrollment to provide coverage for people who are 65 years old and above who are undocumented immigrants. This was included in SFY 2022-23 to be in effect January 1, 2023. Further, we are dismayed that the Governor is not seeking federal approval to provide coverage for undocumented immigrants age 18-64. *StateWide* supports A3020/S2237 “Coverage for All” as a needed immediate step and an incremental fix for our broken health insurance system until such time that the NYHealth Act is enacted and implemented.

StateWide supports the Governor’s proposal to expand the income eligibility for the Medicaid Buy-In Program for working people with disabilities, and we are pleased that the age limit on the program has been removed, allowing older workers to be included.

We oppose the Governor’s language to eliminate prescriber prevails protections under Medicaid fee-for-service and managed care and ask the Legislature once again to reject this proposal.

Thank you for the opportunity to testify today.