Testimony of the New York Health Plan Association

to the

Senate Finance Committee
and the Assembly Ways & Means Committee

on the subject of
2024-25 Executive Budget Proposals on Health Care

January 23, 2024

INTRODUCTION

The New York Health Plan Association (HPA), comprised of 26 health plans that provide comprehensive health care services to more than eight million fully-insured New Yorkers, appreciates the opportunity to present its members' views on the Governor's budget proposals.

HPA members include plans that offer a full range of health insurance and managed care products (HMO, PPO, POS, etc.), public health plans (PHPs) and managed long term care (MLTC) plans. The New Yorkers who rely on these plans are enrolled through employers, as individuals, or through government sponsored programs — Medicaid managed care, Child Health Plus — and through New York's exchange, the NY State of Health (NYSOH).

Our member health plans have been consistent and reliable partners with the state in achieving its health care goals. These partnerships include collaborating on efforts to develop affordable coverage options for individuals, families and small businesses, providing access to care that exceeds national quality benchmarks for both commercial and government program enrollees, and improving access to quality care in its government programs. Plans have also supported and participated in New York's ongoing efforts to address and eliminate long-standing racial and ethnic disparities, working on multi-faceted strategies to build an equitable health care system. HPA's members remain committed to continuing to work with policy makers and lawmakers to further the efforts to promote health care equity and ensure the availability of high quality, affordable health care for all New York consumers and employers.

We recognize the challenges that a $4 billion deficit present to budget discussions. However, we are both disappointed and concerned by proposals in the Executive's budget that amount to more than $600 million in significant cuts to Medicaid health plans.

MEDICAID PROVISIONS

For the past three decades, New York's managed care plans have been partners with the State, establishing and growing the extremely successful Medicaid managed care program, working together to expand coverage, increase access and improve quality of care. With plans' leadership, New York's Medicaid managed care program routinely meets or exceeds the national average on quality measures and improving patient satisfaction. Today, more than 5.6 million of New York's Medicaid beneficiaries — 73% — receive their care through a Medicaid managed care plan.

Earlier this month, New York received approval of the long-awaited 1115 Medicaid Waiver Amendment, which is intended to address and eliminate long-standing racial and ethnic disparities and build a more equitable health care system in New York. Our member health plans are committed to working to strengthen the State's ongoing efforts to in this area, however, several Medicaid proposals, including significant spending cuts, in the Executive Budget run counter to the goals of the waiver. We urge the Legislature to reject proposals that will interfere in these efforts, and restore the cuts that will impede plans' ability to further their collaborative endeavors to provide high quality care to New York's most vulnerable populations. It is with those New Yorkers in mind that we offer our thoughts about Medicaid provisions in the Executive Budget.

Managed Care Proposals (Part H)

Cutting Health Plan Rates — Part H of the Executive Budget, which proposes various programmatic changes to New York's Medicaid program, eliminates the 1% across the board administrative rate increase provided to Medicaid managed care plans in the current year, resulting in a cut to plan rates of more than $400 million in FY25. The rate increase brought Medicaid plans above the bottom of the allowable rate range for the first time in several years. With this cut, plans will again be at the bottom of the range. Rates at this level make it more difficult for plans to make the investments necessary to fulfill the goals of advancing health equity, reducing health disparities, and enhancing care coordination envisions in the 1115

waiver. **To assure that plans can continue to improve care to Medicaid enrollees through innovation and investments in their communities, we urge the Legislature to restore the uniform rate increase to the plans.**

Eliminating the Quality Incentive Program — The Governor's budget also proposes to eliminate funding, through Administrative action, for the Quality Incentive (QI) Program, which supports a broad range of initiatives aimed at addressing health disparities and improving health outcomes for underserved populations across the state.

The QI Program has been in place for more than two decades, and it has a proven track record of improving the quality of care for the Medicaid population and helping to address the social factors that create barriers to equitable care for residents. Initiatives supported by the QI Program include:

- Connecting high-risk pregnant women with registered nurses and community health workers in Brooklyn;
- Diabetes management efforts that have helped patients lower their A1C levels in the Bronx;
- Extending offices hours at a pediatric practice on Long Island to expand access and improve compliance with well care visits, mental health screenings and vaccinations;
- Housing and food support to help homeless and low-income families achieve sustainable independence in the Capital Region, and
- Identifying Medicaid members in Buffalo who are not accessing health care services and providing in-home visits to ensure they get the care they need.

"Managed care quality dollars have a tremendous impact on our operations. These funds are used to support and fund programs, spur innovation to further improve quality outcomes, and to create a continuous learning environment for patients and staff."

"These dollars fund existing successful programs and help put new ideas into action … and allow us to do more for our members."

– Lois J. Bookhardt-Murray, MD; Morris Heights Health Center Chief Medical Officer

Quality funding is directly invested back into the community, with plans using QI Program dollars to partner with providers and community organizations on programs that benefit low-income New Yorkers. The success of the programs that receive funding is closely monitored and health plans are measured on performance metrics that the State sets. Plans only receive incentive funding for achieving results that meet or exceed these metrics.

> *"Rates of performance in Medicaid managed care have increased steadily over the last decade. New York State Medicaid plans have demonstrated a high level of care compared to national averages, and for many domains of care the gap in performance between commercial and Medicaid managed care has been decreasing since the Quality Incentive Program was implemented. The use of financial incentives has proven successful in engaging Medicaid managed care plans in developing infrastructure, programs, and resources to promote high quality care. Incorporating financial incentives that tie payment directly to quality is an important approach to improving the quality of care, holds health plans accountable for the care they provide, and rewards those who invest in processes that improve care. State Medicaid programs have steadily increased the use of financial incentives or pay-for-performance (P4P) mechanisms in their payment systems."*
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> **– New York State Department of Health 2020-2021 report on the Medicaid quality incentive program**

The QI program plays a key role in addressing the core causes of health care disparities. Eliminating its funding will undercut the State's ability to address and eliminate long-standing racial and ethnic disparities and build a more equitable health care system envisioned in the 1115 Waiver. Moreover, in a Medicaid budget that totals nearly $100 billion, eliminating a program that accounts for less than 0.3% of spending but improves the quality and equity of care for low-income New Yorkers is penny wise and pound foolish.

Over the past several years, Medicaid QI funding has been reduced or eliminated by the Executive. We appreciate that the Legislature has consistently restored funding in the final budget to sustain these vital services, and thank you for your continued support of the QI program. **To maintain the ongoing efforts to eliminate disparities and deliver high-quality, equitable care to the state's most vulnerable residents, we urge that the FY25 state budget**

fully fund the Quality Incentive Program, allocating $268 million in state funds to preserve and enhance these critical programs.

Managed Care Procurement — The Executive's budget reintroduces a proposal to procure nearly the entire Medicaid managed care program. The proposal, which directs the Commissioner of the Department of Health to select at least two plans in each region for the different product lines, will disrupt care for patients and limit their choices. Taking away options from millions of New Yorkers who rely on these health plans, which could force hundreds of thousands of individuals to select a new plan and result in significant interruptions in patient care. Many of the affected individuals have multiple health conditions that require coordination of numerous services that include both physical health and mental health care, long-term services and supports, as well as help coordinating social services such as housing, employment, education, and food access.

Executing a procurement of this complexity and magnitude would require a substantial reallocation of State resources when other major priorities affecting the care of millions of low-income New Yorkers are underway in the Medicaid program. For example, the Department is in the middle of a major effort to recertify eligibility for more than nine million Medicaid members as the public health emergency unwind continues.

Additionally, the 1115 Medicaid Waiver amendment will require massive investments of State resources with only three years to implement its ambitious objectives. This will require plans to invest and participate in long term engagements with providers and social care providers to improve care to Medicaid enrollees. Procurement will cause major disruption to that process – especially for those enrollees whose plan is not chosen.

Further, the FY24 budget gave DOH additional authorization related to the Managed Long-Term Care (MLTC) program, enabling the Department to require several plans who did not meet specific criteria to either be acquired by another plan or cease operations, creating substantial consolidation – and a fair amount of disruption – in the market. The FY24 budget also provided additional requirements related to quality of care for MLTCs and provided

DOH with the authority beginning October 1, 2024 to require a performance improvement plan from any MLTC that has not met the performance standards. Undertaking a procurement in light of these provisions is unnecessary.

Finally, in 2022 the Legislature rejected a similar proposal in the FY23 budget, instead requiring an independent study of the process, with a report to be presented by October 31, 2022. This report was not produced or discussed prior to release of the Executive Budget.

Procurement of the program makes even less sense two years later. To protect the care of millions of New Yorkers as well as their choice of health plans, we urge you to reject the procurement proposal in the final budget.

Imposing "liquidated damages" for non-compliance with the model contract— Part H also includes language that would authorize the Department of Health to impose liquidated damages for managed care organizations that fail to comply with the model contract.

Under the Medicaid managed care program, DOH, the Centers for Medicare and Medicaid Services (CMS) and each individual health plans enter into a contract defining the obligations of the parties to provide benefits to Medicaid enrollees. These contracts, which are hundreds of pages long, are governed by contract law as with any other contract. The Executive's budget proposal to impose liquidated damages for breaches of the contract seeks to do so by grafting State statutory requirements onto existing contracts. The proposal is seriously flawed for the following reasons:

- The State cannot amend a contract unilaterally. If the Department wanted to impose liquidated damages changes, it would require the agreement of CMS and the health plan before the provision can be added to the contract.
- The proposal proposes an administrative approach to the imposition of damages under which DOH would seek penalties but give the health plan a short period of time to dispute the basis for damages. However, that is not how damages for a breach of contract can be imposed. Rather, the Department would need to allege and prove a breach of contract through a traditional legal proceeding. The health plan would then

be accorded the opportunity to assert traditional defenses to a breach of contract allegation. It is only upon a determination that there is a breach that the Department would then be entitled to damages – whether they are liquidated (i.e., pre-determined) or based on some theory of damages. (To be clear: liquidated damages are not the same as penalties for a violation of State regulations.)

- The Department already has ample authority to seek redress for both contractual and regulatory violations, making the proposed penalties unnecessary.

It is ironic that the Department would seek any damages for a breach of contract – much less liquidated damages – because the Department is itself in breach of certain contract provisions. Health plans have not sought to enforce such provisions – nor have they sought damages. It is unfair for DOH to seek to impose liquidated damages when it does not live up to the letter of the contract. **We urge the Legislature to reject this proposal.**

OTHER PROVISIONS – SUPPORT

Coverage Expansion Efforts

HPA and its member health plans believe every New Yorker deserves high quality, affordable health care. With that goal in mind, plans have worked with lawmakers and policymakers to advance initiatives that help ensure availability of a range of coverage options while also looking for ways to increase access to coverage. Thanks to these collaborative efforts, New York's uninsured rate is record low 4.7% — among the lowest in the nation.

The FY25 Executive Budget contains provisions that seek to build on New York's success in providing coverage. health insurance. HPA supports the following proposals.

Continuous Eligibility for Children Ages 0 – 6 (Part M) – HPA and its members support this proposal that would provide continuous enrollment in Medicaid and Child Health Plus for children determined to be eligible until age six, regardless of any change in the income of the child's family. **We urge the Legislature to include it in the final budget.**

Essential Plan Proposal for Qualified Health Plan Subsidies – Part J of the Executive's budget would allow the Commissioner of Health to seek federal approval to establish a program to utilize Essential Plan pass through funding to provide subsidies for the payment of premiums, cost-sharing, or both to individuals with an income up to 350% of the federal poverty level who are eligible to purchase coverage through Qualified Health Plans. HPA has long advocated for increasing subsidies that are used to assist New Yorkers in accessing coverage. **We support this budget proposal and urge the Legislature to include it in the final budget.**

Joining Interstate Provider Compacts – Part R of the Executive's budget would enable New York to join the Interstate Medical Licensure Compact and the Interstate Nurse Licensure Compact. This will make it easier for physicians and nurses licensed in other states to practice in New York, which would help in addressing provider shortages in the delivery system – particularly in the areas of primary care and behavioral health. **HPA supports this proposal and encourages the Legislature to include it in the final budget.**

OPPOSE MANDATED BENEFITS AND PROVISIONS THAT INCREASE HEALTH CARE COSTS

New York's health care costs are already among the highest in the nation and the rising cost of care makes it difficult for New York consumers and employers to afford coverage. Unfortunately, Governor Hochul's FY25 Executive Budget contains a number of proposals that will make health care more expensive for all New Yorkers.

Diabetes Medication Cost-Sharing (Part EE of Transportation, Economic Development, and Environmental Conservation Article VII Legislation) – This proposal amends the Insurance Law to eliminate any cost sharing for prescription insulin drug coverage.

Health plans are committed to working to ensure members have access to the medications they need – particularly life-saving medications for those with chronic health and

acute conditions. However, while well intentioned, eliminating copayments, coinsurance or other cost sharing mechanisms on insulin fails to address the major driver of skyrocketing prescription drug costs: the increasing escalation and exorbitant prices drug companies charge. Further, it will shift costs to others through higher insurance premiums and copays and allow pharmaceutical companies to continue to raise insulin prices, leaving patients, employers, and taxpayers paying even more for health care.

The focus should be on measures to promote greater accountability into lowering the price of prescription drugs. Legislation approved last year (A.1707-A/S.599-A) that requires drug makers to provide notice in advance of egregious price increases was an important step in this direction. **We urge the Legislature to reject this provision in the budget and continue to work on policy solutions to make medications more affordable for all New Yorkers.**

Require Minimum Commercial Insurance Reimbursement Rates for Behavioral Health Services (Part AA) – Part AA would require New York State-regulated insurers to reimburse providers licensed by the Office of Mental Health (OMH) and the Office of Addiction Services and Supports (OASAS) at or above the Medicaid rate for outpatient behavioral health services.

Health plans recognize that access to the provider of their choice remains a strong consumer demand for health plan members who expect that their health plans will negotiate reasonable rates to reach agreements with provider groups. Health plans work hard to actively recruit mental health care providers, but the challenges facing the behavioral health care system are not unique to New York and have been exacerbated by widespread workforce shortages. Higher reimbursement in the absence of measures to increase capacity will merely drive up premiums without improving access to care. **We urge you to reject this proposal.**

Mental Health Parity (Part HH of Transportation, Economic Development, and Environmental Conservation Article VII Legislation) – This provision would amend the Insurance Law by raising the penalties that the Department of Financial Services could impose on insurers for violations of the State or federal mental health parity law requirements.

Health plans take seriously their obligation to provide comprehensive mental and behavioral health benefits in compliance with State and federal parity laws. New York already has broad existing authority to enforce mental health parity requirements, including monetary penalties, and regularly executes its authorities and imposes significant levies. At current penalty levels, plans are already incurring fines totaling hundreds of thousands of dollars, often for technical errors in compliance reporting.

Increasing the size of the penalties does nothing to increase access and support members' mental and behavioral health needs, but will lead to higher health insurance premiums. **We urge the Legislature to reject this proposal.**

CONCLUSION

We thank you for the opportunity to share our views today and look forward to continued discussions with you and your colleagues on these and other health care related provisions in the FY25 state budget.