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The Alliance of Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) Waiver Providers would like to thank Senator Krueger, Assemblymember Weinstein, Senator Rivera, Assemblymember Paulin, and committee members for holding this Joint Legislative Budget hearing on the Governor’s proposed Health Budget. The Alliance submits this testimony in the hope of giving the members of the committees an insight into the situation faced by both those who depend on these waivers to remain stable in their community and by the providers who deliver their care and supports to keep them safe. We are concerned that the Executive Budget Proposal does not do enough to address these issues.

These waiver programs are relatively small, serving a total of around 7,000 people who are qualified for nursing home care. Participants in these waivers are supported to live in the community by providers that deliver an array of services designed to keep them safe and stable in their homes. And all of this at an aggregate cost less than that of institutionalization.

The story of the waivers in New York State is the tale of two states – New York City on the one hand and on the other Upstate, Rockland, Long Island and Westchester. The latter category suffered from a shortage of labor before COVID which was made more acute by the pandemic. PHI published a study showing that from 2006 to 2016 Upstate New York lost a total of 500,000 low-wage workers. This translated into approximately a 24% reduction in the area’s low-wage workforce. This contraction was devastating and showed up in overtime rates of employers outside of NYC. For waiver providers these overtime rates went from approximately 10% prior to COVID to between 20-30% during the pandemic – and these are largely unchanged even today. Waiver providers operate with higher overtime use than managed long-term care programs because of their high percentage of waiver participants who are “must-serve;” clients who cannot go without staff. In an environment where there are not enough people willing to work, this often require staff to be mandated and for overtime to balloon.

And these overtime rates have persisted. This is shown indirectly in providers’ weekly Health Electronic Response Data System (HERDS) reports whose trends do not indicate an increase in staff availability. The principal consequence of this was that almost all waiver providers in these regions operated at a loss from the fourth quarter of 2020 until now – as the committee members could tell if they were given access to providers’ cost reports. Providers borrowed money to make payroll or survived on PPP funds; relying on the prospect of a rebasing of waiver reimbursement rates, which will not take effect until March 1, 2024. It was a difficult three years of waiting and for most agencies PPP funds have been exhausted, but The Alliance applauds and thanks DOH and its staff for its persistence in affecting the rebasing that will end provider’s losses.

While The Alliance appreciates DOH’s rebasing of non-NYC rates, the approach to rate adjustment to accommodate future adjustments of minimum wages needs to be examined to make sure that provider’s actual costs are considered. At the present, The Alliance does not believe that the methodology adequately addresses overtime, fringe and related expenses.

And then there is New York City. The City, by contrast, because of its size and large low-wage workforce had more workers prior to COVID. The pandemic, however, hit the City hardest and with devastating effects on front-line health care workers. Most waiver provider agencies found that their overtime rates (the best proxy for a workforce shortage) rose to over 20% and have persisted in that range till today. The workforce issue created financial stress on NYC agencies and with the increase in the minimum wage which went into effect on January 1, 2024, several large New York City providers report to The Alliance that they will begin running deficits. These providers take care of approximately 40% of the waiver's participants in NYC.

New York City waiver rates (for HCSS, the principal service delivered by NYC agencies) were not adjusted to the same extent as those of the other regions in the state. And, at present, there is no prospect that they will experience any additional rebasing. Without the prospect of additional money in the future these agencies are telling The Alliance that they will shutter operations, removing access to care for approximately 1,000 nursing home qualified waiver participants. If this is allowed to play out without being addressed this will be a disaster for many many people.

Generally, The Alliance is reporting to the committees that the health care workforce issue, particularly as it affects waiver recipients, is a structural issue that is not being adequately addressed. The Alliance applauds the Governor for raising the minimum wage generally, and for raising the minimum wage for health care workers in particular. This is an issue of equity and the adequate compensation for the hard work of caring for frail and needy people. But the committees should know that despite the increase wages THERE ARE NO MORE WORKERS than there were before. Overtime utilization remain at historic highs both in NYC and the state's other regions. We encourage the committee members to look at the HERDS reports to see that the increase has not teased out more workers into home care, at least this is true for the waivers, the only programs we have data for. This should alarm all of you. Something more needs to be done.

Finally, COVID saw people leave New York City at unprecedented rates and to a lesser degree New York State as well. People and businesses alike need to hear from the Governor her vision of how to get them back and stabilize the State's programs.

Thank you for your attention.

The Alliance of TBI and NHTD Waiver Providers