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

Joint Legislative Budget Hearing: Health

Albany, New York
January 23, 2024

Home care. Health care. Your care . . . *for life.*®

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The New York State Association of Health Care Providers, Inc. (HCP) appreciates this opportunity to provide testimony on the 2024 – 2025 Executive Budget Proposal and the state of the home care industry. HCP is a statewide trade association representing the spectrum of home care providers.

HCP supports the home care industry through advocacy, information, and education. Our fundamental belief in the basic right of every person to access health care that meets their unique needs is the foundation of what we do. Patient access depends on a robust marketplace of providers, a market designed to meet needs across the lifespan. By influencing policies, regulations, and funding mechanisms that encourage choice, we create a comprehensive environment that addresses the physical, mental, and spiritual needs of people needing care.

Introduction

State leaders have talked about the growing aging population in New York as though it's a looming menace for which we must prepare. The coming "silver tsunami" is an offensive and ageist image which is unfortunately reflected in this and previous Executive Budget Proposals.

Right now, over 20% of New Yorkers are over age 65, putting us fourth in the nation. By 2030, this population is expected to reach 5.3 million people and 51 counties will have a population with 25% of individuals being aged 60 and older.

That's great news - and a golden opportunity - IF we can keep them in their homes and communities.

- 64% of individuals age 60+ own their own homes and have no mortgage, contributing directly to the local tax base.
- Adults 50+ are responsible for approximately $1.8 trillion in federal, state and local taxes (2018), a figure that will quadruple by 2050.
- Adults 50+ are 36% of the population yet support about 43% percent of federal tax revenue ($1.4 trillion) and 37% percent of state and local tax revenue nationwide ($650 billion).
- New Yorkers 50+ are 36% of the population yet contribute 43% (or $719 billion) of Gross Domestic Product (GDP). This is expected to reach $2.2 trillion by 2050.
- New Yorkers 50+ support 5.9 million jobs, a figure that will reach 6.6 million by 2050.
- New Yorkers 50+ generated $482 billion in wages and salary, a figure that will reach $1.46 trillion by 2050).

New York's home care agencies and the direct care workers they employ are a vital lifeline to your constituents and their families who are fighting to remain at home. For more than a decade, our agencies have worked night and day to provide care while operating at razor-thin margins. While other sectors were granted significant pandemic assistance and Medicaid rate increases, home care has faced austerity or worse.

Despite leading the state in delivering cost-effective and desirable care that helps keep our elders and the disabled in their homes and communities, this year's Executive Budget Proposal by the Executive contains over $1,000,000,000 in annualized cuts to home health care. The governor's proposals continue to frame our aging population as an expensive drain on state funds, failing to see the opportunities it presents.

The overwhelming majority of New Yorkers want to age in place, according to AARP. That can only happen with a robust long term services and supports system that includes home care as a sustainable option. We ask the for legislature to reject the cuts proposed by the governor.

Home care needs a 10% Medicaid rate increase, not destabilizing cuts.

For too many years, our testimony has described the challenges agencies have and continue to face with the current Medicaid payment system for home care. Regardless of the payment system, the rate home care providers are paid is simply inadequate to sustain viability:

Long-Term Flat Funding:

- New York's Medicaid program has remained flat-funded for over a decade.
- The 2024 state budget saw substantial investments in institutional settings such as hospitals, nursing homes, and assisted living facilities, but home care received no increase in funding.
- Home care funding was slashed by 1.5% in FY 2021, and it has not been fully restored since then.

Financial Unsustainability:

- Nearly 30% of licensed agencies operated at a loss in 2021, reflecting the financial strain on the sector.
- Agencies have endured skyrocketing operational costs, forcing many agencies to borrow money just to stay afloat. Simultaneously, the cost of borrowing money has risen exponentially.
- Mandated wage increases alone have surged by an average of 32% since 2021.
- While funding was provided to cover the wage increases, the allocation was inadequate. Flaws in the payor structure failed to get money to home care agencies.
- The current payment structure is opaque and has resulted in inadequate funding and unpredictability, creating a disconnect between how the funding was intended to work and its marginal impact.

Workforce Shortages:

- Insufficient reimbursement rates have significantly contributed to the current direct care workforce shortage in home care.
- It costs more to hire direct care staff, and agencies are constrained by low reimbursements. Employers must make very difficult trade-offs.
- Increases in the home care worker minimum wage have led to wage compression and inversion, resulting in critical staff, including schedulers, earning less than direct care workers.
- Agency retention and recruitment challenges have spread to include non-direct service staff because of wage inversion.

Impact on Access to Care:

- This situation will place added pressure on the state's hospitals, nursing homes, first responders, and family caregivers.

- Without adequate support for home care, hundreds of thousands of New Yorkers will go without the necessary assistance to live and thrive in their homes and communities.

OPPOSE: $200 Million in Unspecified Home Care Cuts

Alarmingly, the Governor's proposed Medicaid budget includes an unspecified cut to long term care including home care. To date, we have not been briefed on either the scope or nature of this reduction in Medicaid payments. We vehemently oppose this and hope to work with you and the Executive to find a better path to efficiency.

OPPOSE: Wage Cuts for Personal Assistants

The elimination of Worker Wage Parity (WWP) for personal assistants will cut the income for many personal assistants in the Consumer Directed Personal Assistance Program (CDPAP).

Currently, WWP funds may be paid as salary, benefits, or a combination of both. Many providers administer Wage Parity in the form of increased wages. The Executive Budget Proposal eliminates Wage Parity in CDPAP entirely. This proposal is nothing less than a direct pay cut of up to $2.54 an hour for those workers.

Finally, it sets personal assistants in a separate, lower pay structure from personal care aides who work for an agency. The result would be the collapse of the CDPAP program, leaving many beneficiaries without the caregiver they have trained and trust.

MLTC Reform: Predictability, Sustainability, Transparency Needed

The Executive Budget Proposal includes a number of proposals to reform the Managed Long Term Care (MLTC) program but does not include critical reforms necessary to address the flawed reimbursement methodology in home care.

We ask that the Budget include legislation sponsored by Senator Gustavo Rivera and Assembly Member Amy Paulin, (S6963/A7335). Specifically, this legislation defines the elements that will comprise reimbursement rates, including direct care-related payments, reflecting operational expenses necessary to comply with state and federal mandates and an administrative and general expenses component. It sets a floor under which rates may not fall and provides annual adjustments to reimbursement rates based on a trend factor, thus increasing predictability and transparency in the rate-setting process.

Further, the legislation requires the Department of Health (DOH/the Department) to:

- Establish a regional minimum hourly base reimbursement rate for home care and personal care based on defined elements;
- Apply to the Centers for Medicare and Medicaid Services (CMS) for a directed payment to support the regional minimum hourly base reimbursement rate, and provides an accountability process should the directed payment not be approved;
- Amend the state's Medicaid Managed Care Model contract rates to comply with the requirements of this legislation;
- Publicly post the regional minimum hourly base reimbursement rate;
- Publicly post cost report data of plans and providers in a simple and accessible manner.

- Additional transparency and accountability components include authorizing the Comptroller to review contracts between plans and providers to ensure compliance with regional minimum hourly base reimbursement rates.

Hospitals and Home Care

We support the concept of voluntary collaborative models between home care agencies, physicians, Emergency Medical Services, and hospitals proposed by the governor.

We strongly oppose, however, provisions to allow hospitals to provide care in patient homes without a license to do so. The proposal creates loopholes and end-runs around current state licensure standards for home care agencies under Article 36 of the Public Health law. Currently, hospitals or other providers have and are allowed to apply for license under Article 36. The requirements of hospitals by their licensure under Article 28 do not necessarily provide all the quality and protections included in the standards for licensure under Article 36. The requirements for providing health care to patients are appropriately delineated under Article 36 including criminal history background checks, wage mandates, and health screenings for employees.

We ask the Legislature to reject these or other proposals to allow care at home absent licensure under Article 36.

EVV and OMIG Billing Audits

Included in administrative reforms is a new proposal for the Office of the Medicaid Inspector General (OMIG) to audit home care providers' Electronic Visit Verification (EVV), providing anticipated recoupments of $25 million or more in SFY 2025.

Prior to any actions by the OMIG, we ask that you include in the final budget language that clarifies that home care agencies may bill directly or select a billing entity of their choice to submit an invoice to an insurer under the state's Medicaid plan. Under federal and state law, EVV information and compliance is the responsibility of a home care agency. Insurers have often sought to mandate that home care agencies with whom they contract use a specific billing entity. As home care agencies bear responsibility for compliance and for penalties incurred by OMIG audits, the law must ensure they can choose a billing entity accountable to their home care agency and not an insurer, unless the insurer accepts responsible for payment of any OMIG audit related fines.

We ask the Legislature to include in the budget the provisions of (S6123/A5750), sponsored by Senator Rivera and Assembly Member Paulin, to protect agency choice of vendor.

Additional Concerns for Legislative Budget Considerations

Employee Benefits

The Executive Budget Proposal contains several proposals to increase employee leave and breaks for both pre-natal and post-partum care, and as increases in short-term disability leave benefits. Home care agencies recognize the need to strengthen employee benefits, however, given the almost $1 billion in Medicaid cuts to home care, it will be impossible to provide resources for these benefits. While our association has supported minimum wage increases in the past, our members have not been wholly compensated by the state in rate increases for services. Agencies cannot shoulder additional costs without commensurate financial support for wage and benefit changes.

We ask the Legislature to provide funds directly to home care agencies to pay for past wage increases and any new employee benefit reforms.

Conclusion

HCP, working with the State's DOH, Office for the Aging, and other groups, has and continues to spend significant staff resources on the governor's marquis initiative, the Master Plan for Aging, because we share the goal of ensuring "that all New Yorkers can age with dignity and independence through policies that promote the value of healthy, meaningful aging."

There is a glaring disconnect between the goals of the Master Plan and the Executive Budget Proposal. New Yorkers deserve a better budget – one that reflects our shared values, empowering us to live and age in our homes and communities, with dignity and appropriate support.

We ask the legislature to bridge that gap by:

- **Increasing Medicaid reimbursement rates to home care by 10%**
- **Opposing cuts to Worker Wage Parity for CDPAP workers**
- **Opposing initiatives to allow care at home absent licensure under Article 36**
- **Include S.6963 (Rivera) /A.7335 (Paulin) establishing a regional minimum hourly base reimbursement rate for home care and personal care based on defined elements in the state budget.**
- **Include S.6123 (Rivera) / A. 5750 (Paulin) protecting agency choice of billing vendor in the state budget.**

Addendum:

Testimony of HCP member Karen Clark, Executive Director of Home-Health Care Partners, serving Albany, Fulton, Hamilton, Herkimer, Montgomery, Saratoga, Schenectady, Schoharie, Warren, and Washington Counties.

"My name is Karen Clark. I am the Executive Director of Home-Health Care Partners. We are a not-for-profit, licensed home care agency that has been serving upstate for 27 years. My agency does good work and is well-respected.

We are going out of business. Our last day of service is February 25, 2024. It has been a long road of tremendous effort, highs and lows, and difficult conversations.

We rent space from our sister agency which is a 4.5-star certified agency that was closing but is now being purchased. The 'for sale' signs are now in the windows. This makes the 5th empty business space on this side of our block on Main Street. The unthinkable question facing providers is this: Do we focus on quality, or do we focus on sustainability to stay in business?

Doing business in NYS is extremely challenging. The proposed budget presents new threats to home care. Lifelines and bridge loans are not available to us.

Five hundred thousand New Yorkers left the state in 2022. There is an extended workforce shortage across the board. Like many businesses, health care continues to recover from its own version of 'long COVID.' Mergers, acquisitions, and closures continue throughout the state. It is survival of the 'biggest.'

The outlook for home care is grim. Our agency is still doing what is right as we grieve and wind down. We are service providers and we have been service recipients. Home care is very real and personal to us.

My agency chose quality and integrity over sustainability. Eventually this choice became unsustainable, and we chose to step down. The lesson for all is this: Good agencies go out of business.

My plea here is for you to put an end to this vicious cycle. I ask you to remember this story as you hear from our Association, advocates, and members. It is time to recognize the role of home care in community and population health, and in our own life stories.

Thank you very much for this opportunity."

May 18, 2023
HCP Memo 2023-7

MEMO IN SUPPORT
S6963 (Rivera)/A7335 (Paulin)
Establishes regional minimum hourly base reimbursement rates for home care providers.

Introduction:
The New York State Association of Health Care Providers, Inc. (HCP) **STRONGLY SUPPORTS** this bill.

Discussion:
This legislation makes a crucial correction to the home care system by ensuring home care providers receive adequate reimbursement from private insurers (managed care plans) to pay home care workers adequate wages and benefits so home care services are available to disabled persons and the elderly in our state. **In a program devised and enacted by the Cuomo Administration, private insurance agencies are able to simply pocket a significant portion of the monies appropriated from the state to pay home care workers (Heartless Greed- Albany Times Union).**

Families across the state continue to voice daily their frustration at obtaining home care for their loved ones. The state has sought to address this issue by increasing home care worker wages. Both the FY 2022-2023 and FY 2023-2024 State Budgets included significant minimum wage actions for home health care workers. While wage increases for this highly trained and in-demand workforce are needed to attract and retain an adequate number of workers to meet the need, neither budget linked the minimum wage increases to an increase in reimbursement rates to home care employers.

The resulting destabilization of the home care industry laid bare systemic challenges which this legislation seeks to remedy:

- There is no common understanding of what constitutes an adequate rate to cover worker wages and benefits and related employer costs, despite most employer costs being non-discretionary.

    - The Department of Health (DOH/the Department) has little insight into the nature of the relationship between home care provider agencies and the insurance plans with whom agencies contract.
    - Insurance plans have little insight into the actual cost to agencies to provide care.
    - Home care provider agencies have little opportunity for meaningful negotiations with the insurance plans with whom they contract. Often, providers are presented with a "take it or leave it" offer with no discussion or substantive communication by their insurers.
    - The rate development process must be objectively informed by provider cost reports and Medicaid Managed Care Operation Reports, however, neither data sets are broadly available in a searchable format.

- Absent a requirement to do so, insurance plans do not reimburse home care agencies adequately to pay for the cost of care, which includes non-discretionary labor costs.

This bill provides remedies for systemic failures that have compounded over time, resulting in an underfunded and destabilized home care industry. It seeks to ensure that the funds allocated for wage increases, billions of state and federal dollars, actually get to the home care agencies so they have the monies to fund these wage increases. Insurers already refuse to pay overtime, travel time, and other critical payroll elements; home care agencies should at least be compensated for their actual wage and benefit costs.

Specifically, this legislation defines the elements that will comprise reimbursement rates, including direct care-related payments, reflecting operational expenses necessary to comply with state and federal mandates and an administrative and general expenses component. It sets a floor under which rates may not fall and provides annual adjustments to reimbursement rates based on a trend factor, thus increasing predictability and transparency in the rate-setting process.

Further, the legislation requires DOH to:

- Establish a regional minimum hourly base reimbursement rate for home care and personal care based on defined elements;
- Apply to the Centers for Medicare and Medicaid Services (CMS) for a directed payment to support the regional minimum hourly base reimbursement rate, and provides an accountability process should the directed payment not be approved;
- Amend the state's Medicaid Managed Care Model contract rates to comply with the requirements of this legislation;
- Publicly post the regional minimum hourly base reimbursement rate;
- Publicly post cost report data of plans and providers in a simple and accessible manner.

Additional transparency and accountability components include authorizing the Comptroller to review contracts between plans and providers to ensure compliance with regional minimum hourly base reimbursement rates.

Importantly, the legislation has no fiscal impact but simply directs the monies already appropriated directly for home care worker salaries.

Conclusion

Lack of transparency, predictability, and oversight have contributed to destabilization in the home care industry. Mandated labor costs enacted in the state budget over multiple years have not been met with mandated increases in reimbursement rates to employers who incur labor and care costs. While HCP has been supportive of wage increases, particularly in light of the severe shortage of home care workers, our support has been predicated on solving the reimbursement rate inadequacy problem.

Home care worker wages and adequate reimbursement rates for their employers are inextricably linked and inseparable. The enacted state budget brings predictability to the wage side of this equation. This legislation solves the reimbursement side of the equation.

For this reason, HCP emphatically supports S6963 (Rivera)/A7335 (Paulin) and considers this bill a priority.

NYS Association of Health Care Providers
Representing Home & Community-Based Care

SUPPORT

Home care. Health care. Your care . . . *for life.*

June 6, 2023
HCP Memo 2023-4B

MEMO IN SUPPORT
S6123 (RIVERA)/A5750 (PAULIN)
Relates to the submission of claims for services provided by home care agencies.

Introduction:
The New York State Association of Health Care Providers, Inc. (HCP) **strongly supports** this bill.

Discussion:
Home care agencies must not be denied the right to submit their own bills and select the billing entity of their choice. Yet insurance plans across the state are denying home care agencies the authority to undertake the most basic of business functions: to submit their own bills! **This legislation would protect home care agencies from this arbitrary and compulsory practice by insurance plans.**

The bill neither restricts nor directs with whom insurers may contract. It simply protects home care agencies' ability to select a billing entity of their choosing, as they have for over 10 years.

As a result of this insurer practice, home care agencies are struggling with millions of dollars in past due amounts as health care plans have sought to control the billing of home care agencies, stifling claims and interrupting the timely payment for services.

In recent years, home care agencies have operated on razor-thin margins while insurance plans have posted record profits. This bill would guarantee providers the right to choose who they contract with to secure payment. It reasserts that insurers can neither require contracting with or use of a specific billing entity nor impede the timely processing and payment of claims.

We strongly urge passage and enactment of this legislation on behalf of our home care agencies, workers, and the families we serve by providing critical and quality home care across the state.

Conclusion:
The variety of providers in New York's home care industry is reflected in our membership, which ranges from small start-up agencies that play a vital role in providing much-needed services in their communities to larger, national, publicly traded agencies that provide care in all corners of the state. A range of systems and vendors must be available to meet the specific needs of home care providers, to avoid incurring additional costs, and to avoid the cashflow disruptions which imperil the viability of the home care industry. For these reasons, HCP **strongly supports** this legislation.

About HCP:
Through advocacy, information, and education, HCP influences the future of the home care industry and leads it in adapting, evolving, and thriving in an ever-changing health care environment. We contribute to setting the standards for quality, cost-effective care, and firmly believe that patients do better at home.

The New York State Association of Health Care Providers, Inc. (HCP) is a statewide trade association representing the full spectrum of home and community-based care providers through information, advocacy, and education. HCP represents licensed home care services agencies, certified home health agencies, fiscal intermediaries, and related health organizations. Through a strong network of regional chapters and an active State office in Albany, HCP is a primary authority of the home health care industry.

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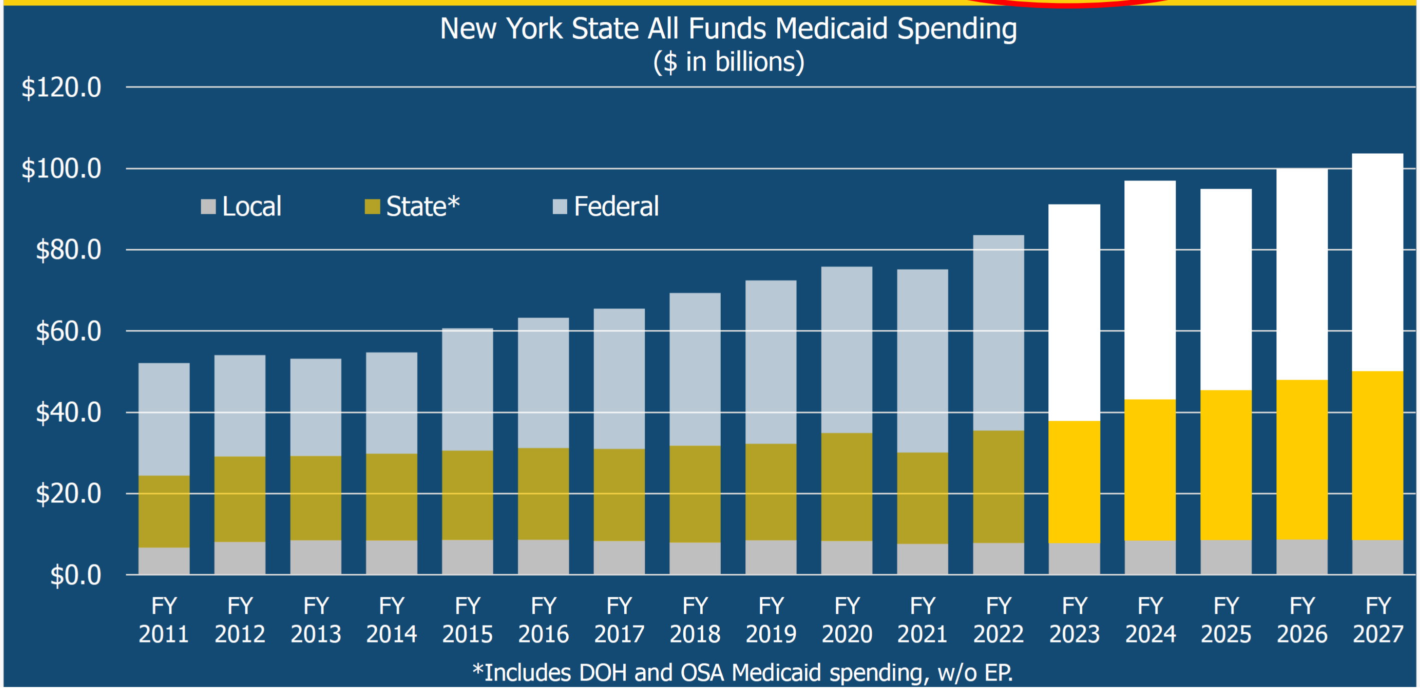
Addendum: Excerpts from "Our New York, Our Future, FY2025 NYS Executive Budget"

Budget Director Blake Washington's Presentation (January 16, 2024)

MEDICAID SPENDING GROWTH AFTER YEARS OF NEARLY FLAT STATE SPENDING



THE HOCHUL ADMINISTRATION INVESTS IN HEALTHCARE

Historical Trend Factors	FY 12	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24
Hospital Inpatient	0%	0%	0%	0%	0%	0%	0%	0%	0%	-1.5%	0%	**1%**	**7.5%**
Hospital Outpatient	0%	0%	0%	0%	0%	0%	0%	0%	0%	-1.5%	0%	**1%**	**6.5%**
Nursing Home	0%	0%	0%	0%	0%	0%	0%	0%	0%	-1.5%	0%	**1%**	**7.5%**
Assisted Living Program	0%	0%	0%	0%	0%	0%	0%	0%	0%	-1.5%	0%	**1%**	**6.5%**
All Other	0%	0%	0%	0%	0%	0%	0%	0%	0%	-1.5%	0%	**1%**	**0.0%**

*FY 24 Nursing Home 7.5% rate increase is pending Federal approval