

TESTIMONY

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**JOINT FISCAL COMMITTEES
BUDGET MEETING ON HUMAN SERVICES
FEBRUARY 9, 2021**

**STATE BUDGET ISSUES IMPACTING
OLDER NEW YORKERS AND THEIR FAMILIES
State Fiscal Year (SFY) 2021-2022
(Proposed by the Governor – January 19, 2021)**

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. We also will highlight some policy issues that impact older residents that are in the budget under the jurisdiction of other agencies.

However, we must begin with an urgent call to move away from austerity budgeting. If the current pandemic taught us anything, it is the need to make sure that the infrastructure of our public health and community-based services must be strong. Those that have the most income and wealth must be taxed to support services that have been withering due to flat or cut budgets for years. Now is the time to invest in building up community-based services and home care services to support elder residents.

Most of what we have been hearing through our hotlines, community outreach & from our members and partners can be said in one sentence: In their root, the problems that have been arising during the pandemic are not new concepts to us. The problems are just magnified due to how large this problem is. The crisis in hospital and nursing home care has been with us for decades, but was exacerbated by the crisis in care brought on by the pandemic. For years we have urged the government to improve oversight of long-term care facilities and increase sanctions on those who deliver sub-standard care, to ensure safe staffing by imposing minimum staff to patient levels in hospitals and nursing homes, and to provide access to quality health care services to all by an improved version of Medicare for all – the New York Health Act.

And what becomes painfully clear is that as a community we may have been better prepared if the systems and programs that have been reduced, cut, and dismantled over the years had been in place. Understanding that times change and we must be in step with those changes, we truly feel that if the community and consumers had input in things like sales of nursing homes to private entities, closing of hospitals in areas of need, and changes to valuable programs such as EPIC there would have been stronger programs and a system that put patients before profits.

A. STATEWIDE'S PROGRAMS:

Patients Rights Helpline: 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, 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, and the shortage of home care workers. In SFY 2017-18, funding was increased to \$63,500. In SFY 2018-19 & 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. In SFY 2020-21, the Legislature added \$200,000, for total program funding of \$231,500. This additional appropriation was much appreciated, especially with the extraordinary amount of questions and concerns during the past year which we have worked hard to address. We are distressed, however, that NYSOFA still has not contracted with us for any of the SFY2020-21 appropriation for these services. The Governor's current budget proposes \$31,500 for the StateWide's Patients' Rights Hotline and Advocacy Project.

Recommendations:

- *StateWide requests the Legislature restore the program to the SFY 2020-21 level by adding \$200,000 to the current appropriation. (Aid to Localities budget S2503/A3003 Page 8, Line 27-30).*
- *StateWide requests that the Legislature reappropriate \$200,000 from SFY 2020-21 due to delays by NYSOFA in contracting with us.*

Managed Care Consumer Assistance Program (MCCAP): Since 2004, we have received state budget funding through NYSOFA to provide Medicare enrollment and pharmaceutical assistance program 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 SFY19-20 proposed Executive budget.

(Aid to Localities budget S2503/A3003 Page 7, Lines 44-45.)

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.

***Recommendation:** Accept the Executive’s funding recommendation for the Managed Care Consumer Assistance program, with flat funding at the SFY 2020-21 level.*

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 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 (formerly called Supplemental Nutrition Assistance Program) and Transportation funding are vitally important. Additional funds were added by the Legislature in SFY 2020-21 to the Community Services for the Elderly program, giving flexibility to local Areas Agencies on Aging Commissioners (AAAs) to determine where there is greatest need to address local issues, including use of the additional funds for EISEP.

The Governor’s proposed budget maintains the SFY 2020-2021 level of funding for CSE. Starting in SFY2019-20, the Governor added \$15m to NYSOFA programs, designed to address waiting lists. This funding continued in SFY2020-21. We are pleased that the Governor has again proposed an investment of \$15m in NYSOFA programs to address past waiting lists. However, additional funding is needed to allow the programs to build the needed community resources to meet the needs of a growing aging population. The US House Committee on Education and Labor produced a fact sheet during its 2019 deliberations on reauthorizing the Older Americans Act (OAA) noting that “as the population of Americans age 60 and over has grown, funding for OAA is not keeping pace.”

The Governor’s proposed budget once again defers the cost of living adjustment for NYSOFA programs, attributing \$2million in savings. In the Health and Mental Hygiene agencies, while the COLA is again deferred, there has been funding appropriated to support the increase in the minimum wage. That is not the case in the NYSOFA budget. As a result, compounded by relatively flat funding, programs are being squeezed so that meeting the minimum wage, combined with good administrative policies in place that allow EISEP home care salary parity with Medicaid-funded home care salary, can only result in fewer hours of care being funded.

Recommendation:

- *Increase funding for core NYSOFA programs by a minimum of 7%, reflecting Congress' report on the funding increase needed to address unmet need. With cost constraints due to the tax cap at the local level where Aging services are optional, local dollar investments in aging services are stagnating or facing reductions and it is important that any additional state resources invested in aging services not require a local match above baseline funding.*
- *Allow the cost of living adjustment to be applied to NYSOFA services.*
- *Require a report by NYSOFA that addresses unmet need due to insufficient resources or capacity.*

EISEP (Expanded In-Home Services for the Elderly)

The additional funds appropriated 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, and we recommend doing so by the addition of funding to the CSE program to allow the decisions to be made under local control, there is a clear need to invest in home care. An analysis of how the \$15m funding to reduce waiting lists was used in the NYSOFA budget is essential, since it was not required that they be used exclusively for EISEP services, to understand the existing barriers that are the root cause for waiting lists for EISEP.

Recommendation:

- *Require NYSOFA review the barriers to spending resources on the EISEP home care program to meet community need of an aging older population and recommend solutions.*
- *Incorporate A2590, requiring an annual report to the Legislature on unmet need due to insufficient resources or *capacity*.*

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, as evidenced in the Assembly's 2017 hearings on the home care worker shortage. We urge you to address the capacity issues in a comprehensive manner so that the traditional medical/health home care worker shortage and the aging/EISEP home

care worker shortage are addressed together, and that solutions for one sector do not create further problems for the other. As New York’s home care providers struggle to recruit and retain workers, they unfortunately lack the resources to test innovative solutions to this problem.

Recommendation:

- *Include funding to support pilot projects throughout the state that boost the number of home care workers that enter and remain in the field. Set aside funding to develop innovative pilot projects to incentivize the growth of the home care workforce, which would be tested and replicable throughout different areas of New York State. We recommend that a new Home Care Jobs Innovation Fund is funded at \$15 million over three years, by incorporating language in S4222 into the budget.*
- *Include the Invest in Care Act, to ensure that solving the current and predicted future shortage of home care workers is a priority goal of the state’s economic development regional councils.*
- *Include funding in the Department of Health budget to restore the Workforce Recruitment and Retention program for personal care service workers, certified home health agencies, long-term home health care programs, AIDS home care programs, and hospice programs.*
- *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” and adjust for salary compression within programs that may result.*

Long Term Care Ombudsman Program (LTCOP)

LTCOP is a vitally important program that is funded largely by the federal government through Older American Act funds and partly by the state to supplement that funding. LTCOP functions as an independent agency and is hosted by the NYSOFA. According to the NYS LTCOP website, its goals are to be an “advocate and resource for older adults and people with disabilities who live in nursing homes, assisted living, and other licensed adult care homes. Ombudsmen help residents understand and exercise their rights to good care in an environment that promotes and protects their dignity and quality of life. The Ombudsman Program advocates for residents by investigating and resolving complaints made by or on behalf of residents; promoting the development of resident and family councils; and informing government agencies, providers, and the general public about issues and concerns impacting residents of long-term care facilities.”

In October 2019, the NYS Comptroller released an audit of the LTCOP; key findings included the lack of 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 – have 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 these important services.

The presence of LTCOP in long term care facilities during the pandemic would have improved communication with family members, ensured residents rights were respected, and enhanced efforts to maintain a regimen of infection control. The state followed federal guidance and blocked visitation by ombudsmen. Further compounding the problem, there is insufficient paid staff in the program to respond to the many complaints, and the volunteers that are the majority of the ombudsmen are older themselves and were staying at home to minimize their own risk of contracting the COVID-19.

Recommendations:

- *Given the audit findings, take action to ensure that the LTCOP can be truly a vital part of the oversight and problem prevention and resolution in long term care facilities.*
- *Increase program budget, but tie the appropriation to 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. Include provisions in S612, the Long-term Care Ombudsman Program Reform act.*
- *Require that annual reports on the LTCOP include the degree of effort to increase the number of family councils in long term care facilities.*

C. Improvements to Long Term Care

To assure that quality care is provided in nursing homes and adult care facilities, there is supposed to be a system of checks and balances. It includes visitation by family and friends, active ombudsmen programs, residents' councils, oversight and enforcement by the Department of Health, and facility operators acting in good faith to minimize risk of adverse outcomes and exposure to liability. Yet during the pandemic state and federal directives eliminated most of these. The disproportionate impact of the pandemic on residents of long-term care facilities combined with the disproportionate impact on residents of color heightens the need for immediate action.

There has been a growing crisis, prior to the pandemic, in the quality of care and the oversight by the state in nursing home and adult care facilities. This includes a backlog of complaints needing investigation, fines that are merely a cost of doing business and do not create a disincentive to poor practices, inadequate staff to resident ratios and less than optimal visitation to facilities by the long term care ombudsman program.

We fully support the statements of many legislators, and now including the NYS Attorney General, that have decried the conditions in nursing homes prior to the pandemic including understaffing and poor enforcement. The state must take immediate action to protect the rights of those who need long term care services. *StateWide* has been seeking changes for decades, including minimum staffing standards, more timely response to complaints, investigations of poor outcomes or practices where corrective actions truly result in improved care, and fines that are meaningful. We wonder, if the public outrage over the current disaster in care doesn't spark action, what will?

We have identified four major areas of concern as they relate to long term care services delivered in residential facilities. These are:

1. Failure to uphold the rights of residents and families that have been negatively impacted, including the ban on visitation which led to isolation and physical and mental deterioration of residents.
2. Pre-existing high risk of infection and lack of enforced infection control and staff training preceded the epidemic and is a predictor of the spread of the disease.
3. The corporate structure of facilities and lack of accountability has contributed to reduced quality of care and poor infection control, putting profits before patients.
4. The inability to discharge appropriately to the community due to lack of housing and community supports which includes the shortage of home care workers, the unsafe

"dumping" discharges to shelters, and the appearance that preference on admission was given to those with higher reimbursement, including the "COVID bonus."

Recommendations:

- *Corporations should be held accountable for meeting their responsibilities and the liability waiver granted in 2020 should be repealed in a retroactive manner. (A3397)*
- *Establish minimum safe staffing standards. (S1168/A108)*
- *A medical loss ratio should be established for for-profit nursing homes with a moratorium on conversion from non-profit or public to for-profit during this time along with a prohibition on purchases by both venture capitalists and LLCs that do not disclose ownership.*
- *State policy must ensure that essential visitors are welcome to provide support to residents at any time, including during an infectious disease outbreak now and in the future. (S614/A1052, A3113)*
- *Increase penalties for poor performance. (A232 & S1576/A196)*
- *Establish standards for infection control audits (S1783 & A1999) and adopt a model infectious disease exposure prevention standard (S1034/A2681)*
- *Require that every skilled nursing facility employ an infection control specialist, responsible for ongoing infection control staff training and for developing infection prevention & control policies and procedures, performing infection surveillance, and auditing adherence to recommended infection prevention & control practices.*
- *Protect residents from inappropriate discharge (S3058/A3919)*
- *Provide disclosure of ownership, public comment, and review quality of owners' performance in other facilities prior to approval of certificate of need (S3060)*
- *Seek clarity on the Governor's budget narrative on "Enhancing Nursing Home Quality of Care" to determine what funding, language or regulations are expected to follow. We agree with the Governor's conclusion that "Now, more than ever, it is important that nursing homes are staffed to provide high quality care and safety for their residents" and we hope his policies reflect the need for minimum staffing levels and not merely review of agency staffing contracts.*

D. 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 decision.) We oppose funding cuts to the program that impact access to benefits and safety net providers.

Recommendations:

- Eliminate the Medicaid global spending cap in favor of adopting a Medicaid budget that realistically spends what is necessary to provide the program New Yorkers need. (A226)
- 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.
- 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.

E. Protecting and Improving Benefits for Older Residents

The Medicare Savings Program (MSP) is funded through a state and federal partnership, administered and budgeted within the state's Medicaid program. The federal government allows for several state options that will *allow the state to save money*. The Centers for Medicare & Medicaid Services (CMS) reminds states of the existing opportunities to simplify the eligibility and enrollment processes for applicants and eligibility workers, especially for the Medicare Savings Programs.

Currently the MSP covers Medicare enrollees up to 135% of the federal poverty level (FPL) and *StateWide* has advocated increasing that threshold which would also streamline and increase the number of Medicare enrollees that are eligible for the fully federally funded Extra Help program. The Governor has rightly proposed using federal funds to expand the benefits of the Essential Plan so that households under 200% of the federal poverty level (FPL) are not required to pay a monthly premium. We urge you to invest in coverage for those enrolled in Medicare to ensure affordability of coverage.

Recommendations:

- *The Medicare Savings Program should take advantage of all federal options to streamline its enrollment and reapplication processes.*

- *Increase the income eligibility for the Medicare Savings Program to 200% FPL.*

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. There have been administrative cuts that have resulted in benefit cuts in the program, including elimination of coverage for any Part D Late Enrollment Penalty. We are also concerned that these changes are made without consumer advice and input.

Recommendation:

Support S4603 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 and once again, require an annual report to the Legislature and reverse administrative changes that resulted in a new and onerous EPIC application.

NYS Retiree Health benefits

Under current law, all State retirees who vest lifetime health benefits and reach the age of 65 are enrolled in Medicare Part A and B in lieu of the State's own health insurance. The State then reimburses State retirees for their Medicare Part B costs. Higher-income beneficiaries must pay an adjusted amount for Medicare Part B under the federal Income-Related Monthly Adjustment Amounts (IRMAA).

The Governor proposes to eliminate the guaranteed retiree health benefit in several ways, by eliminating the reimbursement of the IRMAA payment, by capping the Medicare Part B premium at 2021 levels and by requiring future employees to pay a greater share of their retiree health premium if they have less than thirty years of service.

Recommendation:

Reject the Governor's proposal and ensure there is no diminution of retiree health benefits.

Homeowner Protection Program (HOPP)

Tens of thousands of New Yorkers have avoided losing their homes due to this program which provides legal and counseling services to homeowners who are unable to pay their mortgages. HOPP is set to expire on July 15, 2021. The timing could not be worse, as the NY moratorium on foreclosures is set to expire only two months prior, in May 2021. Just as banks will start foreclosures proceedings in record numbers, homeowners will have nowhere to turn for representation. Older homeowners already have been disproportionately impacted by COVID; they should not also be forced into homelessness.

Recommendation:

Restore funding to the SFY2020-21 level.

Broadband Access

The Governor plans to launch a centralized online portal to aggregate all affordable internet programs in one place and gather critical data on consumer experience and remaining service gaps and expects to help those that do not have access to the technology, or privacy, to take advantage of telehealth. The state will require internet providers to provide special pricing (\$15/month) for low income households (to any family that would qualify for free or reduced-price lunch or is at 185 percent of the federal poverty line). A charitable donor will subsidize costs for New York students who cannot afford \$15 a month for at-home internet during the COVID-19 crisis.

There are currently large gaps in access to broadband services that are not reflected in the state's overview of available services. In large part, this is due to the state relying on tracking of access by census block, a measure that does not reflect the reality of households in urban, suburban and rural areas without reliable broadband service. In spite of known gaps in access, the Governor recently vetoed an important bill requiring the Public Service Commission (PSC) to study the availability, affordability, and reliability of high-speed internet and broadband access in New York State, and produce a detailed access map indicating internet service by location.

Recommendations:

- The state must ensure universal access to broadband connectivity, especially important due to the expanded reliance on tele-health services as well as a means to reduce social isolation.
- Subsidies for low income households must include those with older residents as well as those with students.

Thank you for the opportunity to testify today.