Joint Legislative Budget Hearing on Health

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New York Advocates for Home Care (NYAHC)
Testimony on Executive Budget Proposal

Submitted By:

Jon Wegman
President, New York Advocates for Home Care (NYAHC)

Contact: Jon Wegman, President, NYAHC
info@nyahc.org

New York Advocates for Home Care (NYAHC) thanks the Chairs of the Senate Finance Committee and Assembly Ways and Means Committee for the opportunity to submit testimony. NYAHC is a coalition of providers, employees, consumers, and families dedicated to empowering New Yorkers with disabilities to live independently at home and take charge of their care. We are gravely concerned that New York is headed toward a disaster of its own making in the home care sector, and we are writing to request that the final state budget address two regressive pre-pandemic 2020 MRT-II program actions that will destabilize home care services for tens of thousands of New Yorkers.

1. **NYAHC urges a repeal of the Department of Health's Request for Offers #20039 for the Consumer Directed Personal Assistance Program's Fiscal Intermediaries (FIs) in order to preserve current, quality FIs that are supporting workers and patients.**

The Consumer Directed Personal Assistance Program (CDPAP) is one of the most popular home care programs in New York because it allows consumers to receive care in the setting in which they are most comfortable—their own homes by their Personal Assistant, who is family, a friend or someone they trust. All CDPAP Fiscal Intermediaries were approved by the DOH. The program currently serves over 139,000 people and continues to grow each year because it is an ideal option for those who want more control over their care and would rather receive assistance from someone they know and trust. Moreover, the need for this program is underscored by the recent staffing crisis in traditional home care, which also explains the program's growth.

A consumer directed home care option is vital for families. The ability to choose a family member, friend, or neighbor has been a lifeline for families that helps their loved ones remain at home and avoid institutional care; a win-win for taxpayers and CDPAP consumers. The CDPAP program has worked well to this point in time, with all Fiscal Intermediaries approved by DOH. This program has worked exceptionally well during the pandemic as consumers were more likely to have services and the PAs more likely to provide services to their consumer with few exceptions. But now, the state of the program is in jeopardy.

We are deeply concerned with the CDPAP RFO #20039, which requires all currently approved CDPAP providers to receive DOH approval to remain in the network through awarding of contracts. Almost one year after providers submitted their responses to the RFO, the DOH announced in February 2021 that just 68 of the nearly 400 qualified organizations who responded would be awarded contracts. Moreover, on February 25, 2021, during last year's joint legislative budget hearing on health, the DOH stated that an astounding 80% of the state's 139,000 CDPAP consumers would be forced to seek a new FI under the Department's plan. By eliminating 80% of providers from this essential program, the DOH's move would cause a troubling disruption of service that, should the RFO be implemented, will dismantle the CDPAP program as we know it and eliminate home care options for those who need them.

In addition, some consumers have four or five caregivers, known as Personal Assistants (PAs). That translates to potentially over 100,000 employees needing to begin working for one of the 68 DOH awardees, including undergoing a completely new employment application, with the required new employee physical exam, PPD, etc. No provisions have been put in place to ensure that the awarded FIs will provide the same or similar pay and benefits to these employees as they received previously. If PAs do not get the same benefits, many PAs will seek alternate employment outside of health care. The workforce is scarce as is, and consumers cannot afford to lose any of their PAs—especially during these trying times.

This program has been working well for a number of years and has served the consumer in a positive way and has contributed to decreased costs by allowing people to remain in their home to receive care and not having to go into a facility which benefits the taxpayer.

2. NYAHC urges a repeal of New York's unilateral limitation on LHCSAs in New York State.

Similar to our concerns regarding CDPAP, under a suggestion by the MRT II, on April 1, 2020, the Social Services Law was amended to allow the DOH to take a heavy-handed approach with Licensed Home Care Services Agencies (LHCSA) that provide traditional Personal Care Services. Specifically, the 2020 enactment of Section 3605-c requires LHCSAs to compete for an arbitrarily limited number of contracts with the DOH in order continue operation in the Medicaid program. A Licensed Home Care Services Agency is a home care agency licensed under Article 36 of the Public Health Law. A LHCSA accepts responsibility for a patient's care and safety and directs and controls the manner and means by which the LHCSA's workers provide services to Medicaid recipients in their own homes. LHCSAs are regulated and subjected to survey by DOH. Many LHCSAs also attain accreditation status through Joint Commission, (JCAHO), Community Health Accreditation Program (CHAP), or ACHC which have standards above and beyond the regulations of NYS. This suggestion was made in March of 2020, during the height of the pandemic, when the home care industry was doing its utmost to prepare and provide appropriate care to their patients.

We advocate for a full repeal of the LHCSA RFO, as all LHCSAs already undergo an extensive licensure process with the DOH prior to providing services, and there are no cost savings included with this provision. Implementing an RFO on licensed agencies during the worst staffing shortage in recent history will cause a massive disruption to services and will create barriers to quality care and services.

Additionally, and more recently, the DOH has elected to provide enhanced funding under the American Rescue Plan Act to only 212 of approximately 1,479 LHCSAs, representing less than 20 percent of these statewide providers. In the DOH's November 2021 presentation, it stated that the provider class for the first directed payment of $361 million and the second directed payment of up to $1.1 billion, was limited only to LHCSAs with managed care revenue[1] in 2019 that "meets or exceeds the revenue threshold in their respective regions".[2] In other words, the third of providers with the highest managed care revenue in each region will be included in the provider class.[3] DOH's siphoning of funds to certain LHCSAs will result in an arbitrary reduction in the number of LHCSA network providers—a provider network that already faces financially challenging circumstances.

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[1] Managed care revenue refers to the LHCSA's 2019 managed care revenue received from MLTCP and MAP plans.
[2] *See* http://leadingageny.org/home/assets/File/November%20Policy%20and%20Planning%20Meeting_Directed%20Payment_11_17_21.pdf, at p. 4.
[3] *Id.*

Conclusion

We acknowledge that there are concerns under the current managed care model, and we want to work with the state to address those concerns and find solutions. However, we do not accept a wholesale dismantling of the CDPAP program that helps so many families across the state as a remedy to these concerns. This is an extremely inopportune time to make changes and disrupt services to seniors and people with chronic illnesses or disabilities.

To further limit the LHCSA ability to contract with DOH will limit the services able to be provided. The pandemic has wreaked exponential havoc on those in the health care field. Adding this stress is both callous and risky for consumers and will eliminate more jobs and livelihoods of people during such trying times.

Legislative remedies addressing these two areas already exist.

- **AB 6479 / SB 5962** would allow FI services to continue to be provided by FIs who eligible providers were as of January 1, 2020, and mandates that the Commissioner of Health may issue a new request for applications for contracts for services with more specific and transparent requirements applied to the scoring of applications.

- **AB 7304 / SB 6640** would repeal the 2020 law that allows the DOH to arbitrarily limit the number of LHCSAs that may participate in Medicaid, thereby restoring the right of approved and qualified LHCSAs to serve Medicaid enrollees.

We firmly believe that our association and the state share the same goal of ensuring the over 250,000 New York Medicaid recipients continue receiving uninterrupted home care services. As a result, we strongly support including legislative language from both AB 6479/SB 5962 and AB 7304/SB 6640 into the budget to address these issues in a responsible and timely manner.

Thank you for your time and attention on this important matter.

Respectfully submitted,

Jon Wegman
President, New York Advocates for Home Care
Email: info@nyahc.org