

**TESTIMONY**  
**NY STATEWIDE SENIOR ACTION COUNCIL**  
**JOINT FISCAL COMMITTEES**  
**BUDGET HEARING FEBRUARY 8, 2017**

**STATE BUDGET ISSUES IMPACTING**  
**OLDER NEW YORKERS AND THEIR FAMILIES**  
**State Fiscal Year (SFY) 2017-2018 - April 1, 2017 – March 31, 2018**

NY StateWide Senior Action Council (*StateWide*) has reviewed the Governor's Budget Proposal to assess its impact on older New Yorkers and we thank you for the opportunity to share our concerns that span several budget tables, including Health/Medicaid, Tax, & Financial Services, in addition to your purview today of human services.

**STATEWIDE'S PROGRAMS:**

**PATIENTS RIGHTS HOTLINE AND ADVOCACY PROJECT:** 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. Through funds allocated for the Project, *StateWide* staffs a toll free hotline helping patients navigate the health insurance and health care delivery systems, empowering patients and family caregivers to uphold their rights.

The demand for Helpline services is increasing as is the complexity of those cases, requiring more staff time. We receive calls from patients, family or friend caregivers, social workers and other professionals, including legislative staff assisting constituents. During the past year we assisted over 150 New Yorkers including seniors and their caregivers. Each case can run from 2 hours to 100 hours and may have a duration over several months, multiple calls and research hours on behalf of the client. These cases inform us on how the healthcare systems' policies and practices are affecting patients; we then can inform policymakers to see if system corrections can be made. The Project receives questions on:

- the use of observation status by hospitals that results in failure of Medicare to cover rehabilitation,
- rights during guardianship proceedings brought by nursing homes for payment,
- quality of care questions for both hospital and nursing home patients,
- discharge planning and coordination with community based aging services,

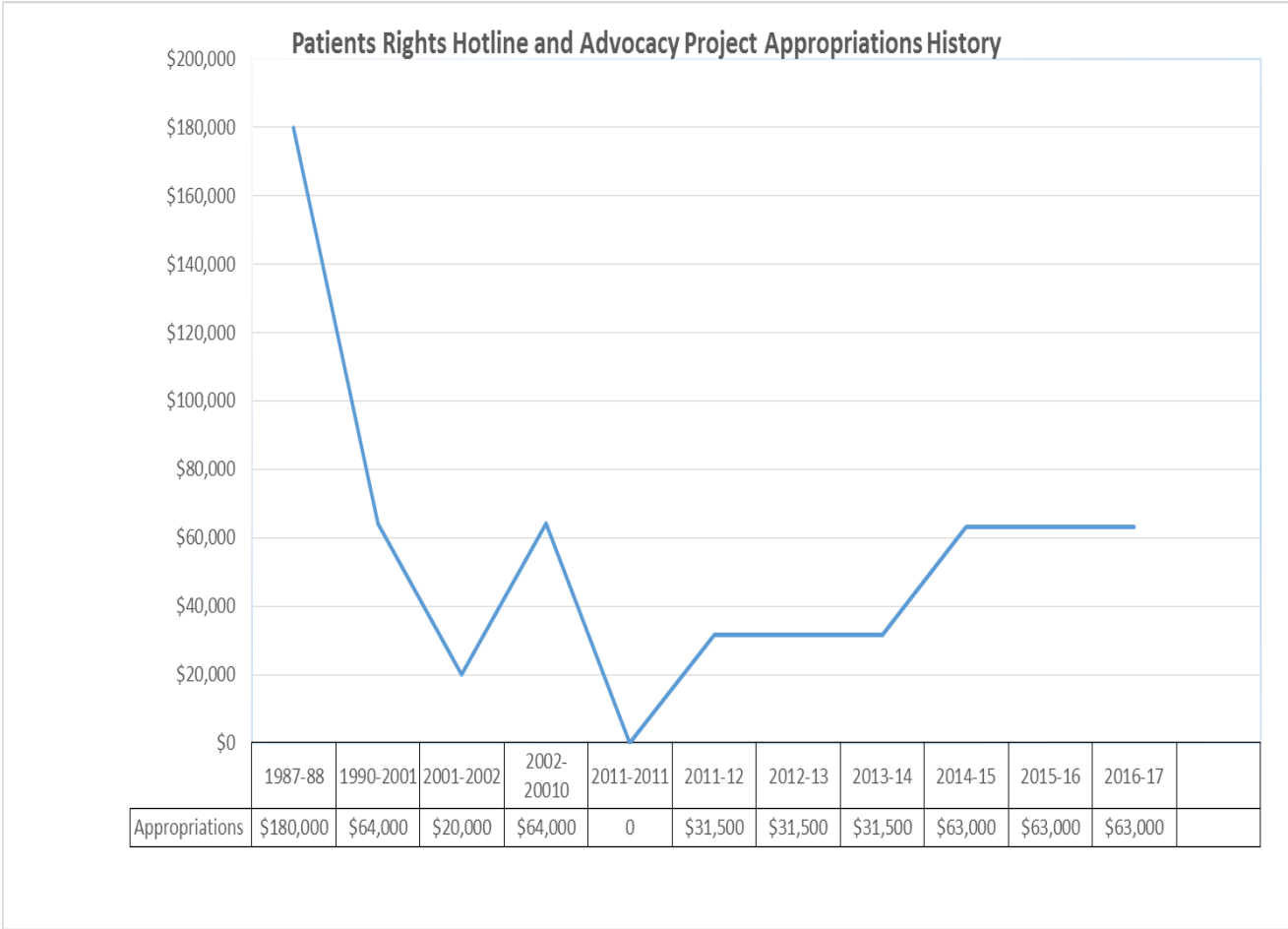
- shortage of home care workers to support aging in place,
- health care and insurance reforms including the Affordable Care Act, the Delivery System Reform Incentive Payment System (DSRIP), Managed Long Term Care and the Fully Integrated Dual Advantage Program, and
- other health, housing, nutrition, and benefits issues.

Through these funds, we also provide a monthly Telephone Teach In, bringing presentations by experts on quality of care issues to callers. In so doing, we aim to prevent problems and provide information before there is a crisis in care. In the last year, these topics included:

- New York State Hospital Financial Assistance Program
- Alcohol and Substance Abuse Services for Older Adults
- How to get help for patients with dementia and their caregivers
- How to compare Nursing Homes for services, quality and safety
- Nursing Home Forced Arbitration
- What is Sepsis and How Can it Be Prevented?
- Using Medicare's Quality Improvement Organization (Livanta) to appeal a Discharge or Complain about Health Facility Quality

*StateWide's* appropriation has been diminished during times of economic recession from its original \$180,000 in 1988. Additionally, our ability to use funds for outreach and marketing has been significantly reduced, making it more difficult for patients in need of assistance to know about our services.

- In SFY 2014-2015, SFY 2015-16, and SFY 2016-17, the Legislature added an additional \$31,500 resulting in the final allocation of \$63,000.
- The Governor's proposed SFY 2017-18 budget funds the program at \$31,500, the same level as SFY 2013-14.



**Recommendation:** StateWide requests additional funding, minimally to keep the program whole by adding \$31,500 to the total, and preferably, to increase total funding to \$100,000 based on increased need for community education and assistance, including more complex case issues, as health system reforms are implemented and caseload increases with the aging of the baby boom generation.  
 (Aid to Localities budget A3003/S2003, Page 8 – Lines 12-15).

**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.

Education and information outreach is essential to ensure older adults and persons with disabilities who have Medicare coverage are making informed decisions about their coverage

options and accessing counseling when needed. With the wave of Baby Boomers and a growing trend of employers in New York informing retirees that they no longer will have insurance benefits, the need for outreach continues to grow to reach those affected.

- A Kaiser Foundation Issue Brief (October 2012) on seniors' awareness of and experienced during Medicare Open Enrollment found that:
  - Nearly ¼ of surveyed seniors were unaware of Medicare's Annual Open Enrollment Period. These seniors were predominantly a vulnerable population subgroups of seniors – those with low incomes, limited education, functional impairments and poor health status.
  - Nearly half of seniors who receive Medicaid in addition to Medicare (dual eligibles) were unaware of the Open Enrollment Period.
  - One third of seniors do NOT review and compare their Medicare coverage options annually, as CMS recommends.
  - Kaiser concludes that seniors who do not routinely review their Medicare coverage options “do not learn about important changes in a timely manner (if they are enrolled in a private plan) or about alternative coverage options that might be better suited to their medical needs or produce lower out-of-pocket costs.”
- A March 2009 Kaiser commissioned study found that “many beneficiaries are not enrolled in the plan that will save them the most money given their specific needs.” [J. Gruber, “Choosing a Medicare Part D Plan: Are Medicare Beneficiaries Choosing Low-Cost Plans?]
- Another study suggests that “only a small share of seniors switch plans annually, even when the opportunity exists and even when a lower-cost option is available.” [J. Polinski et al, “Medicare Beneficiaries' Knowledge of and Choices Regarding Part D, 2005-Present,” J. Am Geriatr Soc. May 2010:58(5)]
- A study published in the journal Health Affairs in October 2012 estimated that “a mere 5.2 percent of Medicare Part D beneficiaries chose the cheapest coverage that met their needs. All in all, consumers appear to be wasting roughly \$11 billion a year on their Part D coverage.” [<http://content.healthaffairs.org/content/31/10/2259.abstract>]

***Recommendation:*** Support funding for StateWide's MCCAP counseling services and restore total funding levels for the 6 programs to \$1,962,00, an increase of \$195,000 ( 9.9%) (Aid to Localities budget A3003/S6403, Page 7– Lines 28-29).

## **B. Aging Services**

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 2016-17 to the CSE, and that appropriately allows for flexibility in determining priority use of the funds by the local Offices for the Aging. There are still significant waiting lists (estimated at 15,000 by the Area Agencies on Aging in NYS) throughout the state on many programs, with transportation waiting lists tripling. There are real dollar savings by investing in the aging services that prevent institutionalization and therefore prevent spend down into state and county taxpayer supported Medicaid. 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.

### ***Recommendations:***

- 1. Increase appropriations to reduce waiting lists in these vital services where the value invested is significantly less than the cost of a nursing home stay. We request an additional \$24 million in CSE, ensuring that additional funds do not require a match by local governments in order for the funds to be distributed.*
- 2. The Governor's budget removes the exemption on the county share of \$3.5 million in funding that has been added to the CSE the past two years. We recommend restoring budget language that removed the required match for additional funds added in SFY2015-16 and SFY2016-17.*
- 3. Provide sufficient funding to local offices for the aging to meet the minimum wage increases for home care workers, including sufficient resources for their not-for-profit subcontractors. The proposed budget eliminates funding for the two percent COLA for NYSOFA funded direct care workers, enacted in 2015, resulting in a \$2 million reduction in the NYSOFA budget. Difficulties in distributing this important resource should be analyzed, and addressed. We recommend restoration of the \$2m to the NYSOFA budget to address recruitment and retention issues, including the problem related to EISEP home care worker shortages.*
- 4. Reject the Executive's proposed discontinuance of the discrete budget line for Transportation funding by moving the SFY2016-17 level appropriation of \$1,121,000 for Senior Transportation to the CSE program. The current discrete line does NOT require any*

*local government cost share; it is 100% state funded. Under the proposed consolidation of funding into CSE, a 25% local cost share is implicit.*

*5. Ensure that the New York Connects program, providing comprehensive information and assistance for those needing long term services and supports, will continue to provide services to both Medicaid and Non-Medicaid eligible New Yorkers. The Executive proposes to have the New York Connects program funded under the federal Balancing Incentive Program (BIP) and the Medicaid Global Cap without negatively affecting existing services.*

*6. Commit to a multi-year investment of additional resources to bring core services into alignment with the client population growth.*

**Address the Home Care Worker Crisis:** The Governor’s proposal does not address the crisis in home care and the shortage of home care aides, found throughout the state regardless of funding source. Elders face delayed discharge from hospitals or require costlier institutionalizations to meet their intermittent or long term home care needs for personal assistance. The need for services is increasing, compounded by the decreasing numbers of available home care workers and informal caregivers, and cannot be met through current strategies, including utilization of the Consumer Directed Program.

NYS Aged Dependency Ratio

Ratio of persons aged 18 to 64 years to persons aged 65 years and over

NYS Aged Dependency Ratio	Year:	2015	2020	2025	2030	2035	2040
Aged (18 to 64)/(ages 65 and over)		4.31	3.98	3.38	3.05	2.91	2.88

Our survey of older residents, Area Agencies on Aging and colleagues in discharge planning, case management and disabilities services found that there is a crisis in recruitment and retention of home care workers. Many EISEP and Medicaid providers rely on the same home care agencies and both are finding problems meeting the need for APPROVED hours of care. We have a total of 118 coalition members representing 35 counties who join us in urging you to include innovative solutions to the home care crisis in the current budget negotiations.

Systemic Issues include:

- a. More people on wait lists than being served; people are dying on the waiting list
- b. Shrinking workforce as the years pass which also impact the profitability of the agencies when they can't provide services, inability to accept new cases
- c. Chautauqua County to release a white paper on Workforce Shortage
- d. The goal in reducing skilled nursing beds, hospital beds and expanding Medicaid have placed an enormous burden on home care to provide care for clients in the community.
- e. Home Care agencies making every effort to recruit more workers.
- f. In this crisis, all organizations are working towards improving the conditions.
- g. Many of the agencies only hire part time workers with no benefits, leading to high turnover rates of home care workers.
- h. Some of the rural counties only have 1 service provider for the entire county.
- i. Low wages and concern about not being able to compete in upstate communities with the food worker minimum wage.
- j. Many homecare workers do not want to travel far from the communities where they live, geographic barriers in some rural areas make it difficult for aides to get to homes.
- k. MLTCs not finding care workers for hours that they have approved.
- l. Lack of living wage, lack of mileage reimbursement, lack of reliable transportation.
- m.. Agency stating that they will no longer provide less than 3 hours of service on any given day due to: staffing (workers do not want to drive 10 – 15 miles for a 2-hour shift) and safety concerns (too much rushing around creates more accidents) and they cannot tie up their limited staff in shorter cases.

***Recommendation:*** *Create incentives for the recruitment and retention of home care workers to truly address the shortage that otherwise will result in more nursing home placements for those who would prefer to receive care at home.*

**Senior Centers:** The Governor eliminates localities' Title XX funding discretion, redirecting the finds to support child care services. ***Recommendation:*** *Oppose any redirection or reduction in funds that would compromise the funding of Senior Centers.*

**Naturally Occurring and Neighborhood Naturally Occurring Retirement Community (NORCS):** The Governor's proposal continues funding for both NORCs and NNORCs at the SFY2015-16 level and discontinues the \$350,000 added to each category by the Legislature. There is need for additional funds for these vital programs that coordinate health and social services to help support older residents to age in their own homes.

**Recommendation:** Restore funding added by the Legislature in SFY2016-17 and increase funding to ensure that in addition to funding current programs that meet standards, there is sufficient resources for new initiatives to apply for funding. The current RFA, released in December 2016, ensures that “priority shall be given to any applicant that is proposing to serve a project area that is already designated as a classic or neighborhood NORC. The State intends to fund programs in different areas throughout the state, however, the final results will be determined by the amount of funding available and content of the applications received.” The RFA indicates that at current funding levels, NYSOFA anticipates a maximum of 12 programs in each category will be funded (total 24.) Currently the number of funded programs is 29.

### **C. Health & Medicaid**

**Elderly Pharmaceutical Insurance Coverage (EPIC)** - Coverage of prescription drug costs for older residents enrolled in the EPIC program has in recent years been tied to drugs where the manufacturer provides a required rebate to NYS for the Medicaid program.

**Recommendation:** With the Governor’s new Medicaid cost containment proposal to require a 100 percent supplemental rebate for any amount that exceeds a benchmark price recommended by the Drug Utilization Review Board (DURB), effort should be made to ensure that if adopted, this policy does not cause seniors to lose the EPIC benefit for drugs that are covered by Medicare. Further, we recommend that the EPIC program be expanded to 1) cover all Medicare enrollees, not just seniors, by eliminating the age threshold and 2) make medical marijuana affordable for EPIC enrollees by having the EPIC program treat this prescribed drug like any other medically necessary prescription.

**Health Care Regulation** – The Governor proposes a Health Care Regulation Modernization Team. **Recommendation:** Should this proposal be enacted, we urge the inclusion of consumers as part of the stakeholder workgroup and engagement process and further suggest that any recommendations from the workgroup be reported to the Legislature in addition to the Executive Branch, with a prohibition on the promulgation of any changes to be implemented by an emergency process to ensure adequate time for public comment.

**Pharmacy Benefit Managers** - We **support** the Executive’s proposal to have the Department of Financial Services register and regulate pharmacy benefit managers. It is good consumer protection to require disclosure of any financial incentives for promoting the use of certain drugs and pricing information regarding fee arrangements and rebates.

### **Medicaid**

The state budget **proposes changes to Managed Long Term Care (MLTC):**



- Changes the threshold for enrollment in MLTC Plans to only those enrollees who require nursing home level of care. We anticipate that existing MLTC members will be allowed to continue accessing services through the MLTC program in which they are currently enrolled. Others will return to fee for service community based-long term care to be arranged through a local government social services office.

***Recommendation:** Carefully examine the impact this change may have on delays in accessing services from local social services where staff has been reduced as a result of the implementation of MLTC. Provide funding for a livable wage for personal care and other home care workers to address forced reductions in service, although hours have been authorized, due to workforce shortages.*

**Spousal Refusal** - This proposal requires a responsible relative with sufficient income and resources residing with an applicant for medical assistance to contribute to medical assistance costs. ***Recommendation:** Oppose repeal of the right for responsible relative refusal.*

**Prescription Drugs** – Efforts should be made to limit the increase in drug costs under the Medicaid program, but not by removing important consumer protections.

***Recommendation:***

1. *Oppose the proposal to eliminate prescriber prevails for all drugs except atypical antipsychotics and antidepressants.*
2. *Oppose the elimination of Medicaid coverage for over the counter drugs available without a prescription, when medically necessary.*

#### **D. Economic Security and Property Tax Changes**

**Protection from Financial Exploitation** - The Department of Financial Services would be authorized to train bank employees to recognize the signs of financial abuse and authorizing approved banks to place holds on potentially fraudulent transactions. DFS would also ensure homeowners with reverse mortgages the same foreclosure protections afforded to homeowners with other types of residential mortgages. A third proposal allows a vulnerable elderly person, or a person living with disabilities to be reimbursed from the Crime Victims Fund for a loss of savings that is the result of a larceny crime where monies are stolen; allows for an award for loss of savings up to \$30,000.

***Recommendation:** Support.*

**State Retiree Health Insurance Reform** - The Governor proposes reductions in the state retiree insurance benefit to control costs by transferring some of the state’s share of costs to retirees. The proposals:

- create different levels of premium based on the years of service,

- eliminate the state’s reimbursement for the Medicare Part B Income Related Monthly Adjustment Amounts (IRMAA)
- freezes Medicare Part B reimbursement at 2016 levels.  
***Recommendation:** Oppose. These proposals represent a significant diminishment of established health care benefits for retirees enrolled in the New York State Health Insurance Program (NYSHIP).*

**Real Property Tax**– The Governor proposes changes to:

- 1. cap the annual growth** in Basic and Enhanced STAR exemption benefit at zero.  
***Recommendation:** Oppose. Local property taxes may still increase and efforts need to continue to ensure that residents are not taxed out of their homes.*
- 2. make Income Verification Procedure (IVP) mandatory for Enhanced STAR.**  
 Many seniors do not file state taxes and would be compelled to do so in order to qualify for STAR. They should be allowed the option to continue current practice of proof by bringing income documentation to their local assessor.  
***Recommendation:** Oppose, allowing this to remain an option for those that wish to exercise it. Provide more community education about the benefits to encourage participation.*
- 3. allow local government tax collectors to collect property taxes in partial payments,** unless the municipality has passed a resolution disallowing this method.  
***Recommendation:** Support*

**E. Campaign Finance Reform, Ethics Reform and Voting Rights:**

**Campaign Finance Reform** – We support efforts to provide for the public financing of political campaigns

***Recommendation:** Campaign financing needs to be adopted in a timely manner to restore the public’s faith in government and remove the influence of campaign contributions. Efforts should be made to explore any state remedies that could reduce the impact of the Citizens United decision.*

**Voting Rights** – We *support* proposals to allow for:

- early voting
- automatic voter registration through DMV, unless a user opts out
- voter registration up to and including Election Day