

# STATE WIDE

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## TESTIMONY

**GAIL MYERS, DEPUTY DIRECTOR  
NY STATEWIDE SENIOR ACTION COUNCIL**

**JOINT FISCAL COMMITTEES  
BUDGET MEETING ON HUMAN SERVICES  
JANUARY 31, 2024**

**STATE BUDGET ISSUES IMPACTING  
OLDER NEW YORKERS AND THEIR FAMILIES  
State Fiscal Year (SFY) 2024-2025  
*(Proposed by the Governor – January 16, 2024)***

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 through a “social model” of services that can stand alone or supplement the “medical model” of care. We will also highlight some budget issues that impact older residents that are part of Medicaid.

In addition to ensuring adequate funding for the two helplines that New York StateWide Senior Action Council provides through state contracts, our members have prioritized the need to stop Medicaid home care cuts from being implemented, ensure affordable housing, improve access to dental care, and increase transparency and data on core aging services.

### **Master Plan for Aging**

StateWide was part of an alliance of advocates that identified a compelling need for an investment in care and a comprehensive roadmap for meeting the needs of aging New Yorkers. The Governor issued an Executive Order creating the Master Plan in Aging. There is \$1m in the proposed Executive Budget for the Master Plan for Aging development process.

While we anticipate reports expected from the Plan after these budget negotiations are completed, we do not believe that expanded funding to meet current demand and prepare the network of aging providers for forecasted need in the immediate future should wait. Investments are needed now to ensure access to services that are vital to preserving the dignity of older New Yorkers and their ability to age in their community homes.

The Governor’s budget calls for cost cuts to the Medicaid program, and will be looking to advisors developing the Master Plan on Aging to identify at least \$200 million in recurring State share savings across New York’s many long term care programs. We urge the Legislature’s involvement and assurances that the process is an open one with

opportunities for community input, with adequate time to review proposals, unlike the off-line deliberations of the previous group charged with this task, the Medicaid Redesign Team.

**A. STATEWIDE'S PROGRAMS:**

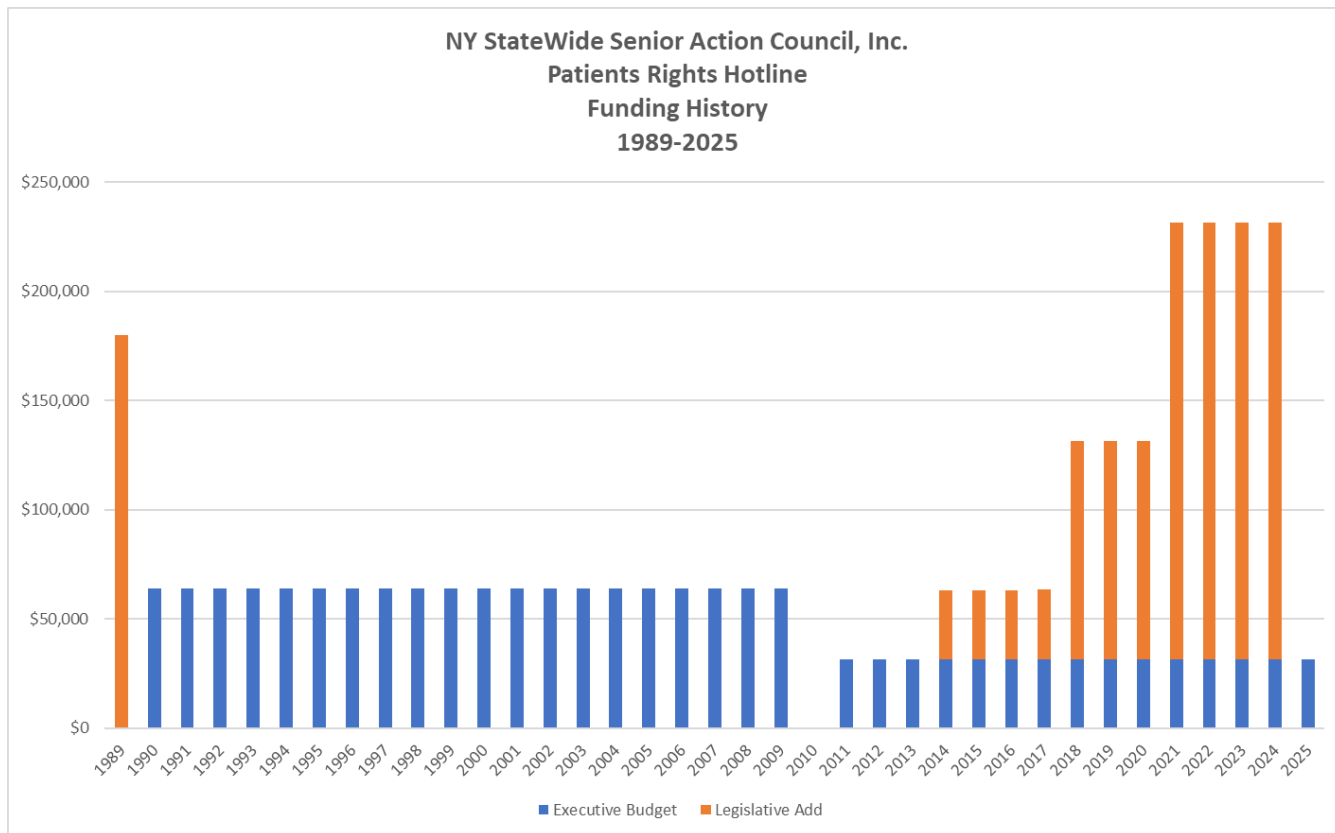
**Patients Rights Hotline and Advocacy Project:** Since 1987, we have received state budget funding through the NYS Office for the Aging (NYSOFA) to educate and empower seniors to uphold their health care consumer rights. StateWide's Patients' Rights Hotline and Advocacy Project originally was funded 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/Public Health Emergency, 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, the shortage of home care workers, and nursing home quality of care concerns. In SFY 2013-14, funding was increased to \$63,000. From SFY 2017-18 through 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. From SFY 2020-21 through SFY 2023-24, the Legislature added \$200,000 annually, for total program funding of \$231,500. This additional appropriation was much appreciated, especially with the extraordinary amount of questions and concerns during and following the height of the pandemic which we have worked hard to address. The Executive proposes \$31,500 for the Project.

**Request: *Restore StateWide's Patients Rights Hotline and Advocacy Project program to the SFY 2023-24 level by adding \$200,000 to the current appropriation.***

*Aid to Localities (A8803/S8303) Page 7, Lines 44-47.*

Our budget history is reflected in the following chart.

Note: 2025 represents the Executive Budget proposal of \$31,500.



**Managed Care Consumer Assistance Program (MCCAP):** Since 2004, we have received state budget funding through NYSOFA to provide Medicare enrollment and pharmaceutical assistance 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 SFY24-25 proposed Executive budget. *Aid to Localities (A8803/S8303) Page 6, Lines 48-62, Page 7 Lines 1-5)*

This funding enables StateWide’s counselors to assist older New Yorkers with: choosing the Medicare coverage that best meets their needs; billing problems; 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.

Additional resources are needed to increase outreach and provide enrollment assistance for the Medicare Savings Program. Failing to enroll in these programs costs these low-income New Yorkers, on average, \$7,400 every year in out-of-pocket expenses. With the increase in income eligibility for MSP effective January 1, 2023, there is much work that we need to do to educate the community, find eligible Medicare enrollees, provide application assistance and follow up to ensure expanded benefits are being secured. We estimate that an additional 300,000 New Yorkers are newly eligible for MSP.

**Request:**

***Increase funding proportionately for the program providers by \$1m, (which would increase StateWide's MCCAP program by \$200,399) so that we can increase capacity to reach more underserved and hard to reach eligible New Yorkers who are not accessing all of the benefits programs for which they rightfully qualify.***

**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 necessary public policy push to encourage people to receive services in the least restrictive environment 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 and Transportation, are vitally important.

We are disappointed that the Governor's proposed budget does not increase funding available to reduce waiting lists, and does not include the additional \$9.3m added by the Legislature in SFY 2023-24. Besides funding for waiting lists, programs need additional support build the capacity to meet the needs of a growing aging population.

Based on demographics, we anticipate that there will be an increased need for EISEP, WIN and other services provided by local offices for aging. Additionally, if the Legislature and the Governor fail to turn back the Medicaid Home Care eligibility rules adopted, but not yet implemented, as a result of the Medicaid Redesign Team recommendations that change the community Medicaid look back period and increase and change the number of Activities of Daily Living needed to qualify, there will be a surge of new low income enrollees requesting services under EISEP.

It is also disquieting that New Yorkers have generously contributed to the home delivered meals program for seniors through a personal income tax check off, but the state does not appear to have dispersed the funds. The [State Comptroller's January 19, 2024 report](#) revealed that while

legislation enacted in 2015 requires that personal income tax check-off contributions be disbursed in the year they are received, to the extent practicable, state agencies are not ensuring that donations are administered timely and effectively.

**Senior Wellness in Nutrition**

SFY 2022-23	Accumulated Fund Balance
\$69,507	\$341,886

**Recommendations:**

- *StateWide recommends articulating an appropriation in SFY 2024-25 for the full accumulated fund balance for the Personal Income Tax check dedicated to Senior Wellness in Nutrition, so that taxpayers’ contributions are used as intended to increased home delivered meals for seniors.*
- *StateWide supports improved transparency and data reporting on funding allocated to NYSOFA for it’s core programs – EISEP, CSE and WIN.*
- *In order to effectively budget to meet the needs of the population, a report should identify anticipated need based on population demographics, not only looking at the number placed on waiting lists. We urge you to require a NYSOFA report that projects need based on a percent of the population expected to need services, compared to the sufficiency of resources or capacity.*

**EISEP (Expanded In-Home Services for the Elderly)**

The additional funds transferred from Medicaid and allocated to NYSOFA 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, there is a clear need to invest in home care. A detailed report and analysis of the use of these funds should also identify existing barriers that are the root cause for waiting lists for unaddressed EISEP home care services.

**Recommendations:**

- *Require NYSOFA review the barriers to spending resources on the EISEP home care program to meet the needs of an aging older population and recommend solutions.*
- *Incorporate A241 by Assemblymember Eichenstein, requiring an annual report to the Legislature on unmet need due to insufficient resources or capacity.*
- *Request and review data on changes in enrollment and capacity of the EISEP program resulting from moving clients between 87% FPL and 138% FPL to Medicaid services under the 2023 Medicaid Income Eligibility increase.*

- ***Request and review data on impact on enrollment and capacity of the EISEP program which would result if the Legislature and the Governor fail to turn back the Medicaid Home Care eligibility rules adopted, but not yet implemented, as a result of the Medicaid Redesign Team recommendations that change the Community Medicaid look back period and increase and change the number of Activities of Daily Living needed to qualify.***

### **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. We urge you to address the capacity issues in a comprehensive manner so that the traditional medical/health home care worker shortage and the social model aging/EISEP home care worker shortage are addressed together, and that solutions for one sector do not create further problems for the other. This cannot be a Medicaid only solution.

#### **Recommendations:**

- ***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” (S3189 by Senator May/A8821 by Assemblymember Paulin) and adjust for salary compression within programs that may result.***
- ***Reject the Governor’s proposal to end wage equity provisions for the Consumer Directed Personal Assistance Program***

### **Long Term Care Ombudsman Program (LTCOP)**

LTCOP is a vitally important program to provide resident advocacy. The program investigates and works toward resolution of complaints made by or on behalf of residents. LTCOP does not have the capacity to have a presence in all adult facilities or to respond to the many requests for help. We were disappointed to see that the Governor did not include the \$2.5m added by the Legislature last year for these vital services.

#### **Recommendations:**

- *Increase program budget, but tie the appropriation to annual reports that detail the progress toward 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.*
- *Require that annual LTCOP reports include the degree of effort to increase the number of family councils in long term care facilities.*
- *We do not support the Governor's proposed change in oversight of Adult Care Facilities. However, if agreed to, we recommend that language be added to require a role for LTCOP. A8807/S8307 - Part F, related to the Assisted Living facility ratings and survey process: ensure the LTCOP assigned to the facility provides input into the determination of quality indicators, in comport with their role under Chapter 759 of the Laws of 2021, the "long-term care ombudsman program reform act."*

### **C. Protecting and Improving Benefits**

#### **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 Prime Therapeutics LLC. 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 and providing premium assistance to the lowest income members.

We seek improved transparency of the program, and that any administrative changes are made only following consumer advice and input. We have proposed legislation to address the concerns that have been brought to our attention by consumers that call our Helpline. The bill would keep the application a simple process, have the income brackets adjusted regularly and allow Medicare Part D enrollees under age 65 to apply. Further, it would improve transparency of program operations and provide enrollment data. Lastly, it would require the program to provide referral/assistance for enrollment in MSP rather than only enrollment in federal Extra Help. By doing so, more people would qualify for Extra Help and costs to the EPIC program would be lowered as they are offset by federal funds for lower income New Yorkers.

#### **Recommendation:**

- *Support legislation (S3005 by Senator Cleare/A6450 by Assemblymember Kim) 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, restore the requirement for an annual report to the Legislature and reverse administrative changes that resulted in a new and onerous EPIC application.*

- *Furthermore, while we support the Governor's proposal to eliminate all cost sharing for insulin for New Yorkers covered under commercial insurance plans, we recognize the state does not regulate Medicare Part D insurance products and the Governor's well-intentioned plan to assist diabetics will not apply to Medicare recipients. We are grateful that federal Inflation Reduction Act now limits insulin co-pays to \$35/month for Medicare enrollees, but urge you to mandate that the EPIC program set a zero dollar co-pay for insulin so that older residents enrolled in EPIC receive the same benefit proposed by the Governor. Likewise, the zero co-payment should be incorporated into NYSHIP's health benefits for retirees.*

## **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 v. LC* decision.)

We are disturbed that the Executive includes Medicaid budget cuts that are not articulated in the proposed budget. She assumes \$530 million in savings will be achieved in SFY 2024-25 from various administrative efficiencies and cost reduction initiatives, which includes \$400 million in *unspecified savings* in Medicaid spending and Long Term Care. As articulated earlier, this process needs to be open for public comment and transparent in its deliberations and recommendations. Any recommendations must be presented to the Legislature in a timely manner to afford ample opportunity for consideration of the proposals prior to the end of the Legislative and Executive negotiation timetable.

### **Recommendations:**

- *Reject the Governor's proposal to cut the Medicaid budget through as yet unspecified savings. We would urge you to insist that such proposals be presented by the Governor as articulated changes to the proposed budget in the 30- day amendments.*
- *Reject the Pharmacy Related Recommendations (HMH Part I) that would allow the Department of Health to eliminate over the counter drugs from Medicaid reimbursement without prior notice and the proposal to eliminate prescriber prevails from Medicaid.*

- *Repeal SFY 2020-21 Medicaid cuts to home care services that created a resources look back of 2 ½ years for new Community Medicaid enrollees, implementation of which has been temporarily delayed due to the federal Maintenance of Effort requirements during the Public Health Emergency, but we anticipate it will soon be in effect. (S 6414 by Senator Skoufis)*
- *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, implementation of which has been temporarily delayed due to the federal Maintenance of Effort requirements during the Public Health Emergency, but we anticipate will soon be in effect. (S328 by Senator Rivera/A6346 by Assemblymember Paulin)*
- *Join us in supporting federal legislation, The HCBS Relief Act which would provide an additional two years of 10% enhanced FMAP to states—basically a continuation of the American Rescue Plan (ARPA) funding. (S. 3118 Casey/H.R. 6296 Dingell) includes the same “supplement not supplant” provision that was included in ARPA and therefore would continue the federal government’s moratorium on states reducing Medicaid benefits while using enhanced funding.*

### **Recommendations to improve Medicaid:**

- *We urge you to eliminate the asset test for Non-MAGI Medicaid enrollees. Medicaid enrollees (MAGI) on the state’s exchange are not subject to an asset test, yet those who fall into the Non-MAGI category (Aged, Blind, Disabled,) are subject to enrollment asset limits. This policy is discriminatory and particularly impacts communities of color who are more likely to have cash saved for emergencies but are less likely to own otherwise exempt resources like a primary home or take steps to shelter their savings. We support phasing out the asset test, by capping the asset test at \$300,000 effective 1/1/25; then eliminating it entirely on 1/1/26. (S4881-A by Senator Cleare/A5940-A by Assemblymember Kim) In so doing, the first year of implementation would match the same test adopted in SFY2023-24 under the Medicaid Buy In program for people who are working.*
- *Rather than extracting cuts from the Medicaid budget to close a perceived budget gap, we urge you to examine the cost savings that can be derived from right-sizing the delivery of long term care by removing the requirement for enrollment in Managed Long Term Care. These insurers receive a capitated rate from the state to manage the care, and are not ensuring sufficient capacity in their service delivery system to*

*guarantee home care services that meet enrollees' needs. We support the Home Care Savings and Reinvestment Act (S7800 by Senator Rivera/A8470 by Assemblymember Paulin.)*

While Medicaid coverage for people who are 65 years old and above who are undocumented immigrants has finally begun to be implemented, we are dismayed that the Governor is not seeking federal approval to provide coverage for undocumented immigrants age 18-64. *StateWide* supports "Coverage for All" (S2237 by Senator Rivera/A3020 by Assemblymember Gonzalez-Rojas) as a needed immediate step and an incremental fix for our broken health insurance system until such time that the NY Health Act (S7590 by Senator Rivera/A7897 by Assemblymember Paulin) is enacted and implemented.

#### **D. Quality of Care**

We continue to express dissatisfaction with the lack of enforcement of prescribed hours of resident care per day in nursing homes. Additionally, oversight by the Department of Health in surveillance and responses to complainants regarding quality of care in long term care facilities needs improvement, including additional Health Department staffing.

We oppose the Governor's proposal (A8807/S8307 - **Part Q**) to expand the scope of practice of nursing aides in long term care facilities to allow non-licensed personnel to administer medications. These vital team members are overburdened already due to low staffing. Long standing research finds that having the Registered Nurse at the resident's bedside increases quality outcomes; allowing medication administration by non-nurses results in less time for the resident to have hands on care from licensed personnel.

We oppose the Governor's proposed change in oversight of Adult Care Facilities related to the Assisted Living facility ratings and survey process. This proposal shifts the burden and authority of the state to an industry accreditation process, allowing for an exemption from state site inspections and diminishing the state's oversight authority.

***Recommendation: If included in the final budget (A8807/S8307 - Part F) we urge you to include language to ensure the LTCOP assigned to the facility provides input into the determination of quality indicators, in comport with their role under Chapter 759 of the Laws of 2021, the "long-term care ombudsman program reform act."***

We oppose the Governor's proposal to discontinue funding for the Enhanced Quality of Adult Living (EQUAL) Program, which funds efforts to enhance the quality of care and life for residents in adult care facilities.

### **E. Economic Security**

It is vitally important to provide residents with the resources needed to be lifted out of poverty, and to thrive in the community.

Once supplemental federal funding ended for food stamp benefits (SNAP), many families found themselves without the needed resources to keep food on the table. With the benefit cut, and food prices soaring, New Yorkers, including lower income senior households, face heightened food insecurity.

#### ***Recommendation:***

***We support increasing the minimum SNAP benefit for New Yorkers from \$23/month to \$100/month using state funds to fill the gap. Should the federal government increase emergency benefits, the state's contributions would be offset by federal funds. (S7663-A by Senator May/A6214-A by Assemblymember Gonzalez-Rojas.)***

We oppose the diminution of retiree health benefits. When retirement is considered, future retirees calculate all their anticipated benefits to plan for their needs. They must be able to count on those benefits and costs; therefore, we oppose the Governor's proposal ((A8805/S8305 Part S) to cease premium relief reimbursement of the Medicare Income Related Monthly Adjustment when the retiree is an enrollee of the New York State Health Insurance Program.

We applaud the Governor for continuing to support efforts to end the Medical Debt crisis. We are pleased that she has included numerous consumer supported provisions to address hospital incurred medical debt (A8807/S8307 - Part O.)

#### ***Recommendation:***

***While we heartily support the provisions in Part O, we further request that specific provisions in the Ounce of Prevention Act (S1366-B by Senator Rivera/A6027-A by Assemblymember Paulin) be included in final negotiations to a) apply to all hospitals, not just those that participate in the Indigent Care Pool, b) increase the income eligibility for assistance and repayment plans to 600% FPL and c) provide payment forgiveness after 36 months of payments have been made by patients with incomes between 200-400% FPL and after 60 months for those with incomes from 400-600% FPL. Lastly, while the Article VII bill language includes notice to patients, we***

***recommend that the right to receive information about financial assistance be included separately and specifically in the Hospital Patients Bill of Rights, Public Health Law § 2803-c.***

New Yorkers have been reporting concerns about accessing and affording dental care. While the Governor has included provisions related to loan forgiveness and scope of practice changes to ameliorate the provider shortage, there needs to be additional support for affordable dental coverage, until such time as the NY Health Act (S7590 by Senator Rivera/A7897 by Assemblymember Paulin) is enacted and implemented. While currently Exchange (New York State of Health) insurance plans are only required to provide pediatric dental care, the federal government will soon be issuing an option for states to include adult dental care coverage. We urge the state to include this option, along with the expected guidance that benchmark dental coverage should be essentially equivalent to the average employer-based benefit plan. This would significantly improve the currently offered stand-alone dental plans offered on the New York State of Health that have long waiting periods prior to being able to access benefits and high deductibles.

***Recommendation:***

***Once the New York State of Health dental coverage is improved, we urge the Legislature to facilitate the opportunity for Medicare enrollees, currently not provided with the option to purchase such coverage, to do so. We support S7698 by Senator Cleare, requiring insurers participating in the NY State of Health marketplace to offer at least one dental plan for individuals age 65 and older.***

Thank you for the opportunity to testify today.