New York HPA Health Plan Association

2018-19 BUDGET: HPA PRIORITIES

The New York Health Plan Association (HPA) represents 28 health plans that provide comprehensive health services to more than eight million New Yorkers in both the Medicaid and Commercial markets. While recognizing fiscal challenges facing the state, HPA is strongly opposed to budget actions that establish new taxes and penalties and make substantial Medicaid rate reductions that impose a disproportionate impact on health plans to balance the budget.

14% Tax on Health Plan Earnings ($140 million) – The Executive budget proposed a new 14% tax on "windfall" profits of for-profit plans, related to changes in federal corporate tax rates.

- ***The Assembly*** *rejects the Executive proposal and instead would impose a 3% surcharge on existing state tax liability across business tax articles, including the insurance premium tax.*
- ***The Senate*** *rejects the Executive proposal.*

While appreciative of the Assembly proposal to reduce the tax and apply it to a broader base, HPA remains concerned about any tax on health plans at a time of market uncertainty and prefers the Senate position of rejecting the tax in its entirety.

Reduce Medicaid Managed Care Reserves to the minimum required level (financial impact unknown) – The Executive budget authorized prospective Medicaid rate reductions for non-profit managed care plans to reduce reserves to the minimum contingent reserve amount under DOH regulations.

- ***The Assembly and Senate*** *reject the Executive proposal.*

HPA supports the legislative position.

Healthcare Shortfall Account – The Executive budget creates a Healthcare Shortfall Account to be funded in part by proceeds of conversions of not-for-profit insurers to for-profit status, totaling $750 million in each of the next four years deposited in a HCRA account.

- ***The Assembly*** *proposes language to address disposition of the charitable asset for conversions of entities subject to article 44 of the public health law and articles 32 and 43 of the insurance law, and requires deposit of any proceeds into a healthcare stabilization fund, limiting use of funds to healthcare purposes and requiring a memorandum of understanding between the Executive and Legislature before any monies are transferred to the fund.*
- ***The Senate*** *resolution states that they are "open to discussions to explore ways to provide security should there be a shortfall in future healthcare funding due to a loss of federal funds".*

While appreciative of the pressure to establish a "shortfall" fund, HPA believes that it is not necessary. Moreover, the FY18 enacted budget allowed the state Budget Director to implement Medicaid spending reductions - with Legislative oversight - in the event that Federal Medicaid funding was reduced by more than $850 million. HPA believes that the existing spending reduction authorization is a better approach to shared responsibility for the cost of the Medicaid program and a more effective way to remain within state spending caps.

Managed Long Term Care (MLTC) Increase in UAS Eligibility ($10.6 million state share savings) **-** The budget would limit MLTC enrollment to individuals who score a nine or above on the Uniform Assessment System (UAS-NY), up from the current score of five, and require a service need of a "continuous period" of more than 120 days. Existing enrollees are grandfathered in.

- ***The Assembly*** *rejects the increase in the UAS score, but limits enrollment to those requiring services for a continuous period of 120 days.*
- ***The Senate*** *rejects the Executive proposal.*

HPA supports the Assembly position to require 120 days of continuous need and urges both houses to support the proposed change in UAS score required for MLTC enrollment.

MLTC Enrollment Lock In ($5.2 million state share savings) **-** The Executive would prohibit members from changing plans more than once a year without cause.

- ***The Assembly*** *modifies the language, but allows for lock-in for the "enrollment period," except for "good cause" as determined by the commissioner.*
- ***The Senate*** *rejects the Executive proposal.*

HPA supports the Assembly position.

MLTC Carve-Out of Long Term Nursing Home Stays ($73.5 million state share savings) - The Executive provides for disenrollment from MLTC of any person permanently placed in a nursing home for a consecutive period of six months or more

- ***The Assembly*** *modifies the proposal to "suspend enrollment" after three months of nursing home placement for members previously enrolled in an MLTC and receiving community based care for an additional six months so the person does not have to re-enroll if they return to community based care.*
- ***The Senate*** *modifies the language to reduce the nursing home placement period to three months, and allows a person the right to appeal their designation as permanently placed.*

HPA supports the legislative position to reduce the nursing home stay to three months.

MLTC Transportation Carve-Out ($6 million state share savings) - The Executive proposes to carve transportation out of the MLTC benefit package and manage it under the state's transportation manager through fee-for-service

- ***The Assembly and Senate*** *reject the Executive proposal.*

HPA supports the Legislative position.

Limit MLTC Contracts with Licensed Home Care Services Agencies (LHCSAs) ($13.7 million state share savings) - The Executive proposes to administratively limit the number of LHCSA contracts an MLTC may have to 10, as a result of concerns over the proliferation of providers (there are now 1,400 LHCSAs).

- ***The Assembly*** *requires DOH to have approval of the public health and health planning council (PHHPC), based on standards adopted by PHHPC in order to limit the number of LHCSA contracts with MLTC plans, and establishes a one-year moratorium on new LHCSAs except to consolidate or address specific needs.*
- ***The Senate*** *requires DOH and PHHPC to review LHCSAs and establish a transition plan by October 1, 2018, limiting the number of LHCSA contracts downstate plans may have to no more than 75 contracts by October 1, 2018; no more than 60 contracts by October 1, 2019; and no more than 50 contracts by 2020. PHHPC will review whether proportional limits are necessary in upstate regions. The Senate also imposes a moratorium on new LHCSAs.*

HPA recommends that the Legislature reject any statutory language related to a LHCSA limit and restore savings. DOH allowed the proliferation of LHCSAs and should now be responsible for reducing the number through a rational process that does not inhibit plans' ability to provide care to members.

MLTC Administrative Rate Reduction ($18.9 million state share savings) - The Executive indicates that DOH will reduce administrative reimbursement to MLTCs from $215 per member per month (pmpm) - which is already inadequate to cover current plan care management costs - to $200 pmpm.

- ***The Assembly and Senate*** *did not prevent implementation of this proposal.*

HPA requests that the Legislature prevent DOH from implementing this cut and restore funding. The state's former actuary indicated that their best estimate for an actuarially sound administrative rate in the MLTC program would be $330 pmpm, more than 50% higher than the current level.

LTC Provider Marketing Ban ($4.9 million state savings) – the Executive would administratively curtail marketing activities by certain LTC providers effective October 1, 2018.

- ***The Assembly*** *restored savings associated with this proposal*

HPA requests that the Legislature make the ban immediate on certain providers.

Health Home (HH) Enrollment Targets and Penalties ($33.3 million state share savings) **-** The Executive budget would authorize DOH to set plan-specific HH enrollment targets and penalize plans that do not meet them.

- ***The Assembly and Senate*** *rejected this proposal, and the Senate reduced HH spending by $200 million.*

HPA supports the legislative position and recommends that if penalties are imposed, that they be imposed on non-performing health homes.

Program Integrity Penalties ($30 million state share savings) – The FY19 Executive Budget includes several statutory provisions related to expanding the authority of the Office of Medicaid Inspector General (OMIG), including a requirement that plans "promptly" report "all" cases of "potential fraud waste and abuse" to OMIG; any plan that "willfully fails to promptly" make a referral may be fined up to $100,000 for each determination. The proposal also allows the state to fine plans – per violation per day – for failing to comply with any statute, rule, regulation, directive or contract provision.

- ***The Assembly*** *modifies language to read that plans shall "without undue delay" refer any case "reasonably believed to be" fraud, waste and abuse – and modifies language related to fines for "intentionally and systematically" submitting inaccurate cost reports and encounter data to strike the word "systematically" and reject authority to apply the fine "for each determination".*
- ***The Senate*** *modifies language to read that plans shall report "all" cases where "there is a reasonable suspicion of fraud or abuse"; modifies language related to failure to comply with any statute, rule, regulation, directive or contract provision to move authority to fine from OMIG to DOH; and modifies language related to submission of inaccurate cost reports and encounter data to reduce the maximum initial fine from $100,000 to $2,000 and a subsequent fine to $5,000 under certain circumstances, with fining authority given to DOH not OMIG.*

While appreciative of the Assembly's modifications of OMIG language, HPA requests that the Legislature reject the proposed fines and further clarify the referral requirement.

Pharmacy ($17.8 million state share savings) - The budget would eliminate prescriber prevails from both the FFS program and Medicaid managed care.

- ***The Assembly and Senate*** *rejected the elimination of prescriber prevails and added language to allow pharmacists to immunize children.*
- ***The Assembly*** *added language that would require Medicaid Managed Care plans to use the Preferred Drug Program (PDP) & Clinical Drug Review Program (CDRP) with a state fiscal administrator for the pharmacy benefit, and added anti-mail order language that eliminates contract requirements and alters the "same reimbursement."*
- ***The Senate*** *added language that mirrors the PBM audit and PBM contract prohibitions regarding clawbacks and gag order legislation.*

HPA supports the proposal to allow pharmacists to immunize children but requests that the Legislature not include PDP, CDRP for Medicaid managed care (MMC), anti-mail order or PBM provisions in the final budget as they would all substantially increase the cost of managing the pharmacy benefit in both MMC and the commercial market, when pharmacy is already the most expensive component of the Medicaid premium.

Early Intervention ($900,000 state share savings) - The Executive budget proposes to significantly expand the Early Intervention (EI) health insurance mandate to require health plans to accept the Individualized Family Service Plan (IFSP) as sufficient to satisfy medical necessity, to require providers to appeal health plan denials before billing the State Fiscal Agent/Municipality, and to authorize a 2% rate increase for providers upon the requirement of appealing plan denials.

- ***The Assembly*** *accepted the proposal to authorize a 2% rate increase, but rejected the Executive proposal to equate the IFSP to a medical necessity determination, proposing an increase in the covered lives assessment of $25 million instead.*
- ***The Senate*** *rejected the Executive proposals.*

HPA supports the Senate position. Imposition of a covered lives assessment to support educational and developmental services will raise health care costs for everyone at a time of uncertainty in the insurance market.

DFS Fines – While included in the Early Intervention section of the budget legislation, statutory language authorizes expanded authority for DFS to increase penalties from $1,000 per offense to the greater of $10,000, or two times the aggregate damages or economic gain attributable to the offense.

- ***The Assembly and Senate*** *rejected the increased fines.*

HPA supports the legislative position.

Children's Medicaid Transformation Delay – The Executive proposed a delay in implementation of the children's Medicaid transformation of up to two years, and assumed $30 million "savings" ($15 million state share) in FY19 as a result

- ***The Assembly*** *includes $15 million to move the transformation forward.*
- ***The Senate*** *includes $7.5 million to move the transformation forward.*

HPA supports the children's transformation, but urges the legislature to delay the implementation date by a reasonable amount of time to assure adequate time for plans and providers to prepare and to provide sufficient funding for the transformation of services. The originally planned start date of July 1, 2018 is no longer viable.

Telehealth – The Executive expands the definition of originating site - to include the patient's residence – and covered providers, and clarifies that remote patient monitoring can include follow-up.

- ***The Assembly*** *substantially modified the language.*
- ***The Senate*** *substantially modified and expanded the language and added $64 million in Medicaid savings.*

HPA supports the Executive position and strongly opposes additional Medicaid savings being attached to the initiative, as those savings would be implemented through a rate reduction.

Additional HPA Proposals

HPA recommends prohibiting (or at least delaying) implementation of the Community First Choice Option (CFCO) Expansion (State spending $25 million).

- ***The Senate*** *delayed implementation and took $20 million in savings.*

HPA recommends require submission of Cost Reports from LHCSAs and FIs to DOH with reporting of results. Spending growth in community based long term care and increased funding for minimum wage make it critical to have a clear understanding of how funds are spent by these providers and provide a line of sight into provider financial condition.

HPA recommends a carve-out of Nursing Home Transition Diversion (NHTD) & Traumatic Brain Injury (TBI) waivers from Medicaid Managed Care *– Current law delays the transition until January 1, 2019.*

- ***The Assembly*** *delayed the transition of both waivers until January 1, 2022.*
- ***The Senate*** *permanently carves both waivers out of Medicaid managed care.*