'17 Legislative Retrospective

A comprehensive look at the 2017 Legislative Session

NYS Association of Health Care Providers
Representing Home & Community-Based Care

HCP 2017 Advocacy Agenda Focuses on Medicaid Funding and Ongoing Reimbursement Issues

Since Governor Andrew M. Cuomo has been in office, most of the major actions of the New York State Legislature have taken place in the context of the State Budget process. The 2017 Legislative Session was no exception. Although this year's Budget negotiations progressed past the April 1 deadline, the final Budget agreement addressed many of HCP's top home care priorities.

Of particular note, the Fiscal Year (FY) 2017-18 Enacted State Budget included additional funding for the minimum wage increase, new funding for home care infrastructure investment and reforms to the State's Workers' Compensation system that are expected to significantly reduce costs for employers in New York.

This year's State Budget also recognized the uncertainty surrounding continued Federal funding for the State's expanded Medicaid program. Governor Cuomo protested proposals advanced in the U.S. House of Representatives and Senate that would dramatically reduce Federal Medicaid funding for New York, even as he sought the power to unilaterally amend the State Budget should such cuts go into effect.

With billions of dollars of Federal Medicaid funding at stake, HCP joined with a coalition of State health care providers, consumer advocates and other key stakeholders, to highlight the importance of the Medicaid program for New Yorkers, particularly for elderly, disabled and chronically-ill patients that need long term care. While the State Legislature has adjourned its regular Session, HCP continues to monitor activities in Congress that threaten Federal funding for home care services in New York, and will engage in grassroots advocacy over the summer as needed.

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Legislative Retrospective is published by the **New York State Association of Health Care Providers, Inc.**

518.463.1118 fax: 518.463.1606
www.nyshcp.org
Please email comments to: **hcp@nyshcp.org.**

2017-18 Budget Overview

The State Legislature missed the April 1 Budget deadline this year for the first time since Governor Andrew M. Cuomo took office, passing Final Budget bills just over one week into the new fiscal year on April 9. A number of major initiatives that held up the Budget process were ultimately included in the $153 billion Budget, such as Workers' Compensation reforms, expansion of ride-sharing services in areas outside of New York City and college tuition assistance for middle-class New Yorkers.

HCP Focuses Advocacy Efforts on Funding for Home Care, Reimbursement Issues and Workers' Compensation Reform

The State Budget process commenced in January following Governor Cuomo's regional State of the State presentations that once again included an overview of the Governor's Executive Budget proposals for Fiscal Year (FY) 2017-18. HCP President Claudia Hammar and HCP Vice President for Public Policy Laura Haight testified at a Joint Legislative hearing on the Health Budget in February, focusing on the value of home care in New York State.

HCP's testimony urged the State Legislature to address the critical needs of New York's home care industry by requiring adequate and prompt reimbursement for home care services in Medicaid managed care, greater oversight and transparency of Home Care Workforce Recruitment and Retention funds and providing additional resources for home care agencies for investment in health care information technology and other purposes. HCP also voiced concerns on the Governor's proposed Health Care Regulation Modernization Team, which would have given certain State agencies the authority to implement pilot programs that are not permissible under current statute or regulation. This provision was not included in the Enacted Budget.

HCP's Advocacy Day focused on four Budget priorities:

- Continued funding of the minimum wage increase and adequate reimbursement for home care services
- Funding for recruitment and retention of the home care workforce
- Investment in home care infrastructure and information technology
- Workers' Compensation reforms

HCP members, staff, and retained lobbyists Reid, McNally & Savage (RMS) aggressively advocated for the inclusion of these home care priorities throughout this year's Budget process and beyond. As a result of these efforts, the final FY 2017-18 State Budget included Medicaid funding to support upcoming minimum wage increases, expansion of the Health Care Facility Transformation program to better integrate home and community-based providers and critical Workers' Compensation reforms.

Summary of Budget Provisions Impacting the Home Care Industry

Minimum Wage Funding

The Final Budget increases Medicaid State share funding to $23.5 billion, including $255 million in additional Medicaid spending for the direct cost of the minimum wage increase for health care workers in FY 2017-18. Of this amount, $242.7 million is earmarked for home care workers. This was the amount initially proposed in the Executive Budget, which HCP supported. The Enacted Budget also authorizes $579 million for the minimum wage increase in FY 2018-19, of which $556.5 million is for home care workers (see related article on **page 3**).

Recruitment and Retention Funds

The Final Budget continues previous funding levels for the Home Care Workforce Recruitment and Retention Funds (R&R) for Upstate Personal Care ($22.4 million) and the New York City Attendant/Personal Care Program ($272 million). Both the Senate and Assembly one-House Budget proposals included language advanced by HCP that would provide transparency and ensure that managed long term care (MLTC) plans disburse R&R funds in their entirety to contracted home care providers; however, this language was not included in the Enacted Budget (see related article on **page 5**).

Adequate Reimbursement

Both the Senate and Assembly included language in their respective Budget proposals supporting adequate and timely reimbursement of home care providers by

Medicaid managed care plans. This language was not included in the Enacted Budget (see related article on **page 4**).

Health Care Facility Transformation Funds

Funding for the Health Care Facility Transformation program was increased this year to $500 million to support both capital and non-capital projects that facilitate health care transformation and access. At least $75 million of this funding must be awarded to home and community-based providers. Of the $500 million in funding, at least $200 million is available for proposals submitted in 2017 (see related article on **page 5**).

Workers' Compensation Reform

The Final Budget included an extensive package of reforms designed to reduce Workers' Compensation costs for businesses, as well as administrative streamlining, increased worker protections, and changes to lower overall system costs (see related article on **page 6**).

Consumer Directed Personal Assistance Services (CDPAS) Wage Parity

The Final Budget included personal assistants (PAs) employed by consumers through the CDPAS program in the Home Care Worker Wage Parity law as of July 1, 2017. An additional $9 million was also included in the Budget to support Wage Parity costs in the CDPAS program. HCP had urged a delay in the implementation until at least December 31, 2017. In late June, DOH delayed implementation of Wage Parity in CDPAS to October 13, 2017 (see related article on **page 8**).

CDPAS Fiscal Intermediary (FI) Authorization

The Final Budget requires all FIs in the CDPAS program to be authorized by DOH in order to operate. HCP recommended extensive changes to this proposal to reduce the burden on licensed home care services agencies (LHCSAs) that currently serve as FIs (see related article on **page 9**).

A number of health care issues included in one-House Budget proposals were not addressed in the Enacted Budget; however, DOH agreed to have further discussions with the Legislature on these matters through a side agreement. Of note, DOH has commenced monthly meetings with the Legislature to discuss high needs populations, the Uniform Assessment System for New York (UAS-NY), and Medicaid managed care rates.

HCP continues to follow up on the implementation of Budget initiatives and other issues that were not included in the Enacted Budget. Updates will be provided to HCP members in *HCP News Alerts* and future issues of the *HCP Insider*.

Medicaid Funding for FY 2017-18 Includes Additional Minimum Wage Monies and Home Care Recruitment & Retention Funds

As State Budget negotiations continued earlier this year, discussions at the Federal level centered on repealing and replacing the Affordable Care Act (ACA) with proposals that would significantly decrease Federal funding of Medicaid programs (see related article on **page 12**).

Due to the potential impact of Federal Medicaid reductions, a provision was included in the Final Budget to give Governor Andrew M. Cuomo flexibility to adjust the State Budget in the event of a significant loss of Federal Aid. If Federal support is reduced by $850 million or more, the Division of Budget (DOB) is now authorized to develop a plan to make uniform spending reductions. The plan would take effect automatically unless the Legislature passed its own plan within 90 days.

Minimum Wage Funding Continues Through 2019

During the Budget process, HCP advocacy efforts emphasized the need to preserve Medicaid funding to support annual minimum wage increases across the State. The Final Budget increased Medicaid State share funding to $23.5 billion for Fiscal Year (FY) 2017-18, including $255 million in additional Medicaid spending to support the increase for health care workers. Of this amount, $242.7 million is earmarked for home care workers. The Enacted Budget also authorized $579 million for minimum wage increase in FY 2018-19, of which $556.6 million is earmarked for home care workers.

Although the first phase of the minimum wage increases took place on December 31, 2016, discussions continued with the New York State Department of Health (DOH) about the implementation and reconciliation of minimum wage funding into the new year. As the April 1 Budget deadline grew closer, managed care plans communicated to providers that contracted rates would revert to pre-January 1, 2017 levels due to a lapse in funding once the FY ended. HCP alerted DOH to the issue in February and urged the Department to issue a notice to plans clarifying that funding would be continued. HCP communicated frequently with DOH well into March to ensure sufficient notice was given. As a result of HCP's efforts, DOH sent a *Dear Administrator Letter* in March clarifying to the plans that funding would be continued into the new FY and advising plans and providers to maintain current contracted rates.

HCP Provides Feedback on Minimum Wage Surveys and Reports

In March, the Department issued a survey to providers in order to determine the Medicaid financial impact of the minimum wage increase for FY 2017-18 and beyond. It would also be used as a tool to help DOH develop a reimbursement methodology to meet statutory minimum wage requirements. HCP played a key role in this process, clarifying questions for providers as they completed the survey and urging compliance within the provider community.

A subsequent minimum wage survey, currently titled the Provider Reconciliation Report, is under development with DOH, DOB and the Office of the Medicaid Inspector General (OMIG). The intent of this Report is to reconcile minimum funding both upstream and downstream in order to assist with the MLTC rate-setting process in advance of the next minimum wage increase. HCP submitted comments on the draft Report with suggestions to make the collection of data easier and more accurate, and for the Department to conduct a webinar to explain to providers how the Report should be completed. The Report is expected to be issued to providers in July.

HCP will be engaging with the Department over the next several months to ensure that the funding allocated for minimum wage increases in the Budget is provided to cover the cost of compliance with the next phase of the minimum wage increase.

HCP Continues Advocacy for Adequate Reimbursement for Home Care

Through Budget testimony, information materials, legislative memos and one-on-one conversations with legislators and agency staff, HCP ramped up advocacy efforts this year to emphasize the need for adequate reimbursement for home care providers.

HCP included adequate reimbursement as a priority during its 2017 Advocacy Day, urging the Senate and Assembly to include language in their respective Budget proposals to ensure that funds intended to support the home care workforce flow through to home care providers. HCP proposed legislation to be included in the Final State Budget that would require the New York State Department of Health (DOH) to contract with an independent actuary to review the adequacy of current reimbursement rates provided in contracts or agreements between Medicaid managed care plans and home care agencies, as well as fiscal intermediaries (FIs) in the consumer directed personal assistance services (CDPAS) program.

Both the Senate and Assembly included requirements for rate adequacy for managed care plans in their one-House proposals. The proposals included a requirement for adequate reimbursement of long term care providers along with additional cost reporting measures for providers. Despite aggressive advocacy from HCP and home care providers, this proposal was not included in the Final State Budget, but was addressed in the side agreement between DOH and the Legislature.

In the side agreement, DOH agreed to convene quarterly meetings with the Legislature regarding Medicaid managed care rates and to provide its actuarial memorandum to managed care organizations 30 days in advance of submission to the Centers for Medicare & Medicaid Services (CMS). The memorandum includes information on the components of premiums disbursed to managed care plans, add-on adjustment, quality pool amounts and other rate development information.

HCP has also continued to keep DOH, the Legislature and the Governor's office informed of instances in which contracted rates between managed care plans and home care providers have been inadequate to cover the cost of compliance with statutory obligations.

Over the summer, HCP will begin collecting data from its CDPAS FI members regarding their costs related to Wage Parity. HCP will also engage with DOH on ensuring reimbursement rates are adequate to cover the increasing costs of compliance with the next phase of Statewide minimum wage increase, which will go into effect on December 31, 2017.

HCP will keep members updated on this issue as more information becomes available.

HCP Advocates for Oversight and Transparency in Recruitment and Retention Funds

Each year, New York State provides nearly $300 million for Home Care Workforce Recruitment and Retention (R&R). This State funding is intended to be used solely for the purposes of recruitment, retention and training of home care aides and other direct care personnel.

The R&R funds are critically needed to help home care providers address the tremendous challenges they face in recruiting, retaining, and training qualified workers, such as offering competitive salaries and other incentives in areas experiencing workforce shortages. In Medicaid fee-for-service, providers were notified of the amount of R&R funds they were receiving in a line item on their remittances. Since the transition to Medicaid managed care, home care providers have not been notified as to how much, if any, R&R funds they are receiving, and have often been told that the funds are built into their managed care rates with no further details. Guidance given to the plans by the New York State Department of Health (DOH) in 2013 gave managed long term care (MLTC) plans a great deal of latitude in how these funds are disbursed and did not direct plans to disburse all funds to home care providers.

At HCP's request, the Senate and Assembly included language in their respective one-House Budget bills that would ensure MLTC plans disburse R&R funds in their entirety to their contracted home care providers. HCP and its members advocated for R&R transparency on Advocacy Day and throughout the Budget and legislative processes. Although funds were included in a final Budget agreement, HCP's proposed transparency language was not.

In March, Senator Kemp Hannon (R-Garden City), introduced R&R legislation that would provide transparency in the distribution and allocation of monies provided to Medicaid managed care plans for recruitment, training and retention of home care workers. Medicaid managed care plans would be required to submit records of their R&R funding allocations to DOH and notify home care providers about how much R&R funding, if any, is being disbursed to them. The legislation further required managed care plans to distribute these funds in their entirety, as a supplement to provider reimbursement rates.

This legislation passed the Senate unanimously but lacked an Assembly sponsor and failed to advance. HCP is hopeful that R&R is discussed as a result of DOH's side agreement with the Legislature to address outstanding issues that were not included in the Enacted Budget (see related article on **page 10**).

Expanded Statewide Health Care Facility Transformation Program Includes Additional Funding for Home Care

In his Executive Budget Proposal, Governor Andrew M. Cuomo proposed expanding the Statewide Health Care Facility Transformation Fund to $500 million to support both capital and non-capital projects that facilitate health care transformation and access to health care services. A minimum of $30 million of these funds were to be earmarked for community-based health care providers, including home care services. The intent of the Governor's proposal was to award these grants to applications submitted in 2016; however, the final Budget increased the funding for community-based services to $75 million and further ensured that at least $200 million would be available for proposals submitted in 2017. Up to $300 million of this funding is to be awarded to projects that were not funded under the first round of applications.

The final Budget also includes a timetable for implementation of the program and a stakeholder process, both of which are behind schedule. To date, the 2016-17 program awardees have not yet been notified, and the monies allocated have not been paid out. At the end of the Legislative Session, Chair of the Senate Health Committee, Senator Kemp Hannon (R-Garden City), introduced legislation that would direct the New York State Department of Health (DOH) to award a total of $495 million to applicants in response to last year's Request for Applications (RFA) for funding from the Health Care Facility Transformation Program by June 20, 2017, and required the issuance of an RFA for the remaining appropriations no earlier than July 21, 2017 and no later than July 31, 2017. The legislation passed the Senate but did not advance in the Assembly (see related article on **page 11**).

The 2017-18 final Budget agreement expands the application criteria for program applicants, including home care providers. The 2016 application criteria made it difficult for home care providers to apply for funding for health care information technology (HIT) and other infrastructure investments. Due to the financial challenges that home care providers have experienced in recent years, agencies have not been able to make needed investments in HIT and other innovations. These investments are essential for the home care industry to participate fully in the transformations underway in the health care delivery system that are evolving toward integrated care models and value-based payment arrangements.

HCP will continue to follow up with DOH to ensure that monies are paid to applicants and that future State Budgets provide funding for HIT investments and other home care industry priorities.

Final Budget Includes Critical Workers' Compensation Reforms

During this year's Budget process, Senate leadership made business-friendly Workers' Compensation reform one of its top priorities. HCP joined a broad coalition of business groups, including the Business Council of New

HCP Member Engagement Boosts Advocacy Efforts

HCP members played a critical role in supporting HCP's priorities during the State Budget process and throughout the Legislative Session by reaching out to State Legislators and responding promptly to *HCP Action Alerts* and surveys.

HCP Advocacy Day

More than 50 HCP members from across the State attended HCP's Advocacy Day on February 28 in Albany. This year's HCP Advocacy Day focused on adequate reimbursement for home care providers, transparency and oversight in Medicaid managed care, and Workers' Compensation reform, among other issues. Participants met with more than 60 State Legislators to educate them about the critical issues facing the home care industry and how these issues impact their patients and businesses. HCP members also participated in a meeting with Senate Finance Committee staff to discuss home care priorities in the Fiscal Year 2017-18 State Budget.

HCP Member Engagement

Throughout the spring, HCP members responded to *HCP Action Alerts* and engaged in local grassroots activities, including meeting with State Legislators in their districts, reaching out to Governor Cuomo's office and calling their Congressional Representatives to urge them to oppose the American Health Care Act (AHCA). HCP members sent nearly 400 email messages to Federal and State lawmakers in addition to numerous calls and fax blasts to reinforce the valuable role that home care plays in New York's health care delivery system, and to ensure that Medicaid funding was protected in proposals to repeal and replace the Affordable Care Act (ACA).

Member Surveys

HCP's advocacy efforts this year were supplemented by responses to three surveys conducted by HCP during the Legislative Session focusing on costs related to minimum wage, the Fair Labor Standards Act (FLSA) and Workers' Compensation. The surveys filled important information gaps that helped HCP effectively voice the concerns of members to State Legislators, Cuomo Administration officials, and the news media.

York State, to advocate for these reforms, and made Workers' Compensation reform a priority for its 2017 Advocacy Day. The reforms are projected to reduce employers' Workers' Compensation costs by $400 million in the coming year, with significant additional cost savings expected in the future.

The Workers' Compensation reforms include more definitive time limits on the caps for permanent partial disability (PPD) and updating medical Scheduled Loss of Use (SLU) guidelines to reflect advances in modern medicine. These reforms had been advanced by the Business Council and endorsed by HCP as measures that would significantly reduce overall system costs. The Business Council estimated that its original proposals would reduce overall system costs by as much as 20 percent, which would result in lower rates for all employers.

The final Budget agreement included the start date for the PPD durational cap, which will take effect after 130 weeks rather than the date of injury, a position supported by the Business Council. With regard to the SLU impairment guidelines, the Workers' Compensation Board is required to issue proposed amendments for public comment by September 1, 2017 that "shall be reflective of advances in modern medicine that enhance healing and result in better outcomes." The law requires that new guidelines be adopted by January 1, 2018.

The new law requires a public actuary to issue an annual report beginning on June 1, 2018 indicating the overall savings in the Workers' Compensation system as a result of the 2017 reforms. Providers should be aware of changes that impose new requirements and penalties on employers, insurance carriers, and self-insured employers. The law also includes a number of administrative changes, additional protections for injured workers and creates a fiduciary fund to help stabilize Workers' Compensation rates over the next five years.

HCP will continue to monitor how these changes will impact Workers' Compensation rates for home care providers and will provide updates as additional details emerge.

Collaborative Approach to Community Paramedicine Stalls During Legislative Session

Prior to the start of the 2017 Legislative Session, HCP, the Home Care Association of New York State (HCA), LeadingAge New York and Iroquois Healthcare Alliance met to discuss the Community Paramedicine Collaborative Approach.

This concept would allow hospitals, physicians and home care agencies, in joint partnership, to develop and implement a collaborative program with emergency medical services (EMS). At-risk individuals living in the community would be served by EMS for care other than the initial emergency medical care and transportation to a hospital.

The Associations and their retained counsels worked to include the Collaborative Approach in the final Budget agreement. Unfortunately, the language was only included in the Senate one-House bill, and ultimately failed to be included in the final Budget.

In early January, Chair of the Assembly Health Committee, Assembly Member Richard Gottfried (D-Manhattan), introduced legislation that would enable the Collaborative Approach in the event it did not succeed in the Budget process. In prior years, HCP opposed community paramedicine legislation that was

Support the HCP PAC!

The 2017 Legislative Session may be over, but much remains to be done and the HCP Political Action Committee (PAC) still needs your support! Help protect and promote home care in New York State by supporting the HCP PAC!

Join your colleagues and make a contribution to the HCP PAC today!

The Health Care Providers PAC is committed to protecting and furthering the goals of the State's home care industry. As the first PAC in New York State dedicated solely to the interests of home care providers, the HCP PAC has over 30 years of experience as a powerful voice in our State Capitol.

advanced, as it did not take into consideration the role of the home care provider or an individual's nurse.

Throughout the Legislative Session, HCP and other associations worked with various stakeholders to discuss the bill as it related to scope of practice concerns. The Collaborative Approach passed the Senate in early June but did not advance in the Assembly.

HCP and interested stakeholders will continue to meet in the coming months to discuss the future of the bill.

CDPAS Wage Parity Implementation Delayed to October

The final Budget included significant changes to the consumer directed personal assistance services (CDPAS) program. For downstate providers, the inclusion of personal assistants (PAs) employed by consumers through the CDPAS program into the Home Care Worker Wage Parity law presented the greatest challenge, particularly with the July 1 effective date that was included in the State Budget.

Following weeks of continuous advocacy and information sharing by HCP with the New York State Department of Health (DOH) and the Governor's office, HCP received news in late June from DOH Office of Health Insurance Programs (OHIP) that the implementation of the Home Care Worker Wage Parity law in the CDPAS program would be delayed. The law will now go into effect 120 days after the June 14 **notice** sent by the Department, making the new effective date **October 13, 2017**.

Over the past year, HCP had heard concerns from many members that some managed long term care (MLTC) plans were directing individuals toward CDPAS rather than traditional personal care services, particularly in areas of the State subject to the Wage Parity Law. Because CDPAS was not required to pay personal assistants at Wage Parity rates at the time, there was a perceived cost savings for plans as evidenced by reduced CDPAS reimbursement rates in the downstate region. Requiring PAs to be paid at Wage Parity rates was intended to address this disparity while also providing additional benefits to the PAs.

During the Budget process, HCP aggressively advocated for a delay in the July 1, 2017 effective date for Wage Parity in CDPAS to December 31, 2017 at the earliest. Citing significant issues experienced during the minimum wage negotiation process last year that occurred over a six month period, HCP urged the Legislature to move the effective date in order to

For Sixth Year, State Ends Fiscal Year Below Medicaid Global Cap

New York State Medicaid spending finished the 2016-17 Fiscal Year (FY) $8 million below the $18.6 billion Global Spending Cap target, while Medicaid enrollment decreased by nearly 65,000. The State highlighted this accomplishment, particularly while moving forward with ongoing initiatives and despite significant pressures on the Global Cap, such as the need for increased funding to support minimum wage increases across the State.

The FY ended with "other long term care spending" – including home care – coming in at $35 million above projections. Managed long term care spending through the 2016-17 FY came in at $66 million over projections due to higher than expected enrollment, 1,204 (0.5 percent) above estimates, through March.

This marks the sixth consecutive year that the State has remained below the Global Spending Cap target despite demands placed on the Cap. The Medicaid Redesign Team (MRT) moved forward with a number of initiatives in FY 2016-17, including transitioning the nursing home and Health and Recovery Plan (HARP) recipients into managed care; continuing the Balancing Incentive Program (BIP) to engage stakeholders in developing systematic improvements in overcoming barriers to providing community-based long term care supports and services; continuing the Vital Access Provider/Safety Net Program; continuing offering the Essential Plan; and implementing minimum wage requirements by using funds to support direct salary costs and related fringe benefits.

Per the Enacted 2017-18 State Budget, the Global Cap has been extended through March 31, 2019.

provide time for FIs and plans to renegotiate their contracts. HCP also advocated for additional funding to be allocated in the Budget to support the proposal, along with mechanisms to ensure that rates paid to FIs were adjusted to support the increased cost.

While the effective date did not budge from July 1 during Budget negotiations, HCP was successful in securing an additional $9 million in the Budget that DOH could include in managed care plan premiums to support the additional costs of compliance. Regardless, DOH informed MLTC plans and FIs that managed care plan premiums were currently adequate to meet the costs of wage parity, and they would not use the additional monies as the effective date approached.

HCP worked continuously to ensure a smooth transition to Wage Parity for CDPAS by sending letters and convening meetings with DOH and the Governor's office providing updates on how negotiations with plans were progressing leading up to July 1. HCP urged DOH to issue guidance to MLTC plans on the requirements of wage parity with clarification on what was included in their premium rates, especially as many MLTC plans refused to raise rates without further guidance. Senator Kemp Hannon (R-Garden City) and Assembly Member Richard Gottfried (D-Manhattan) also sent letters to DOH pushing for guidance to plans and followed up with the Department when initial guidance did not address the pressing concerns of FIs and other stakeholders.

DOH followed up with MLTC plans two weeks prior to the effective date stating that it was the Department's expectation that MLTC plans would work collaboratively with network providers to ensure that contracted rates were adequate for FIs to meet the requirements of the law. Despite this additional guidance, many plans still refused to increase rates to a sustainable amount without additional funding from the Department.

Days before the effective date approached, HCP spoke with DOH staff about the issue and learned that State Medicaid Director Jason Helgerson wanted to collect additional information from FIs on their individual experiences negotiating with plans. Helgerson also requested information from FIs on rates that would cover their costs of compliance with the law and information on what had been offered to them by their contracted managed care plans. HCP reached out to numerous FI members to encourage them to provide this information for a meeting that OHIP would be holding with Helgerson that afternoon.

Just before July 1, DOH made the formal announcement that the effective date would be pushed to October 13, 2017 in accordance with the 120-day provision in the Home Care Worker Wage Parity Law. The law specifies that the Commissioner of Health shall distribute to all certified home health agencies (CHHAs), long term home health care programs (LTHHCPs) and managed care organizations (MCOs) official notice of the minimum rates of home care aide compensation at least 120 days prior to the effective date of each minimum rate of compensation. In order for the Wage Parity rates to become effective on July 1 for CDPAS, a notice would have had to be sent on March 3 of the new rates, which was prior to when the law was enacted as part of the Final State Budget.

HCP thanks the numerous FI members that provided information on plan negotiations and breakdowns of Wage Parity costs throughout the past month. HCP will send requests for additional information in the coming week and asks that members respond quickly to these requests. Questions on CDPAS and Wage Parity may be directed to **Brianne Galli**.

CDPAS FIs Required to be Authorized to Contract for Services

Both the Senate and Assembly one-House Budget proposals included language to require fiscal intermediaries (FIs) in the consumer directed personal assistance services (CDPAS) program to be approved by the New York State Department of Health (DOH) in order to contract for FI services.

The proposal was similar to legislation that was passed by both Houses in the 2015-16 Legislative Session that was subsequently vetoed by Governor Andrew M. Cuomo and required that the following be submitted to DOH for consideration, in addition to a fee of $1,000:

- Name, employer ID number, Medicaid provider ID number and all addresses at which the organization operates
- Names, titles and contact information of all officers and directors in a not-for-profit company or business, or managers in a limited liability company
- Name and employment history of individual

ultimately accountable for operation of FI
- All policies and procedures of the FI, including any contracts or other documents used in communications with consumers
- Plans to solicit and consider input from the FI's consumers, staff, personal assistants and other interested parties that may be charged with roles including quality assurance review, referrals, program monitoring and responding to community needs
- The organization's plan to address the needs of consumers and their PAs in a timely manner
- Written sworn statement by an officer of the entity disclosing any pending litigation, unsatisfied judgements or penalties, convictions for fraud or sanctions imposed by government authorities

Since the transition of the CDPAS program into managed care, the number of FIs has grown exponentially. DOH implemented a policy in 2015 requiring all FIs to have a Medicaid Provider Identification Number in order for the Department to gain further insight about how many FIs were contracting for CDPAS. While further oversight of the FIs in the CDPAS program is necessary, the requirements of the Budget proposal were largely duplicative of those already required of licensed home care services agencies (LHCSAs).

HCP recommended extensive changes to the proposal, including exempting LHCSAs operating as FIs from the requirements. Though the LHCSA exemption was not included in the Final Budget, HCP succeeded in advocating for the removal of the $1,000 fee.

Due to a technical error, this law went into effect as of April 1, 2017, and HCP immediately notified the legislative sponsors and DOH about the error and worked with them to correct it. Senator Kemp Hannon (R-Garden City) and Assembly Member Richard Gottfried (D-Manhattan) sponsored legislation to move the effective date of the legislation to January 1, 2018, provided that DOH has promulgated regulations for the authorization process, with a one year grace period for compliance for currently operating FIs. The bill has passed both the Senate and Assembly and is waiting to be sent to the Governor's office.

HCP continues to monitor further movement on this legislation and will watch for draft regulations from DOH on the authorization process if enacted.

Side Agreement between Legislature and DOH Includes High Needs Population Issues

A number of proposals put forth by the Senate and Assembly during Budget negotiations did not make it into the Final State Budget; however, the New York State Department of Health (DOH) has agreed to discuss these issues further through a side agreement made following the conclusion of the Budget process. Issues such as managed care rate setting and the Medicaid Global Spending Cap are intended to be part of these discussions (see related articles on **pages 4** and **8**), as well as initiatives related to high needs populations.

High Needs Rate Cells and the Uniform Assessment System for New York

Both the Senate and the Assembly advanced proposals establishing high needs rate cells to support Medicaid recipients that need more expensive care, such as patients requiring live-in services, those requiring 12 hours or more of care per day, nursing home residents, waiver services recipients, or other individuals who are determined as being high need or high cost, including due to geographic factors.

The proposals began with the development of a new or additional assessment tool to determine the needs of the individuals. The Assembly proposal reflected extensive input that HCP provided earlier in the year regarding the impacts of replacing the Uniform Assessment System for New York (UAS-NY) assessment tool or adding duplicative survey instruments.

Since New York is a blended-rate state, the Centers for Medicare & Medicaid Services (CMS) have not been amenable to discussing separate rate cells in the past, such as the Legislature's proposal for a high needs rate cell. In its side agreement, DOH committed to exploring the viability of this option or risk adjustments for the nursing home, high cost/high need home and personal care, and Health and Recovery Plan (HARP) populations. DOH will also re-engage CMS on the issue with the help of industry stakeholders.

Regarding UAS-NY, DOH will analyze and formulate recommendations for the tool with input from the provider community. Analysis of the UAS-NY tool has also been undertaken by the Department's Nursing

Home Transition & Diversion (NHTD)/Traumatic Brain Injury (TBI) Waivers Transition to Managed Care Workgroup. Through this stakeholder process, the Department commissioned a review of the tool by Island Peer Review Organization (IPRO) and has committed to implementing changes recommended by the review.

Also included in the side agreement is a delay of the NHTD/TBI Waivers transition to managed care to January 1, 2019. This will allow additional time for the stakeholder Workgroup to address ongoing issues and make adjustments should the Community First Choice Option (CFCO) no longer be available (see related article on **page 12**).

HCP will continue to follow up on the items within the side agreement, and will keep members updated of opportunities for stakeholder feedback and advocacy.

Other Issues to be Addressed in Next Legislative Session

At the end of the 2017 Legislative Session, lawmakers passed hundreds of bills, including legislation impacting the home care industry. Below are home care-related bills that failed to advance but remain priorities for the home care industry. HCP will continue to monitor these issues and keep members up-to-date with new information.

- **Statewide Health Care Facility Transformation Fund Program:** This legislation directs the New York State Department of Health (DOH) to award a total of $495 million to applicants in response to last year's Request for Applications (RFA) for funding from the Health Care Facility Transformation Program by June 20, 2017, and required the issuance of an RFA for the remaining appropriations no earlier than July 21, 2017 and no later than July 31, 2017. This legislation comes as a result of the Fiscal Year (FY) 2017-18 Enacted Budget, which provided $500 million in new funding to support capital and non-capital projects under the Statewide Health Care Facility Transformation Program. Of the $500 million, up to $300 million may be awarded to projects that were not funded under the first round of applications. The Enacted Budget includes a timetable for implementation and a stakeholder process, both of which are behind schedule. This legislation passed the Senate unanimously but did not have an Assembly sponsor, and failed to advance.

- **Telehealth Services:** This legislation would amend the 2015 State Telehealth law. Specifically, the bill would ensure that home care services delivered via telehealth be delivered solely by home care providers that are licensed or certified under Article 36 of the Public Health Law. The bill also creates telehealth parity within long term care insurance policies and clarifies that remote patient monitoring is not a "visit" subject to "on-site visit" limits covered under such policies. HCP met with both sponsors of the bill throughout the Legislative Session to discuss its importance and to move the bill from the Assembly Health Committee with the support of the Committee Chair. Ultimately, this legislation did not advance from the Senate Calendar or Health Committee.

- **Domestic Workers' Bill of Rights Reform:** During the last month of Session, HCP Public Policy staff met with Senator Diane Savino (IDC-Staten Island) and her counsel to discuss potential amendments to the Domestic Workers' Bill of Rights (DWBR) law, which would clarify the role of home care agencies. Senator Savino was the prime sponsor of the original law that was enacted in 2010. Due to changes to the Federal Fair Labor Standards Act (FLSA) Rule in 2015, workers employed by home care agencies in New York became subject to the requirements of the DWBR, causing additional cost and administrative burdens for employers, most of whom already provide equal or greater leave benefits. Savino expressed strong interest in advancing potential DWBR legislation and will work with HCP to address the issue.

’17 Legislative Retrospective Federal Advocacy

HCP Engages in Federal Advocacy as Congress Focuses on Health Care and Medicaid Funding

Following the election of President Donald J. Trump, the U.S. House of Representatives and U.S. Senate sought to repeal and replace the Obama-era Affordable Care Act (ACA). HCP joined with a group of other Statewide health care associations, providers, consumer advocates, insurers and other stakeholders in opposing the health care overhaul, and has taken part in a number of advocacy initiatives at the Federal level.

The group discusses strategies for information sharing, message development, coalition-building and advocacy efforts focused on key House Republicans in New York State. HCP Public Policy staff participates in weekly calls with the coalition on the Federal health care legislation, as well as on a Communications Subcommittee.

Most recently, HCP signed on to a letter with the associations mentioned above, urging the Senate and the House, to reconsider their proposals. In previous months, HCP also engaged in a number of social media and grassroots advocacy activities urging New York House representatives to oppose the American Health Care Act (AHCA), the House’s proposed health care legislation.

Repealing and Replacing the Affordable Care Act

On Thursday, May 4, the House passed the AHCA by a narrow margin of 217 to 213. The bill was amended multiple times since late March in order to secure enough votes in the House for passage. The Congressional Budget Office (CBO) estimated that the legislation would reduce the cumulative Federal deficit by $119 billion over the period of 2017 to 2026 and increase the number of uninsured Americans by 23 million. These estimates differed from the CBO’s scoring of the original bill that was introduced earlier in the year. The CBO projected that the changes in the amended AHCA would dramatically impact people with pre-existing health conditions and make health insurance more expensive for many Americans, especially those who are elderly, poor or sick. Health insurance premiums would also cover a smaller proportion of health care costs.

In mid-June, the U.S. Senate released a “draft discussion” of their health care plan, known as the “Better Care Reconciliation Act of 2017.” The Senate proposal is similar to the House’s health care bill that was passed in May and would reduce Medicaid funding significantly, while negatively impacting other health and home care initiatives. The Senate draft discussion phases out Medicaid expansion and would finance Medicaid through per capita caps based on the Consumer Price Index.

The 31 states that have expanded Medicaid will continue to receive Federal funding through 2023; however, funding will be reduced in 2021. Under this proposal, it is likely that states will end their expansion programs when Federal support is decreased in 2024. In addition, the Senate draft plan would allow states to receive a lump-sum block grant for some beneficiaries. In doing so, it is anticipated that there will be a great loss of Medicaid beneficiaries due to the budget gap states would face without Federal funding.

Like the House health bill, the Senate version would eliminate the Consumer First Choice Option (CFCO), in which New York State elected to participate. This program offers a six percent increase in Federal matching funds to incentivize states to provide home and community-based services for certain Medicaid enrollees. In addition, the plan would allow insurers to charge older individuals five times as much as younger individuals. The ACA currently limits insurers to charge older individuals three times as much. The Senate plan also reduces the annual income limit to receive subsidies to cover insurance premiums from 400 percent of the poverty level to 350 percent – approximately $42,000 for an individual.

The CBO released their analysis of the Senate Republican bill and estimated that by enacting this legislation, the Federal deficit would be reduced by $321 billion over the 2017 to 2026 period – approximately $202 billion more than the estimated net savings in the House version. The Senate bill would increase the number of people who are uninsured by 22 million in

2026 relative to the number under current law. By 2026, an estimated 49 million people would be uninsured, compared with 28 million who would lack insurance that year under current law.

Amid the lack of transparency as Senate Republicans drafted the Better Care Reconciliation Act, and opposition from Senate Democrats and Republicans, as well as constituents, the Senate Democrats asked for a separate CBO analysis. The Democrats argued that the 10-year estimate does not take into account the effects of the bill, specifically due to the stricter spending limits at the end of the timeframe. The separate CBO analysis stated that by 2036, Medicaid spending under the Senate's legislation would be 35 percent lower than under current law. The analysis also estimates that Medicaid Spending would be reduced by $160 billion in 2026, compared to the ACA.

At this time, Senate Republicans do not have the votes necessary to pass their version of the bill. Senate Republicans delayed their plans to vote on repealing the Affordable Care Act prior to the July 4 recess due to insufficient support to begin debate amid resistance from moderate and conservative Republicans. It is anticipated that the Senate will return for a vote on the Better Care Reconciliation Act prior to their month-long break in August.

HCP is monitoring the status of the Better Care Reconciliation Act daily, and will keep members up-to-date with any breaking developments.

Home Care-Specific Federal Legislation

Earlier this year, HCP, along with 48 other State provider associations, signed on to Federal advocacy letters addressing the ongoing Medicare face-to-face physician certification requirement and the Home Health Care Planning Improvement Act (S.445, H.R. 1825).

Home Health Documentation and Program Improvement Act of 2017

At the end of May, Congress Members Kenny Marchant (R-TX) and Earl Blumenauer (D-OR) introduced H.R. 2663, the Home Health Documentation and Program Improvement Act of 2017. This legislation would reform the face-to-face physician recertification documentation requirements for the Medicare home health benefit.

This proposed legislation limits the circumstances in which an encounter is required by excluding patients referred from a skilled nursing facility or hospital. In addition, the legislation proposes to allow the Department of Health and Human Services (HHS) to consider documentation from a home health agency related to a patient's certification or recertification for eligibility for home health on or after January 1, 2018. Lastly, the bill addresses the Centers for Medicare & Medicaid Services' (CMS) past claim denials by requiring CMS to either reach a settlement with affected home health agencies, or reopen and pay the claims denied based upon the physician's records. The bill was last referred to the House Energy and Commerce Committee and awaits a Senate sponsor.

Home Health Care Planning Improvement Act

This legislation would help modernize the Medicare home health benefit to reflect the growing reliance on non-physician practitioners (NPPs) in community-based care. NPPs include nurse practitioners, clinical nurse specialists, certified nurse midwives and physicians' assistants. The legislation would remove the requirement that patients being cared for by NPPs be transferred to physicians for care orders and eligibility certification as a result of the antiquated Medicare standards. The bill would help bring consistency between the NPP state authorized scope of practice and the Medicare home health benefit. The bill was last referred to the Subcommittee on Health and awaits a Senate sponsor.

HCP will continue to work with the National Association for Home Care and Hospice and monitor Federal legislation, rules and regulations that are of importance to providers. The Association will communicate breaking news by issuing *HCP News Alerts*, and will keep members updated on a weekly basis in the *HCP Insider*. Members are encouraged to stay engaged at the Federal level, and to watch for *HCP Action Alerts* in order to participate in grassroots advocacy initiatives, as necessary.

'17 Legislative Retrospective

A comprehensive look at the 2017 Legislative Session

Contact HCP

Claudia Hammar, President
hammar@nyshcp.org, ext. 809

Alyssa Lovelace, Director for Public Policy
lovelace@nyshcp.org, ext. 818

Brianne Galli, Senior Associate for Public Policy
galli@nyshcp.org, ext. 811

'17 Legislative Retrospective — A comprehensive look at the 2017 Legislative Session — is published by the **New York State Association of Health Care Providers, Inc.**

518.463.1118 fax: 518.463.1606

www.nyshcp.org

Please email comments to: **hcp@nyshcp.org.**