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Testimony of United Neighborhood Houses
Before the New York State Assembly and
New York State Senate
Joint Legislative Public Hearing on the FY 2019-FY 2020 Executive Budget:
Topic: Human Services

New York State Assembly Committee on Ways & Means, Honorable Helene Weinstein, Chair
New York State Senate Committee on Finance, Honorable Liz Krueger, Chair

New York State Assembly Committee of Social Services, Honorable Andrew Hevesi, Chair
New York State Senate Committee on Social Services, Honorable Roxanne J. Persaud, Chair

New York State Assembly Committee on Children and Families, Honorable Ellen Jaffee, Chair
New York State Senate Committee on Children and Families, Honorable Velmanette Montgomery, Chair

New York State Assembly Committee on Aging, Honorable Harry Bronson, Chair
New York State Senate Committee on Aging, Honorable Rachel May, Chair

Submitted by Susan Stamler, Executive Director

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Thank you for the opportunity to testify on the FY 2019-2020 Executive Budget and Human Services. UNH is the membership organization of New York's settlement houses. We mobilize our members and their communities to advocate for good public policies, and we promote strong organizations and practices that keep neighborhoods resilient and thriving for all. Our goal is to strengthen and sustain settlement houses' contribution to the economic vitality, health, and cultures of their communities and New York City.

Today, UNH's membership includes 40 settlement houses in New York City and two in upstate New York. The work we do strengthens the capacity of more than 30,000 employees and volunteers working across 680 locations to continue providing necessary services for people of multiple generations with programs that provide skills, education, social services, health, arts, and connection to community and civic engagement opportunities for over 765,000 New Yorkers who visit settlement houses each year.

Settlement House Program

The Settlement House Program provides flexible funding for innovative community-based child, youth, immigrant and older adult services in settlement houses across the state, including in Albany, Syracuse, Rochester, Buffalo, Westchester, Utica, and New York City. The majority of these services are provided through UNH's membership of 40 New York City settlement houses and two upstate affiliate members. Sample activities and services include:

- Job training and placement programs for the unemployed;
- A paratransit driver for adult day program serving seniors with dementia and Alzheimer's disease;
- Treatment and counseling services for sexually abused children under the age of five;
- Culturally competent anti-domestic violence services and counseling for immigrant communities; and
- Intake and referral services for youth requiring medical services, HIV information, mental health counseling, and drug prevention education.

The Settlement House Program remains one of the few sources of flexible funding for community-based organizations serving their communities. With this support, each settlement house is able to respond to the unique needs of its neighborhoods. At a time of diminishing local, state and federal resources, the Settlement House Program is the critical glue that holds together the holistic service model of settlement houses.

UNH urges New York State to increase and baseline State funding for the Settlement House Program in FY 2019-2020. A baselined investment of $5 million will allow settlement houses across the state to respond to evolving needs in their communities and ensure stability of the funding for years to come.

Nonprofit Contracting

New York State's nonprofit human services sector is a critical partner in delivering services on behalf of the State in a more effective and cost-efficient manner than the State itself could deliver. From early childhood education to homelessness prevention to case management for older adults, the provision of these services keeps New Yorkers healthy, thriving, and engaged in the civic and economic life of their communities.

Unfortunately, the ability of nonprofits to consistently deliver the highest quality services in a cost-effective manner is continually compromised by a business environment that threatens their financial viability and stifles innovation. For many nonprofits, the business environment consists almost entirely of contracts with local, state, and federal governments—the terms and execution of which pose challenges to their organizational health. From under-funded services, to late payments for services rendered, to conflicting regulations, to onerous paperwork and audits, government contracts force nonprofits to endure financial losses, sap organizational morale, and divert critical human capital toward addressing financial crises instead of developing innovative approaches to meeting their communities' needs. In FY 2019-2020 and beyond, there are two actions the State must take to support the sector:

- **Renew the Nonprofit Infrastructure Capital Investment Program (NICIP) at $100 million** and **expand eligibility for nonprofit human services providers operating in publicly owned facilities**; and
- Increase funding for salaries for nonprofit staff by **addressing the costs of the State's new minimum wage** and **implementing a human services Cost of Living Adjustment (COLA) at $165 million total**.

Nonprofit Infrastructure Capital Investment Program (NICIP)

UNH was proud to have partnered with the Human Services Council, UJA-Federation of New York, the Governor's Office, and the NYS Legislature to create the Nonprofit Infrastructure Capital Investment Program (NICIP) in the FY 2015-2016 budget. This initial investment of $50m was designed to allow nonprofit human services providers to make critical upgrades to program sites, ranging from roof and brickwork, to boiler replacement, to accessibility enhancements.

Unfortunately, the funding excluded providers located in government-owned sites from applying, such as those based in the New York City Housing Authority. While in FY 2017-2018 NICIP was modified to allow such providers to apply for technology enhancements, they were still barred from physical infrastructure improvements, despite having the same needs as those located in privately-owned spaces. Funding was again renewed in FY 2017-2018, but at the reduced level of $20 million. Over 635 applications were submitted to the NICIP program, and though 580 were deemed eligible for scoring by DASNY, just 237 were awarded funding. The total value of applications–$300 million–far exceeded the $120 million available in NICIP. Unfortunately, this critical program was not funded in the FY 2018-2019 Enacted Budget and has not been proposed for renewal in the FY 2019-2020 budget.

Funding for nonprofit infrastructure is a critical unmet need, particularly as nonprofits continue to play a growing role in providing services in struggling public housing developments. **UNH recommends that the State renew and expand funding for NICIP at $100 million in the FY 2019-2020 budget and lift the restriction barring nonprofit human services providers located in publicly owned buildings from applying.**

Nonprofit Staff Salaries

While UNH is grateful that the Executive Budget proposes investments to address the new State cost of the minimum wage for staff in Advantage After-School Programs and participant salaries in the Summer Youth Employment Program, most nonprofit human services providers funded by government contracts will not be able to pay these higher wages without commensurate contract adjustments to cover the costs, as well as funding to address the challenge of front-line staff wages rising to similar levels of their immediate supervisors. These supervisory staff will require wage adjustments to appropriately value and incentivize their work.

Moreover, New York State has not implemented a Cost of Living Adjustment (COLA) for the workforce in its nonprofit contracted programs in nine years. Nonprofits are faced with the challenges of retaining dedicated staff whose salaries do not keep pace with inflation. This reduces morale and increases turnover.

The estimated cost of addressing the minimum wage increase for contracts not yet adjusted to reflect the increased cost of service provision is $25 million. The estimated cost of reinstating the statutory human services COLA is $140 million. UNH urges New York State to make both of these crucial investments.

Early Care and Education

Early care and education is crucial to both New York's economy and to keeping our promise to our children of a world-class education. Early care and education programs keep parents in the workforce by providing a safe, nurturing and educational environment for their children during the workday. And these early care and education programs are an investment in communities because the jobs created by investing in child care subsidies cannot be shipped out of State. Also, early care and education programs employ a workforce that is 97% female and creates leadership opportunities for women. We were proud to see that one of New York's newest State Parks will be named in honor of Shirley Chisolm. Before she served in Congress and became the first black woman to run for president, Shirley Chisolm taught and led a child care program at a Lower East Side settlement house – Hamilton-Madison House.

Moreover, early childhood education has profound positive impacts on cognitive development, student achievement, and even the lifelong earnings of the children who participate.

UNH appreciates that the Governor in his Executive Budget and Budget Briefing Book took the following steps to address New York's child care shortage by:

- Investing $26 million to address the increase in the federally mandated market rate for many parts of New York State;
- Including guidance in the Budget Briefing Book urging Regional Economic Development Councils (REDC) to prioritize child care in their investments;
- Reinforcing the importance of the work of the recently convened Child Care Availability Task Force;
- Maintaining New York's $5 million investment in QUALITYstarsNY, a quality rating and improvement system; and
- Announcing plans to develop a New York State child care worker scholarship.

However, given the growing need for these programs, these actions do not go far enough to address the shortage of early care and education in communities throughout New York State. UNH urges New York State to use the FY 2019-2020 Budget to continue building access to quality early care and education.

UNH urges New York State to increase State funding to counties for child care subsidies and program operations to expand equitable access to quality child care to more working families and invest in the following:

- **$51 million to restore the child care subsidy program to the level attained in 2016** – the highest in recent years – adjusting for four years of inflation;
- **$20 million to improve quality and increase slots dedicated to serving infants and toddlers by at least 1,000**, with $2.5 million directed to the expansion of the Infant-Toddler Specialist Network, and $2.5 million to train and recruit new providers to the field;
- **$26 million to revise the copayment formula** so that no family receiving a child care subsidy contributes more than 20% of their gross income exceeding the poverty level as the parent share, while maintaining the number of families receiving subsidies; and
- **The necessary funds to enable all counties to maintain updated subsidy waitlists.**

Advantage After-School Programs

There is an incredible need for State investment in after-school programs. As in early care and education programs, after-school programs are a key support for working families and are also the place where children can participate in activities that contribute to their social-emotional development while being both outside a classroom and in a safe, supervised environment.

UNH appreciates the investments proposed in the Executive Budget for after-school programs including:

- A $10 million increase to the Empire State After-School Program which will allow for more than 6,000 additional children to participate;
- A $10 million investment in the Advantage After-School Program to address the increased costs associated with the rise of the State's minimum wage.

However, these actions are incomplete, and New York State must take additional action in the FY 2019-2020 Budget to strengthen the Advantage After-School Program including:

- **Restoring the $5 million investment from FY 2018-2019 to support after-school programs for 3,600 children.** The $10 million increase addresses only the funding needed for new minimum wage salaries and not the programs that would close if this funding is not restored;
- **Making the minimum wage investment multi-year.** The Executive Budget invests funding to cover the increased costs of the minimum wage for one year only. This funding should be permanent and extend into future years.
- **Invest $15 million to increase Advantage After-School rates to improve program quality.** Advantage After-School Programs are funded at $1,375/child, less than similarly State funded programs such as Empire State After-School Program and Extended Day/School Violence Prevention. New York State should **increase Advantage rates to at least $1,600/child in addition to the minimum wage funding** to bring programs to parity with other State funding streams for After-School programs.

Naturally Occurring Retirement Communities (NORCs)

NORCs are housing developments or neighborhoods that were not originally designed as senior housing but have naturally become home to a significant number of older adults over time. NORCs receive contracts to coordinate support from housing, social services, and health care providers to promote the health and stability of older adults living in apartment buildings and housing complexes, as well as in slightly lower-density neighborhoods and rural areas (Neighborhood NORCs or NNORCs)[1]. Currently, the New York State Office for the Aging (NYSOFA) contracts with 29 NORCs throughout the State, and it recently released a Request for Applications (RFA) to add approximately 13 new programs.

Thank you to the Legislature for all of its attention and support for the NORC program over the last several years. NYSOFA-funded NORCs have experienced some volatility in recent years, including a 2017 RFA that was withdrawn after awards were already announced. This process has underscored the need for stability in funding and contracting. **We are pleased that the Governor's Executive Budget Proposal includes $8.06 million for NORC programs this year**, maintaining $4 million in program enhancements that the Legislature added in the FY 2018-2019 budget. This funding will support the existing 29 NORCs and the 13 anticipated new NORCs. This funding is vital to ensure that current NORCs can continue to provide services and supports expansion of the model to new areas in New York State, particularly for underserved areas with rapidly growing aging populations.

At the same time, many NORCs are facing a growing challenge as they struggle to meet requirements for on-site nursing hours, which are mandated in NYSOFA contracts in the healthcare management and healthcare assistance and monitoring categories. The vast majority of NORCs fill these requirements with nurses. While no two programs are identical, the average NORC program utilizes 22 nurse hours per week.[2] In alignment with the NORC model, these nurses provide important services that would not otherwise exist in the community, such as medication education, diabetes testing, flu shots, mobility and balance screenings, and helping clients get in touch with doctors. Many residents rely on these nurses as their main source of health care and truly value the care they provide. From an economic standpoint, the average annual cost of a nursing home for one person in New York is $137,000[3], while individual NORC programs provide hundreds of residents with the health care and social supports to help them age in place for a similar contract cost as the cost of one nursing home resident.

At many NORC sites, providers secure pro-bono nursing services using Visiting Nurse Service, hospitals, students, retired volunteers, and other means. Again, while no two programs are identical, the average NORC program currently utilizes 6 hours of pro-bono nurse hours per week, including some programs that have zero pro-bono hours. These in-kind nursing services maintain the NORC program's founding principle of community-based partnerships and supports. However, these arrangements are becoming unstable in the wake of recent Medicaid Redesign and billing changes, in addition to the growing need for health care as the State's population ages.

[1] Throughout this testimony "NORC" refers to both NORC and NNORC programs.
[2] According to a survey of NORC Program Directors completed in November 2018 – note all additional data in this section was compiled from this survey.
[3] NYSDOH

Many nursing services have been cutting back on their pro-bono hours, and of those that remain, nursing providers and NORC programs are worried about being able to maintain these arrangements. In fact, since 2015 NORC programs have reported an average loss of 50% of their pro bono hours, from 12 to 6 hours each week. Consequently, NORCs are spending more to maintain the same level of service they have continuously been providing. In effect, nursing hours represent an unfunded, though important, mandate in NYSOFA contracts.

An additional $775,000 would sufficiently cover the loss in pro-bono hours over the last several years across all 29 existing N/NORC programs. It is important that this money not impact unit of service requirements (which require a certain number of service hours depending on the funding range) or statutory caps on the size of programs (which is currently $200,000 per program). Nurses typically cost $85 per hour, and this cost represents an average of 38% of a NORC contract, exclusive of any in-kind hours. Further, most NORC programs expressed a desire to host more nurse hours in their programs if they could afford it, lending support to the success and high demand for these services.

Home Care Employee Compensation

New York's home care employees work tirelessly to help individuals who require assistance with the activities of daily living, the vast majority who are older adults. Home care allows vulnerable community members to remain living at home with dignity and individualized care, which the vast majority of individuals prefer rather than being sent to institutionalized settings such as nursing homes. Home care is also much more affordable than institutional care, and because state Medicaid reimbursements cover many of these costs, home care is also a much more affordable option for the State. The home care model is one that should be preserved and elevated if New York remains dedicated to healthy aging and keeping older adults in their homes and communities. Three UNH member organizations provide non-profit home care services to their communities: Chinese-American Planning Council, St. Nick's Alliance, and Sunnyside Community Services. Together, every year these settlement houses provide services to over 4,500 individuals with nearly 7,500 workers throughout New York.

Unfortunately, recent legal activity regarding home care employee wages threatens the viability of the industry, with the potential to spark devastating financial consequences for home care organizations, their employees, and the individuals served.

Background
Under long-standing New York State Department of Labor (DOL) regulations, a residential home care employee who works for 24 hours must only be paid for 13 of those hours, with the remaining hours exempt and reserved for sleep (8 hours, 5 of which must be uninterrupted) and meals (3 hours). Many employees working 24-hour shifts are interrupted by their patients' various needs, and as a result an employee can be paid for 24 hours of a 24-hour shift if the employee received less than 5 hours of uninterrupted sleep. In practice, however, these additional hours can be difficult for employees to quantify, and it can be difficult for organizations to obtain additional reimbursement from their insurance plans. This means that employees often end up doing more than 13 hours of work for only 13 hours of pay, or employers take a loss because they are not reimbursed by their plans.

A series of recent State court decisions[4] brought at the behest of workers invalidated the DOL's 13-hour rule, stating that employees must be paid at least the minimum wage for all 24 hours of a 24-hour shift, regardless of meal or sleep time. These cases await final hearings from the Court of Appeals and Federal court. If the courts rule in favor of the plaintiffs and the 13-hour rule is abolished, it is possible that employers, including nonprofit providers, will be held liable not only for additional costs moving forward but also for substantial back-pay for the last 6 years, which the home care industry at large estimates could cost upwards of $1 billion per year.

In October 2017 the DOL issued emergency temporary regulations that required home care employees to continue being paid for 13 hours out of a 24-hour work shift. The regulations were intended to delay the court decision that requires 24-hour pay for 24-hour shifts, and it appears the DOL intends to attempt to make this ruling permanent, despite the emergency regulations being overturned by the State Supreme Court.

Recommendations:
UNH's nonprofit settlement house providers are committed to ensuring its employees are well-compensated for their labor and treated fairly. The current 13-hour rule is an economically unjust model for employees who often work more hours than for what they are paid. Home care workers are already some of the most economically disadvantaged employees in the State, with a median salary of $24,810[5] and one in four workers living below the Federal poverty line. At the same time, imminent changes to current laws cannot be advanced without concern for the financial viability of providers and their ability to remain in business.

If court rulings invalidate the 13-hour rule and the DOL emergency regulations end, service providers will be responsible for covering additional wages both prospectively and likely also retroactively for the past 6 years. This financial burden will wreak havoc on the industry and could decimate nonprofit providers, with some UNH members individually estimating tens of millions of dollars in potential liability. This loss would cause ripple effects, including a loss of home care services to the community, a loss to insurance plans, and a loss to New York State, which will have to cover the higher-cost service provisions in institutionalized and acute settings. Home care represents 80-85% of the operating budget of UNH's settlement houses that operate these programs, which means this requirement could also pose a serious bankruptcy threat to the stability of these organizations and their important wrap-around community services.

Should the 13-hour rule be abolished, with or without the back-pay component, **it is imperative that the State of New York reimburse providers immediately for the additional financial burden both retroactively and prospectively through Medicaid reimbursements**. Service providers should not be penalized for consistently following the State's labor rules. If the courts find that the State's regulations are misguided, it should be the State's responsibility to cover any incurred costs to service providers.

Because the court rulings may not be settled by the start of the fiscal year on April 1st, 2019, **the State should create a contingency fund in the FY 2019-2020 budget** to be prepared to

[4] *Andryeyeva v. New York Health Care, Morena v. Future Care Health Services, and Tokhtaman v. Human Care*
[5] NYSDOL

retroactively compensate home care workers, rather than forcing providers to take on an unfunded mandate, thus prompting the collapse of the sector.

Even if the lawsuits result in preserving the status quo, New York has an obligation to support its home care workers with fair pay and fair working conditions. In addition to prospectively funding full 24-hour care through Medicaid reimbursements, the State should explore policy solutions such as **expanding the use of multiple 12- or 8-hour split shifts** for certain cases (though this may create some difficulties for individuals suffering with cognitive impairments such as dementia or other complex care regimes), or the use of **variable on-call pay rates** for sleep and meal times (for example, many nurses are paid at 3/4 their rate for their on-call hours). Finally, the State should coordinate oversight of the industry moving forward via **a short-term task force to stabilize the sector** and consider a **permanent office to ensure its sustainability**.

In a state where the fastest growing population is over 65 and the demand for home care is increasing, it is critical that New York State have a robust home care sector where the employees are fairly compensated, the organizations are robustly funded, and the patients receive high quality care within the dignity of their homes. Without paying competitive wages and ensuring fair working conditions, the State cannot hope to build and retain such a home care sector. Because providers are at the mercy of State contracts and reimbursements, this decision falls squarely on the State to shape the sustained future and successful outcomes of home health care.

Adult Literacy Education

The Adult Literacy Education (ALE) program is the only source of State funding specifically available to fund community-based organizations, libraries, and the public university system. ALE funding supports English and High School Equivalency preparation classes, as well as case management, referral, and other support services to noncitizen and low-level English-speaking students. New York is home to 3.5 million adults who lack English language proficiency, a high school diploma, or both; in NYC alone, the figure is 2.2 million. According to a 2016 survey of program providers, typically 50,000 individuals are on waiting lists to access adult literacy classes at any given time.

State investment in adult literacy can help New Yorkers better compete in the job market, support their children in school, experience better health outcomes, and more fully engage in the civic and social lives of their communities. According to research done by the Community Service Society, for every NYC resident who earns a high school diploma or its equivalent, there is a net economic benefit to the City of about $324,000 over their lifetime due to their increased earnings and tax contributions and reduced utilization of public benefits. Yet despite these benefits, and changes made in 2018 to federal policy that made it significantly harder for NYS to utilize federal Workforce Innovation and Opportunity Act (WIOA) dollars to educate individuals with beginning skills levels and/or who lack a documented status, the Governor's Executive Budget proposes a $1.5 million reduction in ALE funding.

In order to strengthen community integration and the competitiveness of the State's workforce, **UNH recommends the State restore the $1.5 million proposed cut and invest an additional $7.5 million to offset the consequences of WIOA changes, for a total of $15.3 million.**

Note: While ALE is not a part of the human services budget, English language and high school equivalency classes are an essential part of the human services continuum of services that prepare people for community integration and economic success.

Thank you for the opportunity to testify. We are happy to answer any questions and can be reached at (212) 967-0322 or by email at sstamler@unhny.org.