

MEMORANDUM IN SUPPORT

HOME CARE SAVINGS AND REINVESTMENT ACT (S7800/A8470)

A bill to replace Managed Long Term Care with a Managed fee-for-service model.

The New York Legal Assistance Group (NYLAG) supports this legislation.

NYLAG uses the power of the law to help New Yorkers in need combat economic, racial, and social injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. We aim to disrupt systemic racism by serving clients, whose legal and financial crises are often rooted in racial inequality. Among the array of free legal services we provide is representation of older persons and people with serious illness or disabilities in retaining Medicaid eligibility and accessing Medicaid home care services in order to live safely in their homes and avoid institutionalization.

NYLAG strongly supports the Home Care Savings and Reinvestment Act (S7800/ A8470) to replace the Managed Long Term Care (MLTC) model with a managed fee-for-service program that works for consumers and home care workers alike and will save New York State billions of dollars. Since enrollment in MLTC plans became mandatory in 2012 for adults who need Medicaid home care to remain safe in their homes, NYLAG has represented thousands of older New Yorkers and people with disabilities. They must fight these MLTC plans that routinely deny them enough hours of Medicaid home care to remain safe in their homes. Consumers who, because of dementia, Parkinson's Disease, stroke, and a host of other infirmities need higher hours of care must accept the minimal hours offered by these plans in order to enroll, then fight for more hours in multiple appeals. In the meantime, they are at risk of falls, fractures, bed sores, and other harms resulting from inadequate care.

It is now abundantly clear that paying insurance companies to provide ONLY long-term care services cannot work because a health insurance model requires the insured population includes healthy members, who need only preventive care and minimal services, balancing out the few who will need expensive care. With MLTC, however, all 280,000 members *by definition have chronic conditions* for which they *have been determined* to need costly home care services. Plus – the plans are relatively small and cannot – or will not – absorb the cost of the few who need high hours of care such as 24/7 home care. So they make a profit by DENYING needed home care services and DELAYING approvals for months – forcing frail seniors and people with disabilities through endless appeals. Historically, only a small percentage of the home care population need the highest amounts of home care – 24 hours/day.¹ However, MLTC

¹ The one MLTC plan that was mission-driven to serve high-need people with severe disabilities such as quadriplegia, Independence Care Services (ICS), was forced to close in 2019 because the capitation premium could not cover the cost of 24/7 care that ICS responsibly approved for those few who needed it – just 5.6% of its members. See APPENDIX showing the percentage of members of each MLTC plan receiving

plans are incentivized to deny 24/7 care, only authorizing it if they lose an appeal. Most consumers lack access to a legal representative and lack the wherewithal to appeal at all, or lose their appeals when up against an insurance company lawyer. Those who can navigate the system win, especially with an experienced advocate.²

The current capitation model incentivizes insurance plans to enroll members with limited needs, enhancing profits since NYS pays the plans the same “per member per month” premium for every member. Likewise, the plans deny increases in hours when needed, and refuse to reinstate home care after a temporary stay in a rehabilitation facility. We have represented hundreds of seniors who desperately want to return home. Without our aggressive advocacy, they would be forced to remain permanently in a nursing home. This defeats federal and state goals of “rebalancing” long-term care from institutional to community-based care – and violates our clients’ rights under the Americans with Disabilities Act (ADA) as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*

Lack of Accountability & Transparency in MLTC Plans. While we support the Governor’s budget proposal authorizing DOH to impose liquidated damages for Managed Care plans that fail to comply with model contract (PART H), these sanctions are long overdue, but are too little too late. A managed care system requires scrupulous oversight of insurance companies, which the administration has been unwilling or unable to do over the last twelve years. In 2022, the NYS Comptroller found that NYS paid \$2.8 billion in premiums to MLTC plans that provided little or no services, and another \$701 million for consumers who had died, moved to Assisted Living, or were otherwise not eligible for MLTC.³ The Comptroller found that the --

Department does not perform reviews to identify instances where MLTC members remain in MLTC but receive few services during their enrollment period.

Id. In response, consumer advocates called on DOH to adopt long term care access standards recommended by CMS, and to post a public quality dashboard with

various ranges of hours of home care per month in 2018. Data obtained from Managed Care Cost & Operating Reports (MCCOR) plans file quarterly with DOH, obtained by Freedom of Information request.

² A study of Fair Hearing decisions in NYS found that over 90% of all MLTC decisions to reduce hours of home care were reversed in a Fair Hearing. See *Mis-Managed Care: Fair Hearing Decisions on Medicaid Home Care Reductions by Managed Long Term Care Plans, June-December 2015*, by Medicaid Matters NY and NYS Chapter of National Academy of Elder Law Attorneys (July 2016), available at <https://medicaidmattersny.org/mltc-report/>. The report was featured in a story in the New York Times, Nina Bernstein, *Lives Upended by Disputed Cuts in Home-Health Care for Disabled Patients*, July 21, 2016, available at <https://www.nytimes.com/2016/07/21/nyregion/insurance-groups-in-new-york-improperly-cut-home-care-hours.html? r=0>.

³ New York State Comptroller, *Medicaid Program — Oversight of Managed Long-Term Care Member Eligibility*, Aug. 5, 2022, available at <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2022-20s52.pdf>.

performance metrics such as the maximum wait time for home care services to be initiated after authorization.⁴ Yet the Commissioner of Health failed to adopt any accountability measures to address the Comptroller’s concerns, and Gov. Hochul recently vetoed a bill that would have required some transparency about home care usage. A1926/S1683.

Federal agencies have also recently issued reports criticizing the lack of adequate oversight of MLTC plans in NYS:

- U.S. Office of Inspector General, *New York Did Not Ensure That a Managed Care Organization Complied With Requirements for Denying Prior Authorization Requests* (2023), at <https://oig.hhs.gov/oas/reports/region2/22101016.asp>.
- U.S. Government Accountability Office (GAO), *MEDICAID LONG-TERM SERVICES AND SUPPORTS: Access and Quality Problems in Managed Care Demand Improved Oversight*, GAO 21-49 (Oct. 2022), available at <https://www.gao.gov/assets/gao-21-49.pdf>.

NYLAG’s MLTC Transparency Project echoed the findings of these reports, illuminating the poor track record of MLTC plans in keeping older people and people with disabilities out of nursing homes report, in part because plans refuse to authorize the amount of home care needed by members with serious chronic conditions.⁵ Based on 12 years of experience representing consumers who must aggressively fight MLTC plans for adequate home care, and our MLTC Transparency Project, we urge that the MLTC program be replaced entirely with a different model, as proposed in the Home Care Savings & Reinvestment Act (S7800/A8470).

MLTC MODEL INFLATES ADMINISTRATIVE COSTS AND PROFITS. In NYS, the average profit margin for MLTC plans was 5.5% in 2021, more than double the national average Medicaid managed care plan profit margin of 2.6% (2015).⁶ In 2018, 23 of 30 partially capitated MLTC plans made a profit after paying all medical as well as administrative expenses, which include executive salaries, marketing and lobbying expenses. Five plans with the highest net income (profit) in 2018 were Centers Plan for Healthy Living with \$69

⁴ *Consumer Advocate Statement on New York State Comptroller Report of Aug. 5, 2022: Medicaid Program – Oversight of Managed Long Term Care Member Eligibility* (Nov. 2022, available at <https://medicaidmattersny.org/wp-content/uploads/2022/11/OSC-MLTC-report-consumer-advocates-statement-11.2.22-final.pdf>), citing CMS, *Promoting Access in Medicaid and CHIP Managed Care: Managed Long Term Services and Supports Access Monitoring Toolkit*, June 2022, available at <https://www.medicaid.gov/medicaid/managed-care/downloads/mltss-access-toolkit.pdf>.

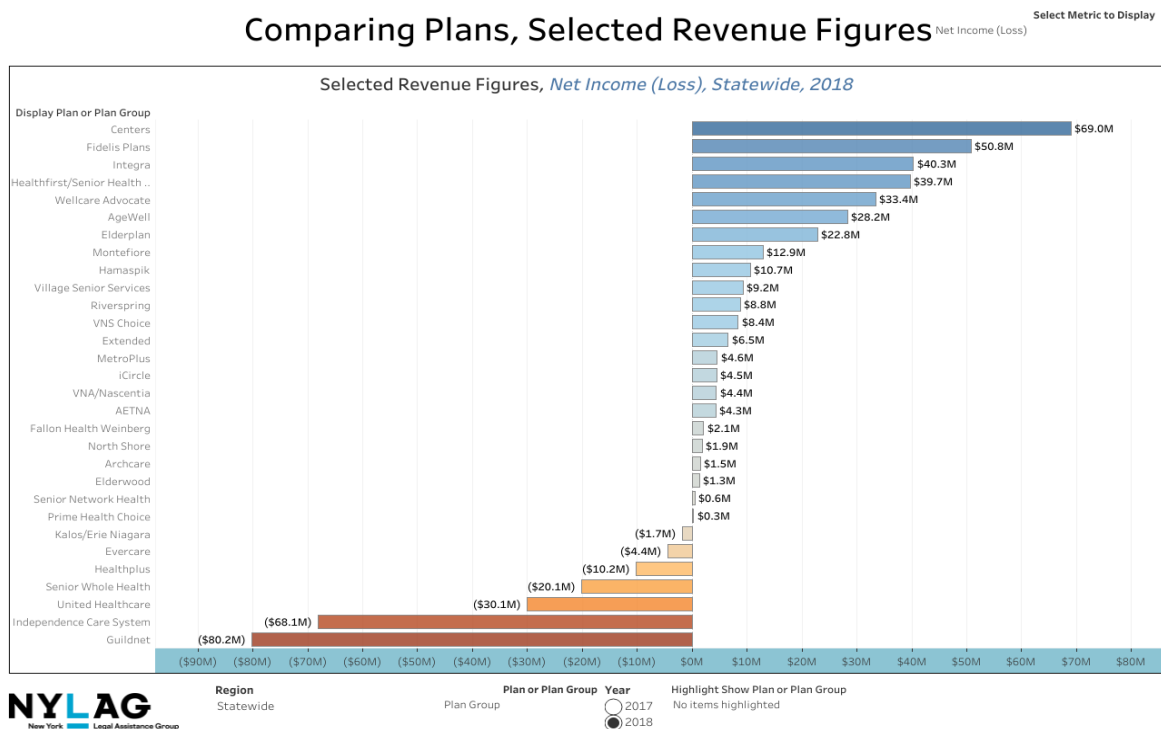
⁵ *NYLAG MLTC Data Transparency Project*, available at <https://nylag.org/MLTCdatatransparency/>. Complete project report available at <https://nylag.org/wp-content/uploads/2022/09/MMCOR-Report-FINAL.3.pdf>.

⁶ Service Employees International Union (SEIU), Oct. 2023.

million, then Fidelis, Integra, Healthfirst, and Wellcare with net revenue over \$30 million.⁷ See Table 1 below showing profit margins of MLTC plans.

Managed Fee for Service is a Better Way. The proposed bill replaces MLTC with a managed fee for service model. As shown to work in Connecticut, Washington State, and Alabama, a care management entity would be paid for the job of developing a care plan and authorizing services. This model is truly conflict-free, unlike the MLTC model in which the MLTC plan has a conflict of interest with its own members that leads it to deny crucial services. Providers would bill Medicaid for services on a fee-for-service basis. Medicaid would pay for the services actually provided, instead of an inflated premium to an insurance plan that is much higher than the few services actually provided. *Our clients will be able to get the home care services they desperately need.* Managed Fee for Service will also promote accountability and transparency. Providers will bill the state Medicaid program instead of MLTC plans, so rates will be transparent and calculated to cover increases in the minimum wage.

Table 1. 2018 Statewide Plans – Net Revenue sorted from High to Low



SOURCE: 2018 MMCOR Reports and NYLAG MLTC Data Transparency Project, see n. 3.

⁷ Data from NYS Managed Care Cost & Operating Reports (MMCOR) filed by MLTC plans for 2018, using statewide reports. Data is visualized interactively at <https://nylag.org/mmcors-consolidated-finance-table/>, allowing user to select data by year, geographic region, or by specific types of expenditures or income. This is one of the interactive visualizations in the *NYLAG MLTC Data Transparency Project*, available at <https://nylag.org/MLTCdatatransparency/>. Complete project report available at <https://nylag.org/wp-content/uploads/2022/09/MMCOR-Report-FINAL.3.pdf>.

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ATTACHED: APPENDIX --Distribution of Hours of Home Care by Plan – 2018

This table shows the percentage of members of each MLTC plan receiving each of seven ranges of hours of home care per month in 2018. The highest ranges are the black (700+ hours/mo.) and gray (480-699 hours/mo.) areas on the far left. The pink (80-159 hours/mo.) and red (1-79 hours/mo.) areas on the far right are the two lowest ranges. Rather than showing a classic bell curve, the distribution for most plans resembles a cliff, with most members receiving the fewest hours. This pattern is even more pronounced in the upstate regions, which can be seen by viewing the data online at <https://nylag.org/home-care-member-years-by-hourly-category/>). Statewide, nine plans authorized under 160 hours per month for over 85% of members in 2018.

SOURCE: NYS DOH MMCOR Reports filed with DOH for 2018, obtained by Freedom of Information request. Data posted in interactive format at <https://nylag.org/home-care-member-years-by-hourly-category/>.

See more observations about this data in the NYLAG MLTC Data Transparency Report (2022) at pp. 28-32, available at <https://nylag.org/wp-content/uploads/2022/09/MMCOR-Report-FINAL.3.pdf>.

Distribution of Hours of Home Care Service by Plan

Show Numbers or Percentages of Member Y. Home Care Type: All Show Plans or Plan Groups: Plan Groups Plans: All Year: 2018 Region: Statewide Filter by Total Member Years with Home Care: 0.416666667 to 27,863.5 and Null values



Showing Percentages of Member Years, by Categorized Monthly Hours of Home Care, Home Care Type: All, Statewide, 2018, Range of Number of Adjusted Enrollees (Member Years) = 0 to 27,864

