February 4, 2011
James Introne
Deputy Secretary for Health
Executive Chamber
State Capitol
Albany, New York 12224

Jason Helgerson
Medicaid Director
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

Dear Mr. Introne and Mr. Helgerson:

Governor Cuomo begins his tenure at a time of unprecedented fiscal challenges. He has begun to outline plans to solve the immediate budget crisis that is confronting the state, a significant portion of which is attributable to the cost of Medicaid long-term care services provided to persons with disabilities of all ages in institutions, community care settings and their homes.

As you develop policies to redesign New York's Medicaid program, we strongly encourage you to consider the fact that services provided to seniors and persons with disabilities in their homes and communities have been shown to bend the cost curve of health care spending. Moreover, there are now federal funds available to incentivize states in building home and community programs.

During the past year, AARP staff and volunteer leaders in New York conducted numerous meetings across the state. We met with consumers, local and county officials, providers, advocacy groups, and with state officials at the Department of Health and the State Office for the Aging to hear their concerns and ideas. From these meetings, we compiled a report "Long Term Services and Supports in New York: A Blueprint for Action", attached. [1]

In this letter we highlight a number of the Blueprint recommendations and provide further information to assist you in your mission to redesign the New York's Medicaid program. The following recommendations are made in the context of the current dire fiscal environment

[1] The Blueprint outlined a broad range of recommendations for New York to strengthen its system of long term services and supports (LTSS) to better respond to strong consumer preferences, as demand for services is increasing, and the mandate to control public costs. The potential LTSS reforms included an expansive array of issues such as workforce, housing, mobility, along with a number of cost savings opportunities under the Affordable Care Act of 2010.

Options to Generate Medicaid Savings

1. Right-size County Nursing Facilities and Diversify Local Services

There are 42 public nursing facilities operated by New York counties (n=38) and NYC's Health and Hospitals Corporation (n=4). These public nursing facilities have played a vital role in delivering long-term care services for varied populations since the 1800's. Many counties now report that they also are serving individuals who have serious mental illness, addictive disorders, or who are homeless. A 2007 comprehensive study by the Center for Governmental Research revealed a collective $100 million annual loss for the 38 facilities outside New York City.[2]

How to deal with cost and quality challenges within public nursing facilities has been a long-standing challenge for the State. In 2006, the Berger Commission concluded there were too many nursing facility beds and not enough home and community based options; it recommended the elimination of about 3,000 beds, of which 1,750 were to be from county facilities.[3] Since 2006, a few counties have closed facilities or taken beds off-line. During the past year, Albany, Essex, Franklin, Fulton, Genesee, Orange, Suffolk and Ulster counties have all discussed options including privatizing the management of their facilities; selling, renovating or closing their facilities; or building new facilities. Additional counties are expected to initiate public facility options as budgets are adopted for the next fiscal year.

Most people do not willingly choose to live in a nursing facility. Older adults and individuals with disabilities have a strong preference to live in their homes for as long as possible. For many populations now being served by county facilities, one must question whether this costly care is the most appropriate setting for them and whether providing facility-based services is in violation of the Americans with Disabilities Act as interpreted by the U.S. Supreme Court in the Olmstead decision.

Various alternatives are being considered by public officials:

- Many county nursing facility officials recommend that the State recognize the "uniqueness" of their operations and the public they serve, and provide them subsidies in the form of higher Medicaid reimbursement and other aid.
- While the Department of Health has supported ways to increase Medicaid reimbursement specifically for public nursing facilities in the past, last year the Governor proposed and the Legislature approved a County Long-Term Care Financing Demonstration Program. The demonstration program would allow up to five counties to reduce beds or close their nursing facilities and invest any savings in community-based long-term care alternatives.[4]
- In 2008, a few counties applied for the residential health care facility Rightsizing Demonstration Program, adopted by the Legislature, to temporarily decertify or permanently convert nursing home beds to other levels of care. In addition, a few counties have received

[2] County Nursing Facilities in New York State, 2007

[3] New York Commission on Health Care Facilities in the 21st Century, 2006

[4] This type of program addresses many complementary goals: reducing the supply of beds; responding to the demand for more community-based alternatives; saving or reallocating taxpayer funds spent on costly facilities.

- awards under the HEAL NY Phase 8 Residential Health Care Facility Rightsizing Demonstration Program.

What can be saved?

Taking beds off line would save the state, counties, and federal government funds that would otherwise be spent on costly nursing facility care for Medicaid enrollees (who could be served in alternative settings) and for individuals who do not qualify for Medicaid long-term care services (such as individuals with mental illness age 22-64, and those who have a primary diagnosis of mental illness). Closing whole facilities or getting out of the financing and operation of facilities could save taxpayers even more money. Money saved could be directed towards less-costly, high quality home and community-based services. Additionally, savings could be utilized to modernize existing facilities or to build a limited number of small home-like residences designed to provide specialized care for individuals who need nursing home care.

The Center for Governmental Research (CGR) estimated that non-NYC county facilities had expenditures over $800 million and that Medicaid paid 80 percent of these county nursing facility days in 2005 (approximately $640 million). Assuming, for example, that these facility expenditures were reduced by 10% through bed closure and that individuals were served in other settings with high quality home and community services, it is estimated that Medicaid could save at least $40 million annually, compared to what would otherwise have been spent; about half of these savings are state funds. In addition to real Medicaid savings, county taxpayers would no longer be burdened by threatened new taxes to offset facility losses.

2. Fully Fund and Invest in NY Connects

NY Connects is a statewide, locally-based program that provides the public with one stop access to free, objective, and comprehensive information and assistance on long-term services and supports. Local offices operating in 54 counties link individuals of all ages with the most appropriate services, regardless of payment source, and help identify those supports that prevent or delay more expensive institutional care. The budget for NY Connects was cut during the last budget cycle.

We believe the State should fully fund NY Connects to maximize its potential in identifying alternatives to institutional services. Specifically, we recommend that the State fund NY Connects to provide options counseling[5] to all individuals, regardless of income, at crucial places such as hospitals and nursing facilities. Most states today provide options counseling to individuals as they are being discharged from a hospital or within a short time period after admission to a nursing facility. Currently, NY Connects provides options counseling for individuals needing to make choices in services, but it does not have the resources to do this counseling where it is most needed and can realize the greatest savings, at hospitals and nursing facilities. Whether counseling is provided at the hospital or soon after a nursing facility admission, the goal is still the same -- educating people about care and service options delivered in the home.[6]

[5] Options counseling is a service that provides targeted information directly to an individual and family based on their assessed current and/or future needs. This program intervention provides people a timely opportunity to choose less-costly and effective services delivered to them in their homes rather than more expensive services delivered in a facility.

[6] In hospitals, options counseling staff would work with hospital discharge planners to identify individuals needing counseling, especially those who have experienced a "life changing" medical event such as a heart attack, stroke or disabling accident.

The Balancing Incentive Payments Program, Money Follows the Person Rebalancing Demonstration and the Community First Choice Option provisions of the national Affordable Care Act discussed below all offer potential sources of funding that could be directed towards options counseling.

What can be saved?

Given the Governor's commitment to address the state's budget shortfall, designing alternatives to expensive Medicaid-supported institutional services should be a high priority, as such effort reduces costs for both public and private payers. Expanded options counseling is a key strategy used by states to delay or prevent nursing facility care. Adopting such a strategy in New York is particularly compelling, as over 70 percent of New York. Nursing facility residents were supported by Medicaid in 2008.[7] Furthermore, the longer individuals live in a nursing facility, the more likely they are to completely exhaust their financial assets and seek Medicaid financial assistance.

Indirect evidence from two states' options counseling programs are compelling.

- New Jersey began its Community Choice program in 1998. Between 1998 and 2008, nursing facility average monthly census was reduced from 34,064 to 21,180, achieved in part through its options counseling program. Registered nurses and social workers assess needs, offer information about in-home services, housing providers and community programs, and explain financial and medical eligibility for public programs to individuals in nursing facilities or in hospitals.
- Washington State assigns case managers to specific nursing homes under its Nursing Facility Case Management program. Within seven days of nursing facility admission, case managers visit all Medicaid residents and those likely to become Medicaid-eligible within 180 days. They conduct an assessment and discuss available community-based options with the resident. If an individual decides s/he prefers to receive services at home or in a community residence, a transition plan to move out of the facility is designed. By 2009, Washington Medicaid was supporting a monthly average of 10,645 people in nursing facilities, down from 17,353 per month in 1992, and now serves three individuals in the community for the cost of serving one in a nursing facility. By reversing its 3 percent facility growth rate, Washington estimates it saved $782 million of expenditures from 1992-2008. Again, this case management/options counseling has been credited by state officials as a key strategy to reducing institutional Medicaid spending.

New York Medicaid spent over $7.6 billion on nursing facilities in fiscal year 2009.[8] If NY Connects' options counseling were successful in reducing unnecessary facility stays and Medicaid nursing facility expenditures were reduced by 3% the first year – an ambitious goal – the state could reduce overall Medicaid expenditures by an estimated $228 million. To yield such savings, the state would have to design and implement an enhanced program, invest in approximately 100 additional options counselors, and serve at home or in the community approximately 2,500

Regardless of whether a person can immediately return home with adequate services or needs rehabilitative services provided in a facility, the individual and family need to understand the potential for support for the individual to return back to the home.

[7] American Health Care Association analysis of CMS data

[8] CMS-64 report, as compiled by Thomson Reuters, 2010

Medicaid enrollees who formerly received nursing facility care. Nevertheless, we believe the Medicaid savings to the state would be substantial from such an investment.

3. Support Family Caregivers and Organized Volunteer Programs

Over 80% of all long-term care services and supports (LTSS) in New York State are provided informally by family members, friends and neighbors.[9] AARP calculated that in 2007 3.3 million New Yorkers provided unpaid care at some time during the year with an estimated value of $25 billion.[10] The typical family caregiver has been described as a 64 year-old female caring for a parent up to 24 hours a day by assisting with personal care tasks, finances, shopping, house-keeping and arranging for a large variety of other services. At great personal sacrifice, these unpaid caregivers make it possible for individuals with long term care needs to remain in their homes, and not be institutionalized. Such personal responsibility indirectly although substantially helps the state to avoid incurring Medicaid costs for expensive nursing facility settings.

In order to continue providing care to loved ones, many family caregivers need some relief from their caregiving responsibilities.

- New York should assure that a combination of paid staff and trained volunteers are made available to provide this relief. Volunteers could assist with chores and shopping, provide social contact in-person or by telephone for those who have difficulty leaving their homes, and escort individuals to medical appointments. In addition, volunteers could provide needed relief for family members when an individual returns home after a hospital or nursing facility discharge. Trained volunteers could also potentially serve as health navigators to ensure that people are coordinating with their primary care physician after discharge, taking the proper medications and receiving prescribed follow-up care. The NYS Office for the Aging received a grant from the federal Administration on Aging to test the use of trained volunteer Community Support Navigators to assist individuals after hospital discharge and prevent avoidable re-hospitalizations and institutionalizations. We encourage New York policymakers to assess the impact of this program for potential future investment.
- Unpaid caregivers could receive needed support, too, if there were additional funding for the cost-effective Expanded In-home Services for the Elderly Program (EISEP), Supplemental Nutrition Assistance Program (SNAP) and Social Adult Day Care programs. EISEP could provide some needed help with personal care tasks; SNAP could help pay for appropriate nutrition; Social Adult Day Care could both allow individuals to leave their homes for the positive benefit of socializing with others, while allowing unpaid caregivers some relief from their work.

What can be saved?

Numerous studies have documented the physical and emotional stress experienced by those who care for a loved one with a long-term disability, as well as the stress experienced by caregivers who try to juggle work, children and an older family member needing care. A New York University School of Medicine randomized controlled study of spousal caregivers for Alzheimer's patients,

[9] NYS Office for the Aging estimate
[10] AARP Public Policy Institute, 2008

concluded that counseling and support intervention led to a 28.3% reduction in the rate of nursing facility placement.[11]

We believe there are considerable Medicaid savings that can come from supporting family caregivers and investing in volunteer programs. Even though the state budget crisis is grim, we believe that strengthening programs such as the Expanded In-Home Services for the Elderly Program (EISEP), Supplemental Nutrition Assistance Program (SNAP), and Community Services for the Elderly (CSE) is essential as these programs provide services to help New Yorkers remain independent in their homes by providing direct support to them and to the caregivers that support them. These programs' cost-effective services prevent individuals and families from "giving up" and seeking nursing facility admission. If New York increased the number of people served in the EISEP program by 2,500 at the cost of $4 million and this investment delayed individuals and families from seeking expensive facility care in a year, New York could conservatively save an estimated $15 million in Medicaid funds.

New Federal Funds Available to Support these Recommendations
New York State should seize the opportunity to utilize the significant grant opportunities under the Affordable Care Act of 2010 (ACA) to improve its LTSS system and infrastructure and provide needed services to individuals and families in their homes.

1. State Balancing Incentive Payments Program (BIPP)

New York could likely receive an additional 2% federal match on its Medicaid non-institutionally-based services and supports spending if it applies and is selected for this grant program. . The BIPP program, beginning October 2011 and continuing through September 2015, an incentive for states to offer home and community-based services (HCBS) as a long-term care alternative to nursing homes. It requires state applications to detail a plan for expanding and diversifying HCBS and estimate costs of the new and expanded services. Although the federal Centers for Medicare and Medicaid Services (CMS) has not yet finalized how it will calculate the additional federal match, we do know that New York Medicaid spent over $9.5 billion on non-institutional services and supports in FY 2009.[12] A reasonable interpretation of the legislative language could mean over $190 million of federal funds to New York per year for each year of the four year grant program.

In order to qualify, New York would have to commit to achieving a target HCBS spending percentage of 50 percent by October 2015[13] and make three structural changes to its long-term services and supports (LTSS) system within six months of application to achieve: 1) a statewide no wrong door-single entry point system; 2) core standardized assessment instruments; and (3) conflict-free case management services. New York would likely have to invest some resources in a program such as NY Connects to broaden available information and ensure that individuals can obtain easy access to eligibility determinations for public programs so as to meet the single entry point requirement; and invest in strengthening existing public information and connecting various governmental information systems to ensure consumer access to public programs. The State would

[11] Mittelman and Haley. "Improving Caregiver Well-Being Delays Nursing Home Placement of Patients with Alzheimer Disease," Neurology, 2006
[12] CMS-64 report, as compiled by Thomson Reuters, 2010
[13] It was 47% in FY 2009

also need to prioritize its work towards adopting standardized assessment instruments statewide and across all its LTSS programs.

At least some of the federal funding could likely be used to rightsize county nursing facilities, for NY Connects options counseling, to expand funding for Medicaid caregiver relief programs, for nutrition programs and social adult day care, as well as for other needed home and community-based services. These BIPP funds are expected to be used to focus on those services that reduce Medicaid costs, especially costly nursing facility care, while delivering quality services in the home and community.

1. Money Follows the Person Rebalancing Demonstration Program

In January 2007, the NYS Department of Health received a five year commitment from CMS of over $82.6 million to transition 2,800 Medicaid enrollees from institutions under its Money Follows the Person program. The ACA reduced the amount of time a Medicaid eligible individual must reside in an institution from six months to ninety days (not including days for the sole purpose of receiving short term Medicare rehabilitation services), extended the program through 2016 and allocated an additional $2.25 billion in additional funding, a portion for which New York could likely be eligible. The money is targeted to increase the use of home and community-based services and reduce the use of institutional services in addition to helping Medicaid enrollees transition out of institutions. Some of this money could likely be utilized to rightsize county nursing facilities, for NY Connects options counseling, to expand funding for EISEP, caregiver relief programs, nutrition programs and social adult day care, as well as other needed home and community-based services. These funds should be used to focus on those services that reduce Medicaid costs, especially costly facility care, while delivering quality services. New York can apply to CMS for additional funds during its annual budget review.

2. Community First Choice Option

New York could potentially receive an additional six percent federal Medicaid match rate for implementing a Medicaid State Plan option providing person-centered, consumer-controlled home and community-based attendant care services. This Community First Choice (CFC) option is available starting October 2011. This option is a permanent part of the ACA law and has no ending date. Services must include assistance in accomplishing and the acquisition, maintenance, and enhancement of skills for activities for daily living, instrumental activities for daily living, and health-related tasks, in addition to back-up systems for continuity of services and supports and voluntary training on the selection, management, and dismissal of attendants. States must set income eligibility levels up to 150% of the federal poverty level (FPL) and up to a state's Special Income Limit for those who meet the institutional level of care criteria (NY has no Special Income Limit).

States that choose this option must maintain or exceed their prior fiscal year HCBS expenditures for older adults and individuals with disabilities. States must also establish and maintain a comprehensive, continuous quality assurance system for attendant services and develop this option in collaboration with a Development and Implementation Council, a majority of whose members are individuals with disabilities, older adults and their representatives.

If New York implemented this Medicaid State Plan option and was able to move the 8,500 individuals who currently receive services in the $325 million Consumer Directed Personal

Assistance Program into this new option, New York would immediately gain almost $20 million annually in new Medicaid funds. New York would continue to receive this additional 6% federal match for every new person choosing this option. In addition, if an additional 5,000 of the approximately 70,000 individuals currently receiving agency-based home care services in the traditional Medicaid Personal Care program chose to receive consumer-directed services under this new Community First Choice Option, New York could achieve further savings. Clearly, it will be important to ensure that beneficiaries who move from other programs into the Community First Choice Option do not experience any disruption in service or loss of benefits.

AARP recommends that New York begin to analyze projected costs and potential savings and plan for the implementation of this option so it can be ready to take advantage of the 6% enhanced federal Medicaid match when the program begins this year. Since CFC is a Medicaid state plan option, all Medicaid-eligible enrollees who need these services must have access to them. Given that New York already gives broad access to its personal care option, there should not be a large number of new enrollees eligible for these benefits. There are some cautions: (1) additional benefit costs could result from the legal requirement that there needs to be back-up systems or mechanisms to ensure continuity of services and supports and training for consumers on selecting and managing their personal attendants; and (2) there is also a state maintenance of effort requirement in the first full fiscal year in which the option is implemented.

Conclusion

AARP believes that New York could save millions of Medicaid dollars by re-engineering the way it provides long-term services and supports and, in addition, receive millions of new federal Medicaid dollars by serving people at home and in community settings rather than in costly institutional care.

As New York considers its social contract with seniors this great state, it would be wise to remember that numerous AARP and other surveys over the years have documented the reality that individuals needing long-term services and supports want to receive those services and supports in their homes, whenever possible. New York should seize these opportunities of a state fiscal crisis and new federal funds to give people the services they need where they want them and save hundreds of millions of dollars in Medicaid funds in the process.

AARP stands ready to assist in these important efforts.

Sincerely,

Lois Aronstein
Sr. State Director
AARP New York