GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION
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TESTIMONY BEFORE THE JOINT FISCAL COMMITTEES OF THE NEW YORK STATE LEGISLATURE: HEARING ON HEALTH & MEDICAID

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Greater New York Health Care Facilities Association ("GNYHCFA") is a not-for-profit trade association serving the needs of the long term care community in the greater New York metropolitan area and beyond, representing 78 proprietary and non-proprietary nursing homes. GNYHCFA has a firm commitment to providing quality care and is focused on ensuring successful performance, maintenance, safe practices, equipment operation, and hazard assessment at each facility. It is the Association's mission to address patient care by supporting effective design, construction, inspection, and operation of health care facilities in order to ensure that our State's most vulnerable population -- our senior citizens -- receive the best possible care when residing in nursing homes. Our members also embrace the importance of maintaining a highly dedicated, well trained direct care workforce for the benefit of our residents, and their support networks. GNYHCFA respectfully submits this testimony to highlight key provisions of the Executive's Proposed Budget for the 2017-2018 State Fiscal Year, and identify certain issues that should be addressed at this time.

1. Bed Hold/Prospective Per Diem Cut

Since 2010, New York State Public Health Law has provided that nursing homes shall be entitled to reimbursement for reserving of a nursing home bed under limited circumstances. Specifically, the State has limited reimbursement to fourteen days in a 12-month period for temporary hospitalization, and ten days in a 12-month period for non-hospital (i.e.: therapeutic). Moreover, the nursing home is only eligible to receive reimbursement at 95% of the Medicaid rate. This policy was established to protect vulnerable residents who may have acute episodes requiring hospitalization, or other departures from the nursing home. The State interest was to ensure that a bed in the nursing home would remain available for that resident, eliminating any uncertainty that the resident could return to his or her home. The policy also balanced the importance of protecting the home's ability to maintain financial solvency during the absence. To protect the State's financial concerns, the policy only permits nursing homes to receive bed hold reimbursement when the nursing home census is at least 95% of its licensed capacity.

Now, the Executive is proposing to eliminate the financial solvency protections afforded to nursing homes by repealing the methodology to reimburse for reserve bed hold days, but still mandating that the home maintain bed availability. (*See* Health & Mental Health Art. VII, Part E, §§ 2-3.) While GNYHCFA understands the importance of protecting the ability of a nursing home resident to return to the facility after an absence, the State must acknowledge that if a home is keeping a bed vacant, the home must receive reimbursement to the existing policies. For this reason, GNYHCFA respectfully urges the Legislature to reject this proposal.

The Executive further attacks service providers for New York's most vulnerable population by proposing to establish a prospective per diem adjustment to nursing homes. (*See* Health & Mental Health Art. VII, Part E, § 4.) This adjustment would reduce aggregate payments to New York nursing homes annually by $18 million. This proposal, in conjunction with the repeal of the bed hold reimbursement, would result in a $40 million cut to the nursing home provider community. This proposal must be rejected as well.

2. **Extension of Trend Freeze and Trend Factor Reduction** (Part I, §§ 4-5)

For nearly a decade, the nursing home provider community has been denied any adjustments for inflation. Despite this limitation, New York's long term care facilities have strived to endure past budget cuts. Even the face of the State's refusal to provide any trend – and in fact impose a trend cut – the nursing home providers continue to meet the MRT Global Spending Cap targets. Due to effective management by facility operators and owners, the nursing homes have been able to survive. The Executive now, however, without regard to these efforts and the conscious actions taken by long term care providers to manage without an adjustment, has proposed to extend the trend factor freeze *for an additional three years*. GNYHCFA objects to this continued trend cut.

3. **Health Care Facility Transformation Program Funding** (Part K)

GNYHCFA commends the Executive for continuing additional capital support for essential health care providers. GNYHCFA urges the Legislature to ensure that both proprietary and voluntary residential health care facilities are eligible to be considered for program funding.

4. **Health Care Regulation Modernization Team** (Part L)

To the extent that the Legislature seeks to include the Governor's proposal to establish a 25 member taskforce to advise on how health care statutes and regulations should be restructured, it is imperative that the list of stakeholders include membership from the nursing home provider community.

5. **Restoration of "Return On"**

Absent from the proposed Executive budget this year is any attempt to remedy the error made by in 2011 when implementing certain MRT proposals regarding long term care. Among the adopted initiatives was a proposal aimed exclusively at proprietary nursing homes. Specifically, §2808(20)(d) of the Public Health Law granted the Commissioner of Health the authority to reduce or eliminate the Return on Equity in the Medicaid rate capital component for services provided by proprietary health care facilities for rate periods on and after June 1, 2012.

Department of Health ("DOH") regulations governing the current reimbursement methodology for proprietary nursing homes historically provided for two key components in capital cost reimbursements: (1) interest payments on the capital investment -- essentially an annual rate of return on the money invested -- and (2) a return of the equity actually invested in the nursing home. *See* 10 NYCRR § 86-2.21. The system was created to inspire and incentivize owners to invest in making capital improvements in nursing homes. Notably, this State policy was accomplished; many owners made significant improvements to the facilities. These owners, however, made the investments in confidence that Department's obligation to partner in this investment would continue for the useful life of the home, and then at a reduced rate thereafter. This is consistent with the corresponding DOH regulations pertaining to voluntary and public nursing homes, which also make capital investments and therefore equally deserve to have capital cost components in their rates. These entities' rates include allowances for depreciation or debt service, depending on how the investments are financed, as well as mortgage interest. *See* 10 NYCRR § 86-2.19.

Despite this, ultimately, the Commissioner eliminated the Return on Equity in 2012. As a result of this discriminatory policy, proprietary skilled nursing facilities are not being reimbursed for Return on Equity in their land and buildings, thereby being thwarted in their investments and ability to optimize opportunities to benefit residents. GNYHCFA urges the Legislature to reinstate the authority for reimbursement of Return on Equity.

Respectfully Submitted,

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