



# **Testimony**

*to the*  
**Joint Legislative Budget Committee**  
**on**  
**Health and Medicaid**

**February 2, 2015**

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Representing more than 600,000 professionals in education and health care  
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Andrew Pallotta

***Executive Vice President***  
**New York State United Teachers**  
**to the**  
**Senate Finance Committee**  
**John DeFrancisco, Chair**  
**and**  
**Assembly Ways and Means Committee**  
**Herman D. Farrell, Jr., Chair**  
**on the**  
**Proposed 2015 - 2016 Executive Budget**  
**for**  
**Health and Medicaid**  
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Good afternoon, Chairman DeFrancisco, Chairman Farrell, and honorable members of the Senate Finance Committee and Assembly Ways and Means Committee.

I am Andrew Pallotta, Executive Vice President of New York State United Teachers (NYSUT). NYSUT represents more than 600,000 education and health care workers statewide. NYSUT's Health Care Professionals Council (HCPC) consists of representatives of NYSUT's 16,000 professional registered nurses and other health care professionals working in public and private health care settings. Our members work in hospitals, clinics and through home health care agencies. Our members also include physicians, visiting nurses, therapists, lab personnel, school psychologists, and registered professional school-based nurses throughout New York state. In addition, NYSUT represents over 160,000 retirees, many of whom use the state's health care system. On behalf of the HCPC and NYSUT, thank you for the opportunity to submit testimony today on the 2015-2016 Executive Budget Proposal.

We are greatly appreciative of your decisive legislative actions, over past few years, as you have aided our health care professionals in their workplace by enacting reforms that help all our members be an effective resource to the public:

Last year, in the 2014 New York state budget, you agreed that New York state's health care facilities (i.e. hospitals, nursing homes, diagnostic treatment centers and clinics licensed under Article 28 of the Public Health Law, state operated group homes and health care units in prisons and OCFS facilities) needed a sound safe patient handling law that would protect both patient and health care worker. You recognized, post-budget, the need for enacting a best practices law with regard to the school nurse as the authority on a student's need for administering necessary medications in school (Ch. 423). Finally, you provided schools (namely, the school nurse) with the ability to provide and maintain an adequate supply of epinephrine injectors to administer to students in emergency situations (Ch 423).

It is apparent to us that you appreciate the complex and, often, difficult environment that our health care professionals must work in. Therefore, we hope that you will continue to enact legislation that considers the safety and well-being of both patients and workers, namely: providing a school nurse and counselor in every school building, expanding anti-mandatory

overtime protections for home care nurses, and loan forgiveness programs that make the health care profession more attractive to prospective employees.

I am sure we can all agree that the key to providing critically needed health care services in a high-quality manner is having appropriately trained and knowledgeable health care professionals at every level of the health care delivery system. Having said this, I would like to discuss, more specifically, how the executive budget affects our health care professionals and the New York state citizens who rely on their skills. My hope is that you will seriously consider our input as you begin the very difficult task of deliberating and negotiating the 2015-2016 New York state Executive Budget.

### **Medicaid**

The 2015 NYS Executive Budget Medicaid (state share) Spending Cap continues a year-to-year cap growth of no more than a ten year rolling average of CPI and allows the Commissioner of the Department of Health to adjust if spending exceeds cap. 2015. Increases in Medicaid spending under the 2015 Global Cap is \$17.57B (+ \$596M/3.6 %). Total 2015 Medicaid spending (all funds) is \$62.05B (+ \$3.29B/ 5.6 % increase).

While we are pleased that executive budget will continue to restore the two percent across-the-board rate reductions for all health care service sectors as it did in 2014, NYSUT is concerned with a few of the proposals in the 2015 executive budget:

the extension of Medicaid Global Cap; and

the extension of the continuation of the elimination of the institutional trend factor reimbursement rates to hospitals and nursing homes;

NYSUT is concerned about how a perpetual cap on spending for our health care facilities will impact the delivery of health care services and programs by health care providers to our neediest New York state citizens.

While we appreciate the 3.6 cap increase (+ \$596M) over SFY 2014-15's spending cap, we believe that strict enactment of a budget with these provisions without consideration of the unpredictable medical needs of the New York state population, will significantly compromise delivery of health care services to our state's citizens. As you, no doubt, are aware, hospitals, nursing homes and home care agencies serve a range of people from the chronically ill to those in need of emergency care. Crises, epidemics and natural disasters occur without warning and expert, decisive responses by health care professional are, therefore, instrumental to our nation's care and resiliency.

Hospitals had to respond, not only to, the influx of medical emergencies, but had to maintain the needs of the patients who were already under their care as well as serve as safe havens for shelter and food. Clearly, our health care facilities need to be preserved and fiscal caps and reductions do not aid in such preservation.

In addition, enrollment in Medicaid continues to grow while the Executive proposes to completely eliminate the trend factors rates for hospitals and nursing homes. This action, unfortunately, requires these health care facilities to absorb all inflationary increases without any

cost-of-living adjustments. Such a harsh approach ignores the heightened costs and the mix of services that providers offer and fails to distinguish between high and low occupancy facilities. The last year these facilities were provided with a full trend factor adjustment was 2005.

A large portion of the Executive's cuts to the Medicaid program mean an equal loss of matching federal funds. If enacted in its current form, the Executive's budget proposal would amount to decreased revenue to hospitals, home care providers, and nursing homes. The consequence of the Executive's continued cuts to health care professionals working in these facilities may be massive layoffs, elimination and sacrifice of high quality services and, most likely, more facility closings. Clearly, cutbacks of this magnitude to the health care community are unacceptable to NYSUT and to New York state citizens, who would be adversely affected by either an elimination or compromise of health care services. We ask that you work closely with the Executive on alternatives to his budget proposals, namely:

We want a reassessment of the Medicaid Global Cap.

We want reinstatement the annual trend factors for health care facilities that have been denied such funding since 2005.

### **Pharmacy Reimbursement**

The executive budget contains a proposal to decrease pharmacy reimbursement for brand name prescription medication by changing the formula from the average wholesale price (AWP) minus 17% to AWP minus 24% under the Medicaid program. While this proposal would achieve State savings by reducing reimbursement, ultimately the health care facility or pharmacist would now bear the burden of having to absorb the reduction.

### **SUNY Hospitals**

I would now like to talk about the SUNY hospitals. I want to thank the legislature for again coming to the rescue last year and restoring the funding that was cut by the governor in his budget proposal. Unfortunately, the 2015-16 NYS Executive Budget cuts the SUNY hospitals by \$19 million which is the restoration you made last year. This cut seems to ignore that the state has a responsibility to at least partially compensate the hospitals for their service to indigent populations and to help pay for the unique life-saving services they offer which are not typically provided in private hospitals. These include burn units, trauma care units and poison control. These hospitals also serve as a safety net for low-income communities, the uninsured and the underinsured. These patients rely on these hospitals for health care.

We ask that the state make a financial commitment to these hospitals to ensure their survival. To that end, we are requesting that you provide \$59 million in additional funding to these hospitals in this year's budget. This will restore their funding level back to the 2010-11 SFY level of \$128 million. We cannot expect these hospitals to continue to operate and provide services to the indigent on their current level of funding. Our members working in these hospitals dedicate their lives to serving others in need. It is wrong for the state to use these public hospitals as pawns to drawn down federal Medicaid funding and then cut them to the bone.

We are also very concerned that the 2015-16 executive budget again advances Article VII language to provide for a pilot program to assist in restructuring health care delivery systems by

authorizing for profit capital investment in health care facilities. This legislation allows for the establishment of up to five business corporations, one of which must affiliate with an academic medical institution or teaching hospital (this could be a SUNY hospital). It also authorizes these corporations to own and operate hospitals, as well as other health care facilities.

NYSUT strongly opposes this proposal which if enacted, could set the stage for the closure, or at the very least, the privatization of our SUNY hospitals. This cannot be allowed to happen. Moreover, we know from the experiences of neighboring states that for profit ownership and operation of hospitals has not worked. The state of Massachusetts is the site of the largest experiment in private equity backing to acquire non-profit hospitals. Beginning in 2010, the "Steward" Hospital Corporation (backed by politically active private equity fund Cerberus Hallmarks of the Steward work in their 10 previously non-profit hospitals have been (a) having hospitals take on debt, (b) continued conflict with labor and (c) forced contracts between the acquired hospitals and other Cerberus-backed companies. acquired the six hospitals of Caritas Christi, previously owned by the Archdiocese of Boston, and, subsequently, four other not-for-profit hospitals, for a total "chain" of ten acute care hospitals and one longer-term facility.

Since 2010, transparency on Steward's activities has been limited at best. Thanks in large part to an investigation by the Massachusetts Nurses Association ([www.mnastewardproject.org](http://www.mnastewardproject.org)) we do know that Steward has put on a considerable amount of debt on the books of its hospitals in order to make payments to its investors. It reduced staff considerably in its hospitals and has had continued conflicts with labor. Moreover, while it controlled 14% of the acute inpatient general care hospital beds in the Commonwealth of Massachusetts, it was responsible for 29% of the complaints to Medicare and the state agency responsible for investigating such complaints. In addition to the deterioration of staffing and the prevalence of complaints, the Steward hospitals also experienced poor financial performance, worse than they had experienced prior to their acquisition and conversion.

In fact, things got even worse in 2014 when Steward closed Quincy Medical Center without explanation despite promising to keep it open and to make investments in the medical center. This facility had been open for 124 years. The following promises were made by Steward with respect to Quincy Medical Center. None of them were kept.

- Maintain an acute care hospital for ten years;
- Pay \$35 - \$38 million toward Quincy Medical Center's outstanding debt;
- Provide \$44 - \$54 million in facility upgrades;

In New Jersey, the experience has not been any better as the state has been stuck with debt from converted hospitals and new for profit owners have voided long-standing managed care contracts. This has rendered patients instantly "out of network" with their local hospital. In addition, patient care has experienced increased problems that have not been addressed.

In Connecticut, Tenet, the for profit hospital chain from Texas abandoned its plan to buy five hospitals in a joint-venture when they learned that they would be required to provide for the continuation of existing hospital services, charity care and typical responsibilities of non-profit hospitals. This exemplifies that for profit companies will always put their bottom lines before providing quality health care treatment for the patients that they serve.

That is precisely why New York has always maintained a system of public and non-profit hospitals. For profit hospitals are wrong for patients, wrong for health care workers and wrong for New York. We urge you to reject this bad proposal again this year.

I want to now turn to the ongoing problems we are experiencing with SUNY Downstate Medical Center. We all know the value of this institution so I'm not going to re-iterate her today. I want to thank you for your heroic efforts over the last two years in supporting this great hospital. Without your efforts, there is no doubt that it would have closed.

This year, the executive budget provides \$700 million in new capital funding to stabilize the health care delivery system in Kings County. The funds may be used for: renovating or replacing inefficient or outdated facilities as part of a merger, consolidation, acquisition or other significant corporate restructuring activity intended to create a financially sustainable system of care that promotes a patient-centered model of health care delivery aimed at improving the overall health and well-being of a community.

It has been widely reported that there are plans to use this \$700 million to build a new hospital in Brooklyn. We believe that to use this money for this purpose would be a big mistake. It would very likely have serious negative consequences for SUNY Downstate and other Brooklyn hospitals. We believe that establishing up to 14 new ambulatory care centers across Brooklyn would be a much better use of this funding. The residents of Brooklyn do not need another hospital. What they do need is access to primary care which these centers would provide. They would "create a financially sustainable system of care that promotes a patient-centered model of health care delivery aimed at improving the overall health and well-being of the Brooklyn community."

We urge you to enact our Brooklyn Safety Net Hospital Plan which lays out this concept that we introduced last year and have developed with UUP and other unions to address the hospital crisis in Brooklyn. We believe that this plan is the only one that is a win-win for all the hospitals in Brooklyn.

NYSUT is also very concerned about how this \$700 million is to be awarded. According to the appropriation language, "Funding will be awarded in the discretion of the commissioner of health, without a competitive bid or request for proposal process ..." This constitutes a total overreach by the governor and is completely inappropriate. If enacted, the Commissioner of Health will be authorized to dole out \$700 million to whomever he pleases without any standards or transparency. This appropriation authority is contrary to how the state is supposed to award public dollars and ignores the ethical discussions that are currently taking place in the public discourse.

Unfortunately, there is little that you can do as you are constrained by the *Pataki vs. Silver* court case which prohibits you from changing the language of an executive budget appropriation. Notwithstanding this reality, we urge you to reject the enactment of this appropriation in its current form.

### **Health Care Facility Transformation Program**

Under the 2015-16 NYS Executive Budget, \$700 million in capital funding is being allocated to address health care needs of central and east Brooklyn communities. Reports are that this money would be used to replace an existing medical facility with a new institution. NYSUT believes that the residents of Brooklyn would be better served by the creation of 14 new ambulatory care centers rather than one hospital. Brooklyn is one of the most diverse boroughs with a large immigrant community. The number of uninsured adults in Brooklyn is higher than the state average with many residents less likely to seek medical treatment in an outpatient department or emergency room.

### **New York State Health Insurance Benefit Exchange**

NYSUT was pleased with the establishment of a New York Health Benefit Exchange for the purpose of providing lower cost health insurance for over a million New Yorkers, and enabling New York to comply with the federal Affordable Care Act (ACA).

The 2015-16 NYS Executive Budget creates a new assessment on insurers to support the ongoing operations of the Health Benefits Exchange. While NYSUT applauds the creation of the Exchange as the mechanism to increase the numbers of insured individuals/families, we are concerned that the insurers would pass the cost of the assessment onto their enrollees. We would urge that any new fee to support the Exchange be levied against employers who do not provide health insurance coverage to their employees. New York should not reward bad behavior.

### **Private Equity Pilot Project**

A pilot program would be created to allow the Public Health and Health Planning Council (PHHPC) to approve five business corporations to participate in a private equity project. The business corporations under this pilot program would have to affiliate with at least one medical or teaching hospital approved by the Commissioner. The PHHPC would have to consider a number of factors when deciding whether or not approve an applicant, including how profit distributions would be made in a way to ensure the communities access to quality care and core community benefits would not be compromised.

We are concerned that the pilot project does not provide the proper safeguards to ensure access to quality care, including adequate staffing levels to deliver optimal care. Private equity firms are most often motivated by profits, with decisions regarding health care delivery being dictated by increasing revenue and not patient care. News reports have highlighted examples of private equity firms that have thrived at the expense of the patient; often turning away patients in order to make space available for more complicated higher care/cost cases as well as limiting the number of staff available for direct care in an attempt to reduce overhead.

New York state must look to support existing medical centers before allowing private equity firm pilot projects.

### **Conclusion**

We believe that you fully understand the important role that the health care professional plays in each community across our state and the nation. Recently we have seen health care concerns arise from a measles outbreak to fear of an Ebola epidemic.

NYSUT's Health Care Professional Council appreciates certain reforms to the health care system proposed in the Executive budget; however, we oppose any cuts that adversely affect the health care professional workforce and its ability to provide direct quality care to New York state residents, particularly the indigent. Such cuts to essential health care services serve only to compromise our health care professionals' ability to maintain and help the people of New York state. Therefore, we respectfully ask the following of the New York state legislature:

reinstate the annual inflation (trend) factors for health care facilities; and

reassess the Medicaid cap to allow for flexible spending when needed.

The NYSUT Health Care Professional Council, as well as all NYSUT members, look forward to working with the legislature and the Executive to ensure that all New Yorkers have the resources necessary to insure that they receive the highest quality of care possible.

Thank you for your consideration.

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