New York State NURSES ASSOCIATION One strong, united voice for nurses and patients

Health and Mental Health 2019-2020 Executive Budget

Testimony to the Joint Committee on Health & Medicaid

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New York State Nurses Association

My name is Jill Furillo and I am the Executive Director of the New York State Nurses Association. NYSNA is the largest union representing registered nurses in New York State, with nearly 40,000 members. As a union representing registered nurses, we advocate universal, equal, high quality health care for all New Yorkers regardless of ability to pay. We strongly support legislation and regulation that allow nurses and other direct care health workers to provide care for our patients and communities in compliance with professional standards, with guaranteed minimum nurse staffing levels, and under safe and fair working conditions.

In reviewing the FY2020 executive budget proposal, we note that support for vital health care services is being maintained or expanded and that there are no serious proposals to undermine standards of nursing care and practice.

NYSNA Supports the Proposal to Conduct a Study on Ways to Ensure Safe Staffing and Patient Safety
The Executive Budget includes a proposal directing the Department of Health to conduct a study that will examine ways to implement staffing enhancements to improve patient safety and the quality of care in the health care industry, and particularly in the provision of care in our hospitals and nursing homes.

The proposal recognizes the inherent authority of the DOH to regulate hospitals and nursing homes to ensure patient safety. It further directs the DOH to engage health care industry stakeholders to conduct a study on the (a) the need for staffing enhancements and other ways to improve patient care; (b) the costs and financial impacts of improved staffing and (c) the impact of improved or enhanced staffing regulations on patient safety and the quality of care.

NYSNA and a range of other labor and community advocates for safe, high quality patient care strongly support the establishment of mandatory minimum staffing standards or floors to ensure that hospital and nursing home patients have enough registered nurses, licensed practical nurses, nurse's aides,

patient care technicians, and other direct patient care workers to receive the safe and proper patient care.

We welcome Governor Cuomo's proposal to conduct a study that we expect to consider the positive benefits for patients and patient care providers that will follow from establishing minimum staffing standards and expect that minimum staffing ratios covering registered nurses, licensed practical nurses, nursing aides, patient care technicians and other direct care staff will be the most effective approach to improving patient safety and the working conditions of direct care workers.

The DOH will review and incorporate in its findings the well-established conclusions or numerous studies and the experiences of California and other jurisdictions that have successfully implemented minimum staffing ratios.

Setting a floor on the number of patients that registered nurses, licensed practical nurses, nursing aides and patient care technicians can be assigned to care for is safer to patients, safer for direct care workers and in the end more cost effective than short-sighted management efforts to cut corners and pinch pennies by skimping on patient care. This is intuitively obvious and support by the data.

A well-established body of research shows that the more patients assigned to a nurse and other direct care staff the worse the quality of care that is received by patients. Poor staffing increases patient mortality rates, reduces patient health outcomes, increases the incidence of co-morbidities, complications and length of stay, reduces patient ratings of their care experience, lengthens patient recovery times, and increases the rates of readmission and unnecessary health care utilization.

Poor staffing also negatively affects the working conditions of direct care workers and the experience of patients. Inadequate staffing increases wait times for care, is a trigger for workplace violence and assaults on patient care staff, leads to increased workplace injuries and illness, depresses workplace morale and leads to higher rates of staff burnout and turnover.

The adverse effects of poor staffing also have serious costs and financial consequences for hospitals, nursing home and other health care providers' bottom lines. High rates of turnover of direct care staff pose a huge and increasing cost for employers in the form of direct recruitment and training costs and indirectly in the form of lost experience and productivity. Unnecessary patient admissions and readmissions impose significant costs on the health care system and result in reduced reimbursement and other monetary penalties under current federal and state policy. Poor staffing is a major contributing factor in assaults and work-related injuries, leading to increased labor back-fill and employee health care costs to employers.

NYSNA strongly supports the establishment of enforceable minimum staffing ratios in hospitals and nursing homes, applicable to nurses and other direct care workers, as a necessary measure to ensure the health and safety of patients and workers in our hospitals and nursing homes.

We support the Governor's proposal, look forward to actively participating in the process, and expect that it will be an important element in reaching the goal of safe quality care for patients, safe and decent working conditions for patient care workers and equal access to care for all New Yorkers.

We further urge the Assembly and Senate to include specific language in their budget legislation to:

(a) Reiterate the existing authority of the Department of Health to issue regulations establishing minimum direct care patient standards in hospitals and other Article 28 health care facilities;
(b) Provide necessary funding to support the DOH study;
(c) Require that the staffing enhancement and improvement measures to be studied include specific care giver to patient ratios and care hour per patient day models of regulation;
(d) Provide that any staffing enhancement models cover registered nurses, licensed practical nurses, nursing aides, patient care technicians and other direct care workers;
(e) Provide that the DOH study estimate both the direct costs of implementation of staffing enhances and the offsetting cost savings to be generated from improved staffing, including the dynamic economic effects of improved staffing on patient care, community health, direct care worker health and working conditions, improved productivity in the delivery of health care and other similar factors;
(f) Establish timelines for establishment of the stakeholder advisory committee, criteria to ensure that it is broadly representative of direct care workers as well as providers and patients advocates, and provide a timeline for completion of the process; and
(g) Direct the DOH to exercise this authority to set minimum concrete standards of care, by incorporating the findings and recommendations of the report in established regulations consistent with applicable legislation, including any existing or future staffing legislation.

NYSNA Supports the Governor's Proposal to Convene a "Universal Access Commission", to Codify Federal ACA Insurance Coverage Requirements, and to Establish ACA Exchanges in State Law

NYSNA remains a strong advocate for universal health coverage for all New Yorkers and supports the enactment of the NY Health Act, which would create a single-payer health system to directly pay for health care for all New York residents.

Though NYSNA continues to support enactment of the New York Health Act, we recognize that existing health care coverage provided by the ACA in the form of subsidized private insurance coverage and expanded Medicaid coverage must be maintained in the face of threats from the Federal government.

Codification of the minimum health coverage requirements of the ACA will prevent private insurers and employers from offering substandard "junk" health plans, refusing to cover essential health benefits, or denying coverage based on pre-existing conditions. Codification in state law of the ACA exchanges will protect the roughly 200,000 New Yorkers who rely on these private insurance plans for their coverage.

We support the establishment of the Universal Access Commission to explore ways to further reduce uninsured levels in New York, but would advocate that the Commission focus on implementation or

transition to single payer options, including the NY Health Act as the ultimate guarantor of health coverage for all New Yorkers.

NYSNA Supports Increases in Medicaid Reimbursement Rates for Hospitals and Nursing Homes

In November of last year the Governor increased the Medicaid reimbursement rates for hospitals by 2% and for nursing homes by 1.5%. This was the first general increase in Medicaid rates in many years and NYSNA welcomed this positive step.

NYSNA recommends that the Legislature give strong consideration to legislation to further increase Medicaid reimbursements in anticipation of the ongoing threat of draconian reductions in the federal Disproportionate Share Hospital (DSH) funding for NY State. The Governor discussed the looming DSH cuts, which have been postponed several times by the US Congress, as a major threat to funding for healthcare. If the DSH cuts are not eliminated or postponed again, NY hospitals will face a reduction of about $700 million beginning October 1, 2019 and a reduction of $1.4 billion in FY2021.$$$$ reduction in funding beginning October 1st.

The State can blunt the DSH cuts to hospitals and maintain federal matching money by shifting the local share of DSH funding into Medicaid rate increases which would be matched by the Federal government.

Proactive steps should be taken now to further increase hospital Medicaid reimbursement rates, maximize New York's drawdown of federal funding for health care, and shield safety net hospitals from the impact of the proposed cuts.

NYSNA Supports the Continuation of Vital Operational and Capital Funding Programs Directed to Safety Net Hospitals

The Executive budget proposal would continue existing funding for the operational needs of financially precarious safety net hospitals under the Vital Access Program (VAP), Vital Access Provider Assurance Program (VAPAP) and the Value Based Payment Quality Improvement Program (VBP QIP).

NYSNA also supports the continuation of funding for the capital needs of safety net hospitals under the ongoing Health Care Facility Transformation Program.

The Governor has stated that additional funding for the VAP/VAPAP and VBP QIP programs may be made available to financially distressed hospitals that seek assistance. The capital funding for the Facility Transformation Program is not being increased and there will not be a new round of grant applications. Instead, facilities that failed to secure funding in Round II will be eligible to apply for up to $300 million in grant.

NYSNA supports increased funding for these programs.

NYSNA also believes that the Health Care Facility Transformation Program be modified to make public hospitals eligible receive funding.

NYSNA Supports the Continuation of the Essential Health Plan

The Essential Health Plan provides coverage to peoples making between 138% and 200% of Federal Poverty Level and certain documented immigrants making less than 200% of FPL. This program provides health coverage to about 800,000 New Yorkers, in 2018-2019, making it a key source of health coverage for low income New Yorkers. The program is almost entirely funded by Federal disbursements, and is actually generating surplus revenues.

NYSNA supports the continuation of the Essential Health Plan, but believes that the surplus revenues generated should be directed specifically to supporting safety net provider or further expanding coverage to the uninsured.

NYSNA Supports Enactment of the Women's Agenda

NYSNA supports proposals to codify in New York law the requirement that health insurers provide contraceptive coverage without cost sharing/co-pays, the removal of outdated regulations in the penal and health law related to abortion rights, creation of a Maternal Mortality Review Board, and improved access to fertility services.

These changes in New York law will further access for women to vital health services and lessen long-standing gender inequities in the health care system. These measures are long overdue and fully supports their passage.

NYSNA Supports the Allocation of Funds from the Proposed Cannabis Regulation and Taxation Act to Support Safety Net Providers

The Executive budget proposes to legalize adult use of cannabis, create a regulatory framework for its use, and impose taxes on adult recreational use, similar to current taxation of alcohol and tobacco use. The proposal would also address issues related to past criminal enforcement of cannabis control laws by reducing criminal penalties for possession of small amounts, ultimately decriminalizing the use of marijuana by adults, sealing of past criminal conviction records involving marijuana and removing possession from the list of parole violations.

NYSNA proposes that any future revenues raised from the taxation of cannabis products be specifically dedicated to supporting safety net health care providers.

NYSNA Supports the Expansion of State Tobacco Controls

The Executive budget proposes to expand existing tobacco controls in a more comprehensive state policy framework, including raising the age for purchase of tobacco and vaping products to 21, restricting the marketing of these products, restricting the areas in which they can be used, and imposing a tax on vaping products.

NYSNA supports these measures, but recommends that the revenues to be raised by the vaping tax be specifically targeted to supporting vital safety net providers rather than being available in HCRA accounts for unrestricted allocation.

NYSNA Supports Continuing Efforts to Limit Drug Costs and Pharmaceutical Distributor Payments
The Executive Budget proposes to enhance the power of the DOH to directly negotiate drug prices with manufacturers and enhances regulation and oversight of pharmacy benefit managers.

NYSNA supports the continuing state efforts to reign in the abuses and exploitative practices of the pharmaceutical industry.

NYSNA is concerned, however, with several aspects of the Executive budget proposals, including the proposal to eliminate "prescriber prevails" provisions of both Medicaid fee-for-service and managed care plans, to increase co-pays (from 50 cents to $1) and to give the DOH greater authority to remove drugs from the Medicaid covered formulary.

NYSNA is concerned that these measures may negatively impact the availability and access to needed medications for Medicaid participants. We urge the legislature to consider rejecting these items from any proposed budget legislation.

NYSNA Opposes the Dilution of Nursing Scope of Practice Standards
The proposed Executive budget does not make any proposals to dilute or otherwise weaken existing nursing scope of practice regulations and standards.

NYSNA has opposed past efforts to undermine nursing scope of practice and is heartened that no such measures are included in this year's budget proposal.

NYSNA Opposes Cuts in NY City Public Health funding
The Executive budget proposes to reduce state reimbursement for the City of New York under the DOH General Public Health Program from 36% to 20%. This would reduce City funding for public health initiatives by $27 million.

NYSNA strongly opposes this proposal. There should be no cuts in public health funding. In addition, this reduction unfairly targets NY City, which already shoulders a disproportionate burden in terms of taxation and revenue distribution and pays a larger share of DSH and Medicaid costs than other localities.

NYSNA Supports Reform of Disproportionate Share Hospital and Indigent Care Pool Methodologies to Fairly Target Funds to Enhanced Safety Net Hospitals and Other Safety Net Providers
The Federal Disproportionate Share Hospital (DSH) program currently allocates about $1.8 billion to New York to provide support to hospitals that provide health care to "disproportionate" shares of Medicaid and uninsured patients. These funds are intended to compensate these hospitals for the losses associated with high rates of Medicaid and uninsured patient populations and correspondingly low rates of privately insured patients. The basic premise of the program is that Medicaid

reimbursement rates are set below actual costs in most instances and that uninsured patients are not reimbursed at all, putting these hospitals in a precarious financial situation. The DSH funds are intended to redress this imbalance by providing extra support to offset these losses and allow these safety net institutions to continue to operate and provide vital care to poor communities.

The $1.8 billion in federal DSH funds is matched by an equal state and local contribution of $1.8 billion, for a total of about $3.6 billion in funding for eligible hospitals.

The state and local share is paid through two main mechanisms – about $1.135 billion in matching money is paid for through the Indigent Care Pool (ICP), most of which is allocated to cover the state/local DSH share for private hospitals. The remaining $700 million is paid through Intergovernmental Transfers (IGTs), most of which fall on the City of New York to cover the local share of DSH allocations to public hospitals.

The state methodology for distributing the DSH and ICP funds does not target this funding to those hospitals with the highest rates of Medicaid and uninsured patients. Instead, it distributes the money more broadly to all hospitals, using formulas that continue to incorporate bad debt, and consequently distributing significant portions of the limited pool of funds to hospitals that do not need the funds (because they are highly profitable) or do not deserve the funds (because they serve a proportionately low share of Medicaid and uninsured patients).

In 2018, pursuant to a memorandum of understanding between the Governor and the Legislature, a workgroup was convened to study reform of the DSH/ICP program, including addressing legislated "transition collar" that continues to allow bad debt to be counted as charity care, and examining the broader issue of DSH fund distribution.

NYSNA was a participant in the workgroup, and in that capacity issued a proposal to (a) increase Medicaid reimbursement rates for statutorily defined Enhanced Safety Net Hospitals by 10%, (b) to change DSH and ICP allocation formulas to target money to hospitals with the highest rates of charity care, (c) to reduce or eliminate DSH and ICP funding for hospitals that have high profit rates or have low rates of Medicaid and uninsured patients relative to their total patient population, and (d) to change current law to prevent the NYC Health + Hospitals system from facing almost the entire brunt of the cuts in federal DSH funding that are scheduled to take effect in October 2019.

NYSNA also endorsed a joint Health + Hospitals Community Proposal that would have eliminated the bad debt transition collar, increased Medicaid reimbursement rates for safety net hospitals by 7%, maintained or increased current DSH and ICP allocation for all safety net and near safety net hospitals, and leveraged additional federal funds to support safety net hospitals.

The DOH was supposed to have issued a report in December. To date, the report has not been released.

The Executive budget does not address any of the issues related to the reform of the DSH and ICP programs and merely proposes to again extend the "transition collar" timeline for elimination of bad debt from the formula for allocation of DSH funds.

NYSNA urges the legislature to demand the release of the ICP Workgroup report, to include in its budget proposals the proposals to reform DSH and ICP funding mechanisms put forth in the Health + Hospitals Community coalition and NYSNA proposals, and to address the looming problem posed by the current DSH and ICP allocation mechanisms under which any future federal DSH cuts will be borne entirely by the NYC Health + Hospital system.