



Testimony of:

**NEW YORK STATE  
HEALTH FACILITIES ASSOCIATION**

and the

**NEW YORK STATE  
CENTER FOR ASSISTED LIVING**

on the

**2019-20 New York State Executive Budget Proposal  
Health & Mental Hygiene  
Article VII Bill**

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## **Introduction**

Good afternoon. My name is Stephen Hanse and I have the privilege of serving as the President and CEO of the New York State Health Facilities Association (NYSHFA) and the New York State Center for Assisted Living (NYSCAL). Joining me today is Nancy Leveille, R.N., M.S. the Executive Director of the Foundation for Quality Care (FQC), the research and education arm of NYSHFA/NYSCAL. NYSHFA/NYSCAL members and their 60,000 employees provide essential long-term care services to over 50,000 elderly, frail, and physically challenged women, men, and children at over 400 skilled nursing and assisted living facilities throughout New York State.

## **Recent Budgets**

Over the past twelve years, funding cuts to New York State's long-term care providers have approximated nearly \$1.9 billion. Initiatives implemented by the MRT have forced long term care providers to absorb nearly \$800 million in cuts over the past six fiscal years, and the potential for additional Federal cuts to Medicare and Medicaid continues to place providers in dire straits. That is all occurring during a time when providers are implementing new Federal Requirements of Participation (ROPs), the Patient Driven Payment Model (PDPM) for Medicare and numerous quality initiatives, requirements which involve the investment of significant resources.

New York State unfortunately leads the Nation with the largest shortfall between the amount Medicaid reimburses providers and the actual cost of providing resident care in the nursing home (approximately \$55 per day). Moreover, New York State's skilled nursing and assisted living providers have continued to endure mounting budget cuts and growing operational expenses to comply with minimum wage, health insurance increases, and ever rising food and utility costs. However, unlike most all other industries, skilled nursing facilities cannot pass these increased costs on to the consumer.

In the 2018-19 Enacted Budget, the Legislature and the Governor established the Health Care Transformation Fund, "to support health care delivery, including capital investment, debt retirement, housing and other social determinants of health,

or transitional operating support to health care providers.” The source of this funding is revenue derived from “excess reserves” related to the sale of Fidelis to Centene. Centene purchased Fidelis for \$3.75 billion, and the State will receive \$500 million over a five-year period. As such, nursing homes are set to receive a 1.5% increase in their Medicaid rates intended to reflect the ever-growing demand of workforce costs. Acute care hospitals also received a 2% rate increase. As workforce challenges continue, this funding is crucial for long term care providers across New York State.

However, this year’s Budget proposal from the Governor would essentially wipe away the 1.5% rate increase, and skilled nursing providers would continue to bear a disproportionate share of budget cuts. Moreover, it is critical that the State provide an increase in both the SSI rate and ALP rate for assisted living providers. The State’s senior population continues to grow, and with the uncertainty at the Federal level, New York must ensure long term care providers receive a rate reflective of the care they are expected to provide.

### **2019-20 Executive Budget Nursing Home Case Mix Cut**

The State’s 2019-20 proposed Medicaid Budget includes an administrative provision directed at nursing homes to achieve \$123 million (State Share) in savings by altering the existing case mix rate methodology. This is the largest funding cut included in the proposed Medicaid Budget. Together with the Federal matching share, this proposed cut equals \$246 million and accounts for nearly one-third of the funds used to reimburse skilled nursing providers for case mix. As such, this administrative cut wipes out the above referenced 1.5% increase while including no funding to address healthcare workforce demands.

The Legislature likely will or has already heard from the Department of Health that this is not a new proposal, and that nursing homes should not be surprised to see the case mix proposal. This is true – last year’s enacted Budget reduced case mix funding by \$15 million, but it is critical to note that part of this initiative states “*The proposal is to work with the Nursing Home Industry to revisit the current MDS Census Collection Process in an effort to promote a higher degree of accuracy in the MDS data which should result in a reduction of audit findings.*” (See SFY 2018-19 Medicaid Scorecard)

To date, no ‘work’ or discussions related to case mix methodology have taken place with the nursing home industry, but what has taken place is this year’s proposal for cutting over one third of the case mix rate funding for nursing homes.

NYSHFA/NYSCAL and its members remain ready to work with the Executive, the Legislative and the Department of Health on this important issue so that all parties truly understand what the MDS process consists of, the Department’s methodology for calculating this \$246 million cut, and the devastating impact it will impose upon nursing homes and the residents they serve.

### **2019-20 Executive Budget Overview**

Given these concerns, I would like to outline several critical long-term care issues impacting providers contained within the 2019-20 Executive Budget:

- I. NYSHFA/NYSCAL **opposes** the administrative changes to the case mix process of adjusting nursing home Medicaid rates for resident acuity;
- II. NYSHFA/NYSCAL **supports** increased investment in recruitment and retention of health care workers to address the State’s growing workforce shortages;
- III. NYSHFA/NYSCAL **supports** an increase in the Supplemental Security Income (SSI) rate for assisted living providers;
- IV. NYSHFA/NYSCAL **supports** continued efforts to improve and build on quality, compliance and efficiency through Nursing Home Quality Initiative (NHQI) measures, including State funding for the Initiative;
- V. NYSHFA/NYSCAL **supports** funding for crucial infrastructure and technological upgrades through the Statewide Health Care Facility Transformation Program, ensuring that LTC providers receive a fair share;
- VI. NYSHFA/NYSCAL **opposes** the recently published nursing home bed hold regulations from the New York State Department of Health (DOH);

- VII. NYSHFA/NYSCAL **supports** thorough discussions and studies of safe staffing/patient safety initiatives and ensuring all stakeholders are involved; and
- VIII. NYSHFA/NYSCAL **opposes** the proposed “New York Security Deposit Act” (Part U, ELFA) as it arbitrarily includes senior facilities that are currently regulated by the Attorney General.

### **Summary of Proposals**

#### **I. Oppose the 2019-20 Executive Budget Case Mix Cut Proposal**

Included in the Executive Budget is an administrative proposal to reduce Medicaid case-mix patient acuity adjustments for nursing homes in an effort to save \$123 million annually (\$246 million gross).

Case Mix Index (CMI) is a direct reflection of residents’ acuity in a nursing home. CMI is used to adjust reimbursement and is the primary payment system for Medicaid skilled nursing facilities throughout the Nation. The Federal Government also uses a case mix payment system for Medicare reimbursement to nursing homes.

In a case mix system, residents are evaluated based on the level of care they require, and then grouped with other residents based on like-care needs. Each provider is assigned an average/cumulative “case mix index” by the DOH which indicates resources utilized by the residents. A skilled nursing facility’s payment rate is then adjusted by the DOH based on this index.

Case mix is adjusted upwards or downwards based on direct care provided to residents. The benefits are numerous, namely that this ensures access to care for medically complex individuals with significant care needs, it enhances quality of care by linking reimbursement to medical acuity, and it is efficient because providers are paid retrospectively.

Nursing homes are always growing in their clinical skill set in order to accept residents with more comorbidities and higher medical acuity than ever before. Hospitals are able to comfortably discharge individuals earlier knowing that there are nursing homes capable of providing advanced care to their patients. For example,

hospitals can often discharge an individual shortly after cardiac orthopedic surgery to a sub-acute rehab facility following surgery; this is a reflection of an evolving health care industry. Nursing homes should always be able to receive payment for the actual cost of care they are providing, and not be impeded by arbitrary reductions imposed by the State.

For background, from 2006-2009, case mix payments were frozen at 2006 levels during the State's transition from the prior Patient Review Instrument (PRI) screening tool to the Minimum Data Set (MDS). As a direct consequence, nursing home admissions were often directed at less medically complex individuals due to their reimbursement not having been tied to the actual cost of providing more intensive care to residents. Once this freeze ended, providers transitioned to the MDS, and facilities were finally able to take medically complex residents and be paid adequately for such. Additionally, through the Office of the Medicaid Inspector General (OMIG), any time a provider's CMI increases over 5%, the reimbursement is capped at 5%, pending an audit by OMIG.

The State must ensure that it does not repeat the mistakes of the past. Arbitrary cuts in case mix can result in the following:

- Decreased access to necessary skilled nursing care for New York State's individuals in need, as increased nursing/therapy services for medically complicated residents is not reimbursed for the true cost of care;
- Diminished ability of nursing homes to care for the increased needs of high-acuity residents resulting in an increase in re-hospitalizations, which runs contrary to the goals of the MRT and the Delivery System Reform Incentive Payment Program (DSRIP); and
- Erosion of the underlying principles of a case-mixed system because the proposal creates a disincentive to admit the neediest and costliest residents due to a lack of reimbursement for this intensive care. Providers are already managing the impact of a Medicaid payment shortfall of approximately \$55 dollars per day.

## **II. Supplemental Security Income (SSI) Rate Increase (State Share):**

NYSCAL is requesting a \$20.00 per day rate increase in the SSI payment to \$61.00 per day per resident in the 2019-20 State budget. It is imperative that the State increase the SSI rate so these facilities can continue to provide quality care and services to our frail elderly and disabled SSI recipients.

New York has many adult care providers who care for individuals whose only source of income is Social Security Supplemental Income (SSI). These adult care facilities provide care for the neediest individuals, including those with mental illness, physical frailties and those without a family support system.

Adult Care Facilities have been negatively impacted by rising costs, including the minimum wage increase, health insurance premiums for staff, ever increasing utility costs and inflation costs of food. However, the SSI rate has remained frozen for over 10 years at \$41.00 per day. As a result, many of the SSI facilities can no longer handle these financial losses and have been forced to close its doors.

The Legislature has recognized the importance of this issue, having unanimously passed legislation to increase the SSI rate to adult care facilities, (See S.6732/A.6715-B).

In vetoing this much needed legislation, the Governor stated the following:

*“While I fully support the objectives underlying these bills, the proposed increases are not supported by any identifiable funding source. Collectively, these bills would add hundreds of millions of dollars in increased and unbudgeted costs to the State's budget, which will ultimately be shouldered by the State's taxpayers. Decisions impacting the scope and efficacy of Medicaid funding, both in terms of revenue available and appropriations to be expended, have always been, and should continue to be, addressed in the context of annual budget negotiations. At a time when the Federal Government has enacted, and is threatening additional, devastating cuts to the State's health care system, it would be irresponsible to incur such unbudgeted costs outside of that process. For these reasons, I am constrained to veto these bills. As part of the budget process, I am directing the Department of Health to work with stakeholders and the Legislature to*

*address concerns related to the scope and adequacy of reimbursement to health care providers.” Veto Message No. 241 (2017)*

The Executive Director of NYSCAL, Amy Kennedy, has personally witnessed closure planning for facilities as a consequence of the State’s insufficient SSI rate, and did so at the McCauley Assisted Living Program here in Albany, New York.

As stated above, NYSCAL is requesting a \$20.00 per day rate increase in the SSI payment to \$61.00 per day per resident in the 2019-20 State budget. It is imperative that the State increase the SSI rate so these facilities can continue to provide quality care and services to our frail elderly and disabled SSI recipients.

### **III. Support LTC Workforce Retention and Recruitment**

Last year the Legislature ensured that the Governor’s proposal to consolidate and cut funding for public health programs was minimized and that funding for the health workforce retraining program was funded at SFY 2017-18 levels.

NYSHFA/NYSCAL urges the Legislature to do all it can to protect public health funding and health care workforce programs. The health care workforce continues to lose quality employees to food/retail industries, exacerbating the shortages for all health care providers.

### **IV. Support a Comprehensive Staffing Study**

The Governor’s Budget proposes a staffing ratio study. This proposed study will engage industry stakeholders and the public to discuss and strategize on patient safety, various approaches to staffing and workforce implications and fiscal impacts to the industry and taxpayers. NYSHFA/NYSCAL looks forward to these discussions.

### **V. Oppose the Recent Bed Hold Regulations**

The Department of Health recently issued a proposed rulemaking that would, among other things, require skilled nursing facilities to reserve the same bed in the same room without receiving a reserved bed payment during a Medicaid recipient’s temporary hospital stay.



New York presently reimburses skilled nursing providers with at least 95 percent occupancy at 50 percent of their Medicaid daily rate for up to 14 days in a calendar year for residents who are admitted to a hospital.

A nursing home's costs for providing care do not decrease when a bed is vacant. Moreover, as a consequence of the 2011 MRT cuts to skilled nursing providers, Medicaid pays only half of the daily rate to reserve a bed for a resident who is hospitalized.

While the State's current 50-percent reimbursement is insufficient, New York's current bed hold requirements ensure a nursing home resident is able to come back from the hospital to their original room with their original clinical staff to ensure both the continuity of their care and the normalcy of their life and living environment. NYSHFA/NYSCAL respectfully requests the Legislature to reject the regulatory elimination of reserved bed payment to skilled nursing providers.

## **VI. Support Nursing Home Quality Initiatives**

NYSHFA/NYSCAL supports the addition of State funding to support the Nursing Home Quality Initiative (as opposed to the State's current \$50 Million nursing home funded system, which simply reallocates existing provider monies).

The Nursing Home Quality Initiative (NHQI) is an annual quality and performance evaluation project where nursing homes are awarded points for quality and performance measures in terms of quality, compliance, and efficiency. Deficiencies in the nursing home are incorporated into these results, and points are calculated annually to create an overall score out of 100. Nursing homes are separated by ranking into five quintiles with the 5th quintile being the lowest-performing.

New York's nursing homes have made excellent progress in the CMS Quality Measures, as evidence by the progress demonstrated since 2013 in the State's NHQI. NYSHFA/NYSCAL continues to work with its LTC affiliates to achieve further successes and is looking forward to discussions on this progress with Executive staff and Legislators.

## **VII. Support Statewide Health Care Facility Transformation Program Funding for Infrastructure and Technology**

The Executive Budget proposes to authorize DOH to award up to \$300 million of the \$525 million authorized in the Statewide Health Care Facility Transformation Program (SHCFTP) Phase III for applications that were submitted under Phase II, which was authorized in the FY19 budget. The Department announced it was accepting applications in January 2018 with a submission deadline of March 2018, those awards have not yet been announced. Many nursing homes and assisted living facilities use this funding to update and modernize allowing them to deliver better quality of care.

## **VIII. Support an Increase in the Assisted Living Program Medicaid Reimbursement**

New York's Assisted Living Program (ALP) is an important and cost effective program for the disabled and frail elderly who require increased services but do not require services in an institutional setting. ALP's efficiently and effectively meet the needs of these individuals while providing an enhanced quality of life.

The ALP per diem rate was established to reimburse a residents' entire scope of service. The ALP rate was created in 1992 and is based on a statewide price adjusted regionally using the Resource Utilization Group/(RUG II) categories.

The prices were based on 1983 costs and have never been updated to reflect rebased costs. From 2006-2018, the aggregate cost increases due to inflation is approximately 24%. ALPs, however, have not received a trend factor since 2006. As a result, New York's ALP rates have remained at 2006 levels with the primary two RUG II category (which apply to 90% of residents) payments ranging per day from \$51 to \$97, depending on the region.

The original ALP payment methodology was based on 50% of the SNF per diem rate, however, the current ALP rate now approximates only 35% of the current average SNF Rate.

Given the forgoing, NYSHFA/NYSCAL respectfully requests the ALP reimbursement rate be increased to provide this essential care.

**IX. Support 2018-19 Enacted Budget Initiative for Return to FFS**

The 2018-19 Enacted Budget included a provision to exclude from managed long-term care (MLTC) enrollment nursing home residents following three months of consecutive nursing home care. Individuals that meet these requirements would be disenrolled from MLTC and revert to fee-for-service (FFS) Medicaid for their nursing home stay.

The SFY 2018-19 Medicaid Scorecard states that this policy was expected to result in a total savings of \$245 million for SFY 2019-20, in addition to the \$147 million in savings for this year from last year's enacted Budget. This initiative was effective April 1, 2018; however, as NYSHFA/NYSCAL understands it, the State is presently awaiting authorization from CMS.

**X. Oppose the “New York Security Deposit Act”**

The Governor's Executive Budget proposes to limit the amount of security deposit a landlord may charge a tenant to a value not more than two months' rent, including the first month's rent. There is no definition of what would qualify as a “security deposit,” but other provisions of existing law indicate that facilities charging an “entrance fee” would be subject to requirements of this proposal. This is wholly unnecessary, as these facilities are currently required by State law to file a plan for approval with the Office of the Attorney General. If a facility wanted to increase this fee, it must re-file for approval each time. It is unclear if the intent of the New York Security Deposit Act is to include these facilities, but we nonetheless urge the Legislature to reject this proposal as it does not contain the necessary exemptions.

**XI. Support Funding for Assisted Living Initiatives**

- The Governor proposes maintaining grant funding for Enhancing the Quality of Adult Living (EQUAL) at \$6.5M. NYSHFA/NYSCAL supports this initiative, however its necessity is indicative of the larger problem – lack of SSI increase.

- NYSHFA/NYSCAL supports the proposed funding for criminal background checks. The Governor proposes maintaining funding from previous years at \$1.3M to assist facilities with criminal background checks of employees to adequately safeguard patients. The checks can be time consuming and inefficient, often requiring travel and lengthy wait times for background processing throughout different law enforcement agencies and jurisdictions.
- Support funding for Transition of Mentally Ill Adult Home Residents. NYSHFA/NYSCAL supports all efforts to provide care in the least restrictive setting, while ensuring that those settings are safe and that the access to quality and needed health care services is adequate. The State should consider utilizing the Health Home Program in its transition efforts to provide individuals with care management while simultaneously ensuring the care is provided in the most integrated settings possible.

## **Conclusion**

In conclusion, the New York State Health Facilities Association and the New York State Center for Assisted Living (NYSHFA/NYSCAL) is thankful for the New York State Legislature's time and attention on these critical issues to ensure the continued delivery of high-quality, cost effective long-term care to our most vulnerable individuals.

It is vitally important that the New York State Legislature protect and enhance access to the crucial services provided by skilled nursing facilities for our rapidly aging population. Longer lifespans and better chronic disease management will contribute to the need for increased long-term care services as the baby boomer generation is aging. Worldwide those aged 60 and over are expected to double by 2050. New York cannot continue to cut funding to essential long-term care and assisted living programs and expect to be able to adequately serve this aging population.

As always, NYSHFA/NYSCAL will continue to work together with the Governor, the Legislature and all affected constituencies to ensure the continued delivery of high quality, cost effective long-term care services throughout New York State.

Thank you.