HANYS' SFY 2020-2021 state budget testimony

Joint legislative hearing of the Senate Finance and Assembly Ways and Means committees

January 29, 2020

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Good morning Chairs Krueger, Weinstein, Rivera and Gottfried, and committee members. I am Bea Grause, president of the Healthcare Association of New York State, representing nonprofit hospitals, health systems and post-acute care providers across New York. Thank you for this opportunity to discuss the 2020-2021 executive budget proposal.

During his annual State of the State presentation three weeks ago, Governor Cuomo stated that "New York has delivered on the promise that healthcare is a right for all, not a privilege for the few." That is a momentous achievement.

Our members are, and will continue to be, fully committed partners with the state as we continue historic efforts to transform the healthcare system.

Healthcare quality is our top priority

New York's hospitals, health systems and post-acute care facilities have made significant progress in quality improvement efforts by adopting evidence-based best practices and implementing data-driven interventions. Recent improvements include a 19% reduction in sepsis mortality, 35% reduction in hospital-onset *Clostridium difficile* and a 23-step jump in state rankings for maternal mortality.

Importantly, our members are sustaining and building on these improvements because the work of optimal patient safety and quality is a journey. HANYS' members pursue excellence all day, every single day. A total of 176 hospitals participate in the New York State Partnership for Patients, a federal safety and quality improvement initiative, and more than 200 healthcare organizations have joined HANYS' *Commitment to Excellence* program. Together, we are working to build on our successes and stay on the cutting edge.

We are on the front lines of public health challenges and emergencies

Our members serve on the front lines of public health challenges facing all New Yorkers, including the recent threat of coronavirus. New York's hospitals tackled SARS (also a coronavirus) in 2003, the 2009 flu pandemic, Ebola in 2014 and others. We know that prevention and control of novel infections like 2019-nCoV will continue to pose unique challenges.

While public health authorities and scientists work tirelessly to learn about the potential impacts of the newest virus, hospitals and others on the front lines of providing care are employing rigorous infection control practices and strengthening systems in place to rapidly identify patients with 2019-nCoV and prevent further spread.

We continue to partner with lawmakers to increase organ donations and fight the misuse of opioids, a scourge that affects families across this state. We also support enhanced restrictions on tobacco use, efforts to limit youth exposure

to vaping and initiatives to promote greater public safety, such as stronger bicycle helmet safety laws.

New York's hospitals and nursing homes are also on the front lines of emergency preparedness. Our healthcare providers stand ready to respond to natural disasters such as Superstorm Sandy and the devastation our friends and families have faced in Puerto Rico.

New York's healthcare providers know the importance of being nimble and adapting quickly to new threats, while maintaining focus on delivering quality patient care.

Improving the healthcare system for consumers

We also recognize the need to keep pace with our patients' evolving needs and expectations. Our members are working hard to provide patients with easy access to meaningful information on services and prices. HANYS' members will continue these efforts in partnership with state policy makers, understanding that we will need other stakeholders, including the payers, to join us in our ongoing efforts to keep patients at the center of our healthcare system.

To that end, we want to thank the governor for advancing as part of his budget proposal several critically important, common-sense managed care reforms. These proposals will provide much-needed efficiencies and will not only reduce administrative waste but will also lead to better patient experiences.

Coverage is key

We stand firmly committed to ensuring access to affordable healthcare and achieving the goal of universal coverage. Thanks to the governor and legislature, New York is a leader in providing healthcare coverage for its citizens: 95% of New Yorkers have access to some type of health insurance. We are committed to working to increase that percentage.

Hospitals are economic anchors, but we face serious challenges

Hospitals and health systems across New York play a vital role in improving local economies and communities. Quite often, our members are the largest employers in their community. Together, they add $170 billion to New York's economy. Our workforce is the backbone of our facilities, from our nurses and doctors to maintenance, food service and cleaning staff. Everyone plays a vital role in our success and ability to deliver needed services to our patients.

Keeping our doors open to care for the sick and injured and serving as places of refuge for those with nowhere to turn is a responsibility and privilege we embrace.

However, our membership continues to face serious challenges, including workforce issues.

In a world of advancing technologies, we are working to address an aging workforce and provider burnout. We support and thank the governor for his proposal to increase apprenticeships, including those in healthcare. I would like to also thank you for your continued support in ensuring a healthy and robust healthcare workforce.

Further compounding our workforce challenges is this year's proposed elimination of the excess medical malpractice program, which helps to address a medical malpractice insurance affordability crisis by funding a secondary layer of medical malpractice insurance.

Our members, large and small, urban, suburban and rural, provide 24/7 healthcare services for all New Yorkers, regardless of their ability to pay. This is our core mission. We recognize and applaud the support we've received from the governor and the legislature in providing vital resources for us to continue this mission. Please consider continuing infrastructure investments for our hospitals and nursing homes, should funds become available.

Together, we must continue moving these efforts forward.

HANYS and the hospitals, health systems and post-acute care providers we represent appreciate the fiscal challenges our state is facing. We want to be partners in helping to solve these challenges. However, as we move through budget deliberations, we ask you to be mindful that cuts to providers put at risk all of the good work we've accomplished together thus far.

Exacerbating the state challenges is the unrelenting assault on the healthcare delivery system by the harsh and detrimental policies of the federal government, particularly those being generated by the current administration. We've seen the implementation of numerous administrative actions by the president that have put at risk billions of dollars of federal support, most aimed directly at our safety net providers.

These include cuts to the 340B Drug Pricing Program, site-neutral payments, targeting New York through the area wage index and, most recently, proposals to limit a state's ability to finance its Medicaid program through supplemental payments. These cuts exact an overwhelming toll on New York's healthcare providers. We are working daily to reverse and minimize the impacts of these drastic policies, but the threat remains very real.

Our nonprofit hospitals and health systems are doing all of this despite facing serious financial challenges. The statewide average hospital operating margin

of 1.7% is the worst in the country, with nearly half of New York's hospitals operating with *negative* margins.

Our nonprofit nursing homes, whose residents are overwhelmingly insured by Medicaid, are paid significantly below the cost of providing care to these individuals. This underpayment contributes considerably to the fragile condition of our state's nonprofit and public nursing homes.

We stand ready to help address the Medicaid imbalance

The governor has called for another Medicaid Redesign Team in his 2020-2021 executive budget to address what he has defined as a $2.5 billion Medicaid shortfall. The MRT will do this without imposing any negative fiscal effects on local governments and, most importantly, without diminishing or reducing services to Medicaid recipients.

It is hard to imagine that amount of money being taken out of New York's healthcare delivery system without putting a great deal of strain on our already over-stretched hospitals, health systems and post-acute care providers. This will clearly be a challenging and critically important endeavor with impacts that will be felt for years.

I'm here today to offer my help and that of my members. HANYS is ready to be part of the governor's initiative to bring stakeholders together to address the Medicaid imbalance. We played a key role in the original MRT nearly a decade ago and welcome the opportunity to again be part of the solution now. Throughout this process, we will remain committed to protecting our patients and the dedicated healthcare professionals who serve them.

We thank the legislature for acknowledging these challenges and continuing to support New York's healthcare institutions and the dedicated professionals who serve in them. HANYS is committed to working with state government and all healthcare stakeholders as we pursue our common goal: ensuring that the highest quality care is accessible and affordable to all New Yorkers. We appreciate the support of the legislature and governor and look forward to continuing the progress we have made together.

Attached is HANYS' summary chart outlining key healthcare provisions of the proposed executive budget for 2020-2021.

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HANYS' Detailed Overview of the State Fiscal Year 2020-2021 Executive Budget

Issue/topic	Governor's budget proposal
Global funding proposals	
Medicaid Redesign Team	Establishes a Medicaid Redesign Team charged with identifying $2.5 billion in state Medicaid savings in SFY 2020-2021. The recommendations for achieving these recurring savings, which are due before April 1, 2020, cannot negatively impact Medicaid beneficiaries nor rely upon local governments beyond the current structure. The budget also provides the administration the authority to make uniform across-the-board Medicaid payment reductions of $2.5 billion if savings cannot be identified by MRT II and approved by the legislature.
1% across-the-board payment cut/contingency	Provides contingency authority to continue the 1% Medicaid ATB payment reduction authorized in the last quarter of SFY 2019-2020 to keep spending within the limits outlined in the financial plan. This policy reduced Medicaid spending by $124 million (gross Medicaid) for the last quarter of SFY 2019-2020 and would cut Medicaid spending by $496 million (gross Medicaid) for the full SFY 2020-2021.
HCRA reauthorization and workforce program elimination	Extends numerous provisions of the Healthcare Reform Act through March 31, 2023, but also eliminates several workforce programs supported through HCRA (*see "Workforce" section for details*).
Capital funding	Does not include new capital funding to support continued investment in the Statewide Health Care Facility Transformation Program but continues spending authority for prior year funding commitments. Of the $525 million in "Statewide III" capital program funds authorized in SFY 2018-2019 budget, $187 million in awards have been announced.
Global cap and commissioner's superpowers	Does not extend the commissioner of health's "superpowers" for monitoring Medicaid global cap spending beyond the upcoming SFY 2020-2021, which was included in last year's enacted budget. The SFY 2020-2021 increase in state-share Medicaid spending is estimated to be 3.0%. The "superpowers" are maintained through the upcoming fiscal year.
Federal funding contingency provisions	Continues the authority of the director of the budget to develop plans to make spending reductions if federal Medicaid funding to New York state or its subdivisions is reduced by $850 million or more and/or if non-Medicaid federal support to New York state is reduced by $850 million or more. Any such plan would take effect automatically unless the legislature adopts its own plan within 90 days. Additionally, the budget authorizes the director of the budget to reduce by no more than 1% all general fund and special revenue fund aid to localities appropriations if the annual estimated general fund is reasonably anticipated to end the fiscal year with an imbalance of more than $500 million or more than the estimate for tax receipts projected in the SFY 2019-2020 Executive Budget Financial Plan. The provisions exempt certain appropriations from the uniform reduction but unlike previous years, does not exempt Medicaid from such reduction.
Minimum wage	Includes more than $1.8 billion for the SFY 2020-2021 minimum wage increases for healthcare workers who provide Medicaid services reimbursed by DOH. While this funding is made available outside the Medicaid global cap, it is considered Medicaid funding and has been identified as a major driver of the Medicaid structural deficit.

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Issue/topic	Governor's budget proposal
Hospitals	
Distressed and other supportive funding programs for hospitals and health systems	Maintains various supportive funding streams, including: • Hospital quality pool • Distressed hospital funding via the Value-Based Payment Quality Improvement Program (VBP-QIP) and Vital Access Provider Assurance Program (VAP-AP) initiatives • VAP funding for Critical Access Hospitals • VAP funding for essential community providers (rural hospitals) • Special payment add-on for Sole Community Hospitals
Enhanced safety net program	Eliminates $82 million in funding (Medicaid gross) to support "enhanced safety net hospitals" with a high volume of Medicaid and uninsured patients and hospitals operated by SUNY or a public entity. However, the budget continues $50 million in program funding (Medicaid gross) for Critical Access Hospitals and Sole Community Hospitals.
Indigent care pool methodology	Extends the ICP distribution methodology for an additional three years to March 31, 2023. However, the budget does not extend the transition adjustment or "collar," which currently caps the maximum hospital transition losses at 20% and will expire Dec. 31, 2020.
Certificate of need fees and surcharges	Imposes an additional surcharge on all CON applications equal to 3% of the total capital value of an application to be imposed when the commissioner provides approval of such application. The budget also exempts projects funded solely by state grants from all CON fees and surcharges and authorizes DOH to establish criteria for the purpose of exempting certain applications from the proposed 3% surcharge. Additionally, the provisions eliminate a hospital's ability to deem CON fees and surcharges for hospital construction applications as allowable capital costs for the purpose of determining reimbursement rates. The budget estimates the proposal will generate an estimated $70 million in state revenue.
Sexual assault forensic examiner program	Requires all hospitals with emergency departments to provide care to victims of sexual assault by having a certified sexual assault forensic examiner (nurse practitioner, physician assistant, registered nurse or physician) available onsite or within 60 minutes to conduct an exam and collect forensic evidence. Hospitals without EDs must have protocols in place to transfer patients, with consent, or care for patients who choose not to transfer, which may include having a SAFE come to the hospital.
Hospital price and quality transparency	Although not explicitly included in budget legislation, the governor previously announced an initiative to authorize DOH, DFS and NYS Digital and Media Services Center to create a consumer-friendly website (NYHealthcareCompare) containing information about hospital charges for medical services and the quality of services provided. Additionally, the site would include resources concerning financial assistance programs and what to do about a surprise medical bill.

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Hospitals	
Antimicrobial resistance	Requires all hospitals and nursing homes to establish antibiotic stewardship programs that meet or exceed Medicare and Medicaid Conditions of Participation. ASP programs must incorporate an ongoing process to measure the impact of the program. Additionally, the budget requires antimicrobial resistance and infection prevention training programs for licensed or certified individuals who provide direct patient care.
Hospital resident compliance audits	Repeals provisions requiring DOH to annually audit hospitals regarding their compliance with regulations governing the conditions and limits on the number of working hours for hospital residents. Supporting budget documents state DOH will instead administratively require hospitals to attest annually to their compliance with the requirements.
Comprehensive Psychiatric Emergency Program	Extends the authorization of CPEP until July 2024. Extends the length of time a CPEP may hold an individual, from 72 to 96 hours. Requires triage and referral services to be provided upon receiving the individual into the CPEP. Requires admission to an inpatient unit if the individual has been in an extended observation bed for more than 72 hours and still needs immediate treatment. Allows for the establishment of CPEP satellite facilities. Removes "crisis residence services" from the list of services a CPEP is required to provide.
Insurance/managed care	
Administrative denials	Prohibits an insurer from administratively denying payment to a general hospital for medically necessary inpatient, observation or emergency department services solely on the basis that the hospital did not comply with certain administrative requirements. The language further provides that the prohibition does not apply to claims for services for which a request for preauthorization was denied by the insurer.
Product identification	Requires an insurer to identify the plan or product of the insured when such insurer requests additional information from a provider in order to determine liability to pay a claim. The budget also requires an insurer to provide payment in these cases within 15 days of making the determination and to pay interest on the amount to be paid.
Down-coding of claims	Requires an insurer to use national coding guidelines when reviewing, upon a hospital's request, the insurer's initial determination to down-code a claim for payment. The provisions also require an insurer to pay interest on any increased payment resulting from the information submitted by the hospital related to the initial coding of the claim.
Administrative simplification workgroup	Requires DFS and DOH to convene a healthcare administrative simplification workgroup to study and evaluate mechanisms to reduce healthcare administrative costs and complexities. Findings and recommendations are due by April 1, 2021.
Healthcare claims payment performance	Requires insurers to report quarterly and annually to DFS on the number and value of healthcare claims, categorized by the claims received, paid, pended and denied.

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Issue/topic	Governor's budget proposal
Insurance/managed care	
Authorizations for inpatient rehabilitation services	Requires insurers to make authorization determinations for inpatient rehabilitation services provided by a hospital or skilled nursing facility within one business day of receiving necessary information. Current provisions require such determinations to be made within three business days.
Timeframe for appeal determinations	Shortens the current timeframe within which an insurer must make appeal determinations from 60 days to 30 days of receiving necessary information.
Provisional credentialing for physicians	Requires payers to provisionally credential physicians who are newly licensed, have recently relocated to the state, or who have been issued a new tax identification number to permit them to be reimbursed for the provision of services to a plan's enrollees pending the completion of the plan's credentialing process.
Independent dispute resolution	Repeals the provision enacted last year that exempts hospitals with a high percentage of inpatient Medicaid, uninsured or dual eligible discharges from the IDR process. The budget also adds language clarifying that inpatient services following an emergency room visit are included in the IDR process.
Hold harmless and assignment of benefits	Requires payers to pay out-of-network providers directly for emergency services, including any inpatient services following an emergency room visit, when an insured has made an assignment of benefit to the non-participating physician or hospital. The provisions also prohibit the non-participating provider from billing the insured directly for those services, other than any applicable cost-sharing.
Medical debt	Reduces the timeframe for healthcare providers to bring an action to collect medical debt from six years to three years of treatment.
Medical malpractice	
Physician excess medical malpractice	Eliminates the excess medical malpractice program after June 30, 2020. However, the budget extends DFS' authority to set rates for medical malpractice premiums until June 30, 2021. The budget includes $105.1 million in funding, a reduction of $22.3 million from last year, to support the costs of the program through June 2020.
Interest rate on court judgments and accrued claims	Eliminates the requirement of a 9% interest rate on judgments and instead requires interest at the "one-year United States treasury bill rate," defined as the weekly average one-year constant maturity treasury yield, as published by the Federal Reserve, for the calendar week preceding the date of the judgment. As of Jan. 23, 2020 the one-year constant maturity treasury yield was 1.54%, and in the past 12 months has ranged from 1.5% to 2.6%.
Medical indemnity fund	Eliminates funding to support the Medical Indemnity Fund for neurologically impaired infants. However, the budget includes language extending authorization for enhanced rates of provider reimbursement until Dec. 31, 2021.

Issue/topic	Governor's proposed budget
Workforce	
Elimination of various workforce programs	Discontinues several healthcare workforce-related programs, including the Health Occupation Development and Workplace Demonstration program, which supports the administration of the Health Workforce Retraining Initiative. The budget also proposes to eliminate several HCRA-funded workforce programs, including: • Health Workforce Retraining Initiative ($9.1 million) • Empire Clinical Research Program ($3.4 million) • Ambulatory Care Training program ($1.8 million) • Diversity in Medicine program ($1.2 million) • Area Health Education Center program ($1.7 million)
Rural healthcare access and network development	Combines two previously distinct programs, the Rural Health Care Access Development program ($8.25 million) and the Rural Health Network Development program ($5.53 million), into one program. The budget provides $9.4 million in support for the combined program, which is a 32% reduction from last year's total funding.
Doctors Across New York	Maintains current funding of $9.7 million to support the physician loan repayment and physician practice support programs.
Registered pharmacy technicians	Expands the settings in which registered pharmacy technicians may practice to include community pharmacies. The proposal would also increase the number of registered pharmacy technicians from two to four and the number of unlicensed persons from four to six that may assist a licensed pharmacist, provided the total number of individuals under supervision does not exceed six.
Physician profile	Modifies the information that physicians must provide as part of the information maintained on DOH's physician profile database and authorizes the use of a physician designee to maintain and update a physician's profile.
Physician oversight and licensure	Eliminates indefinite licensure for physicians and requires fingerprint-based criminal history record checks prior to licensure. Makes numerous modifications to the current process governing investigations of physicians, physician assistants and special assistants conducted by the Office of Professional Medical Conduct within DOH.
Prevailing wage	Requires the prevailing wage to be paid on construction projects that are paid for with at least 30% public funds and whose total costs exceed $5 million. The language provides specific exemption criteria for certain covered projects, which would not likely impact hospital construction projects. The provisions also establish a Public Subsidy Board with authority to make binding recommendations and determinations. The provisions are applicable to procurements issued or contracts executed on or after July 1, 2021.
Employee sick leave	Requires all employers to provide sick leave to their employees each calendar year. At a minimum, employees would accrue one hour of sick leave for every 30 hours worked, provided employees received a minimum number of total days of sick leave per year dependent upon the size of the employer. The budget also extends current labor law employee retaliation protections to this provision.

Issue/topic	Governor's proposed budget
Workforce	
Digital Marketplace ("gig economy") Worker Classification Task Force	Establishes a nine-member Digital Marketplace Worker Classification Task Force to make recommendations concerning the employment of digital marketplace workers, including the criteria used to determine the proper classification of such workers and other employee protections. The budget defines "digital marketplace company" as an entity that operates a website and/or smartphone application that customers use to purchase or arrange services, including healthcare services. The proposal does not apply to any company that has entered into a collectively negotiated agreement.
Behavioral health	
Opioids/fentanyl analogs	Conforms state law with federal law by adding 24 additional synthetic fentanyl analogs to the state Schedule I list of Controlled Substances and adds two additional synthetic fentanyl analogs to the state Schedule II list of Controlled Substances. Additionally, the budget authorizes DOH to add any substance to Schedule I if such substance is already listed on the federal schedules of controlled substances.
Behavioral health parity compliance	Requires DOH and DFS, in consultation with the Office of Mental Health and the Office of Addiction Services and Supports, to promulgate regulations by Oct. 1, 2020 establishing behavioral health parity compliance program requirements for commercial health insurers and Medicaid Managed Care plans. Requires any penalties collected to be deposited into a newly established fund that may only be used for initiatives supporting parity implementation and enforcement on behalf of consumers.
Prescription drugs	
Collaborative drug therapy management	Makes permanent provisions authorizing Collaborative Drug Therapy Management and makes numerous modifications to permit PAs and NPs to participate in CDTM, expand the permissible terms of the collaborative agreements, expand the settings in which healthcare professionals participating in CDTM may practice and modify the current requirements for licensed pharmacists to participate in CTDM.
Prescription Drug Pricing and Accountability Board	Authorizes the superintendent of financial services to investigate when the price of a prescription drug has increased more than 100% over a 12-month period and creates a nine-member Drug Pricing and Accountability Board to aid in such investigations.
Pharmacy benefit manager	Authorizes DFS to regulate PBMs. The budget further authorizes DFS to establish a "code of conduct" for PBMs that may prohibit conflicts of interest between PBMs and health plans, certain deceptive, anti-competitive or unfair claims practices, and pricing models such as spread pricing. Additionally, the provisions require PBMs to provide specified information to DFS and establishes financial penalties for violations of registration/licensure obligations and for failure to provide required information to DFS.

Issue/topic	Governor's proposed budget
Additional provisions	
DSRIP waiver authority	Extends until April 1, 2024, the authority of DOH, OMH, OPWDD and OASAS to waive any regulatory requirement necessary to allow providers involved in DSRIP projects or replication or scaling activities to avoid duplication of requirements and allow efficient scaling and replication of DSRIP promising practices. The current authority to issue regulatory waivers to providers participating in DSRIP projects is set to expire on March 31, 2020.
Tobacco control	Implements numerous restrictions and protections related to the use of tobacco, electronic cigarettes and vapor products including, prohibiting the sale of flavored electronic cigarettes and related products, and the sale of tobacco products, electronic cigarettes and related products in pharmacies. Additionally, the budget authorizes DOH to regulate the sale and distribution of carrier oils; requires manufacturers of electronic cigarettes and vapor products to provide to DOH and to make publicly available certain information, including ingredient lists; adds various other restrictions relating to the sale, display, transport and advertising of tobacco, electronic cigarettes and vapor products.
Local share of Medicaid costs	Limits the county-level (local) Medicaid growth to 3% annually. However, if a county (including NYC) exceeds its 2% property tax cap, Medicaid spending growth is limited to 2%. If the Medicaid growth target is exceeded, the locality is financially responsible for the excess spending growth and required to remit payment to the state for the non-federal share of those expenditures. The language provides the Division of the Budget with access to relevant data to confirm, and if necessary, make these financial determinations.
Health homes/criminal history record checks	Removes health homes from the list of providers that are subject to DOH's criminal history record check process and authorized to claim reimbursement for the cost of such process.
Styrofoam ban	Prohibits the sale, use or distribution of disposable food service containers made of expanded polystyrene (Styrofoam) and polystyrene loose fill packaging (packing peanuts) beginning Jan. 1, 2022. Hospitals, adult care facilities and nursing homes are included in the definition of covered food service providers included in this proposal. The language provides specified exemptions to the provisions of this proposal and authorizes civil penalties for violations of the provisions.
EQUAL program	Modifies the Enhanced Quality of Adult Living program to narrow the eligibility for funding to adult care facilities with a minimum threshold of residents with serious mental illness and to ACFs with the highest percentage of residents in receipt of Supplemental Security Income or safety net assistance. Funding is authorized to support mental hygiene training for staff, independent skills training for residents and capital improvement projects.
Recreational marijuana	Legalizes, regulates and taxes adult-use cannabis for individuals over 21 years of age and allows counties and cities with a population over 100,000 to opt out of the recreational-use program. The budget creates the Office of Cannabis Management within the Division of Alcohol Beverage Control. Revenues derived from the program, anticipated to total $500 million over five years, will be deposited into the Cannabis Revenue Fund and distributed for administration, traffic safety committee, social and economic equity plan, substance abuse and prevention, public health education and intervention, research and other identified purposes.