



Testimony of:

**NEW YORK STATE
HEALTH FACILITIES ASSOCIATION**

and the

**NEW YORK STATE
CENTER FOR ASSISTED LIVING**

on the

**2020-21 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). 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 & Medicaid Redesign Team (MRT)

Over the past thirteen years, funding cuts to New York State's long-term care providers have approximated nearly \$1.9 billion (the absence of a trend factor since 2007 alone accounts for approximately \$1.3 billion). Initiatives implemented by the first Medicaid Redesign Team (MRT) have forced long term care providers to absorb nearly \$800 million in cuts over the past seven fiscal years, and the potential for additional Federal cuts to Medicare and Medicaid continues to place providers in dire straits - all 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 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.

The State also recently implemented a one percent across-the-board cut to Medicaid providers, and while we are empathetic to difficult cost-containment decisions, this cut does not reach other cost-drivers in New York's Medicaid program, such as drug manufacturers.

We urge the Legislature to ensure that skilled nursing and assisted living providers are at the MRT II table in discussing and determining how to address the State's Medicaid deficit. As the Governor's FY 2021 Budget Briefing Book points out, New York State's population of 65 and older grew by 23.7 percent over the last decade, outpacing the national aging population average of 15 percent.”¹

2020-21 Executive Budget Overview

Given these issues and financial constraints, I would like to outline several critical long-term care issues impacting providers contained within the 2020-21 Executive Budget:

- I. NYSHFA/NYSCAL **opposes** an MRT II that does not include skilled nursing and adult care facilities as members;
- II. NYSHFA/NYSCAL **supports** strengthening administrative resources and efficiencies at the local government level to support a strong Medicaid program;
- III. NYSHFA/NYSCAL **supports** an increase in the assisted living program (ALP) rate for assisted living providers;
- IV. NYSHFA/NYSCAL **opposes** the recent 1% ATB cut to Medicaid providers;
- V. NYSHFA/NYSCAL **supports** increased investment in recruitment and retention of health care workers to address the State's growing healthcare workforce crisis;
- VI. NYSHFA/NYSCAL **opposes** the inclusion of nursing homes in the prevailing wage requirements for construction projects;
- VII. NYSHFA/NYSCAL **supports** maximizing the State's savings under the return to FFS policy for extended nursing home stays;

¹ SFY 20-21 Executive Budget Briefing Book, p.65.

- VIII. NYSHFA/NYSCAL **opposes** the imposition of a Certificate of Need (CON) surcharge on construction applications;
- IX. NYSHFA/NYSCAL **supports** continued funding for VAP and SHIN-NY;
- X. NYSHFA/NYSCAL **supports** efforts for training and capital improvement projects through the EQUAL program and **opposes** arbitrary cuts to ALP providers;
- XI. 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;
- XII. NYSHFA/NYSCAL **supports** funding for criminal background checks for hiring of staff at adult care facilities;
- XIII. NYSHFA/NYSCAL **supports** the antimicrobial resistance program; and
- XIV. NYSHFA/NYSCAL **opposes** the inclusion of skilled nursing facilities and adult care facilities under the State's polystyrene products ban.

Summary of Proposals

I. Include NYSHFA/NYSCAL on the MRT II

The State announced as part of its SFY 20-21 Budget it would be reinstating the Medicaid Redesign Team ("MRT") initiative with the goal of achieving \$2.5B in savings this year. The Governor has enlisted the original MRT co-chairs, Michael Dowling, President & CEO of Northwell Health and Dennis Rivera, Former Chair of SEIU 1199 to head up the "MRT II" initiative.

The Governor set forth 5 goals for the MRT II: (1) Zero impact on local governments; (2) Zero impact on beneficiaries; (3) Find industry efficiencies and/or additional industry revenue; (4) Root out waste; and (5) Report back in time for the April 1st budget deadline. Given that the goals include zero impact on local government or beneficiaries, is imperative that NYSHFA/NYSCAL be included in

MRT II to represent skilled nursing and adult care facilities in any discussions regarding Medicaid funding and programmatic changes.

II. Local Government Spending Reforms:

An additional prong to address the Medicaid deficit includes a proposal to limit the growth of a county's Medicaid takeover savings to 2% annually if that county does not stay within the 2% property tax cap. Although New York City is not subject to the 2% cap, it would be required to adhere to a 2% limit in the same manner to receive the savings. Should a locality's expenditure exceed 3% annually, that locality is required to pay the entire annual increase for that year. NYSHFA supports this proposal as it could help address a systemic problem in many counties when it comes to pending Medicaid applications and the failure of many New York counties to process Medicaid applications in a timely manner as required by law.

Delayed Medicaid Application Processing by Counties: An applicant requesting Medicaid may do so by dropping off an application to the local Department of Social Services (LDSS) or by mailing the application to the County which he/she resides. Nursing homes assist applicants/recipients in completing the necessary paperwork for Medicaid enrollment, including detailed information and documentation regarding income and assets. Federal and state law set time limits for processing a Medicaid application. The federal Medicaid Act requires eligibility to be determined with "reasonable promptness." A determination of eligibility for Medicaid must generally be made within a 45-day time period, with two exceptions.

After the application is submitted but prior to its acceptance, an applicant/recipient is considered "Medicaid pending," meaning the individual has not yet been approved or denied benefits. This period of time can prove to be difficult because in most cases, as seniors require long-term care during this interim period, but they cannot afford to pay for their cost of care.

Fortunately, many nursing homes will accept an individual on "Medicaid pending" status because if the application is accepted, the facility and providers will be reimbursed for the cost of care of Medicaid approved

benefits from the date the Medicaid application was filed. In addition, Medicaid can reimburse for services for up to three months prior from the date the application was filed if the individual is approved. With Medicaid pending, seniors can receive care prior to Medicaid approval and are neither responsible for paying the costs of the care and services received, nor are they responsible for the fees associated with room and board. Nursing homes receive no payments from the State while the application is pending and can only receive reimbursement once the application is approved. The resulting cash flow impact is detrimental to the operation of a skilled nursing facility and could impact patient care for other residents as well. It should also be noted that when Medicaid applications are rejected, the State will not reimburse the facility, and in most cases the nursing home is not paid at all. Again, when nursing homes accept this risk and provide the much-needed long-term care to seniors in need.

A recent survey of providers servicing Erie County conducted jointly by NYSHA/NYSCAL and LeadingAge shows that the County owes approximately **\$14.7 million** to skilled nursing facilities for care already provided. The Associations are currently in the process of conducting a state-wide survey. NYSHFA/NYSCAL supports efforts to improve oversight and administration of the Medicaid program at the County level by the State.

III. Adequate Funding for Adult Care & Assisted Living Facilities:

It is vitally important that the New York State Legislature protect and enhance access to the crucial services provided by Adult Care Facilities and Assisted Living Programs (ALP) 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.

Investments in affordable housing and healthcare for homeless New Yorkers cannot be done in a piecemeal fashion by addressing certain demographics of homeless individuals and we urge the Legislature to support allocating a portion

of this funding for assisted living facilities. Assisted living facilities play a crucial, often overlooked role for our aging New Yorkers and we urge the Legislature to support a modest, overdue ALP rate increase in order to support seniors both in their own homes and as many eventually transition into residences for care.

IV. Urge the Governor to Restore the One Percent Cut to the Medicaid Rate:

The recent one percent across-the-board cut to Medicaid providers implemented by the Department of Health threatens the stability of the care provided by skilled nursing and assisted living facilities and will have a negative impact in the local community. To cut Medicaid funding to providers when we know that healthcare for vulnerable individuals must include continuing investments in health services and care is completely at odds with how to address New York's Medicaid deficit.

V. Support LTC Workforce Retention & Recruitment:

The lack of health care workforce has caused skilled nursing and assisted living providers to compete with other parts of the healthcare continuum, but not in ways that benefit health care because rates and funding for Long Term Care have simply not kept up with the costs and demand. The health care workforce continues to lose quality potential employees to food/retail industries, exacerbating the shortages for all health care providers.

2019 Staffing Study: The SFY 19-20 Enacted Budget included a new law that requires the creation of a state study to determine "how staffing enhancements and other initiatives could be used to improve patient safety and the quality of health care service delivery in hospitals and nursing homes." The Department of Health held several hearings where testimony was heard on the issue, with findings and recommendations due to the Legislature by December 31, 2019. Any report issued at this time would need time for review and discussion and should not be included in as part of the SFY 20-21 enacted Budget given the current deficit and not within the demanding timeframe of the State Budget.

If the goals are safe quality care for patients, safe and decent working conditions for patient care workers and equal access to care for all New Yorkers, then New York State needs to recognize that statutory nurse staffing ratios will not solve or change the fact that a significant percent of SNF lack the necessary broadband services and financial ability to move to electronic health records. Statutory staffing ratios will not improve the lack of staff at the State Education Department, further delaying the licensing process and hiring at SNFs. Statutory staffing ratios enacted in a vacuum will not help other professions advance in health care careers and will hamper innovation, which is clearly shown by California's most recent funding of \$2.4 million in May for even more training for nursing home staff to meet the State's staffing mandates.

VI. Prevailing Wage:

The Executive Budget proposes including the prevailing wage requirement for construction projects that are paid with at least 30% public funds for contracts or applications for permits on or after July 1, 2021. NYSHFA/NYSCAL appreciates that there would be a public subsidy board that could potentially analyze and adjust the threshold for certain projects and their attributed public benefit, but a wage mandate of this level is unsustainable for health care providers and we urge the Legislature to except skilled nursing and assisted living providers among the projects that are not considered "covered projects."

VII. 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 the SFY 19-20 enacted Budget. This initiative was effected

April 1, 2018 but has recently been approved by CMS. The State should seek to maximize savings under this policy.

VIII. Certificate of Need Surcharge:

NYSHFA/NYSCAL is opposed to the State's proposed surcharge on Certificate of Need applications. If enacted, nursing homes would be required to pay a surcharge of 3% of the total capital value of the facility construction application in addition to the existing application fee. The law would also prohibit any fees or charges for the CON application from being eligible for reimbursement.

IX. VAP & SHIN-NY

NYSHFA/NYSCAL supports the continued funding of \$66 million for supporting critical health care providers in the State's Vital Access Provider (VAP) program. Additionally, NYSHFA/NYSCAL supports the the proposed \$30 million in continued funding for the Statewide Health Information Network of New York (SHIN-NY) to improve health care quality, safety, and efficiency through the implementation of certified electronic health records (EHRs).

X. Enhanced Quality of Adult Life Funding (EQUAL):

The Executive proposal includes changes to current law that would eliminate the current approved purposes and to reduce operating funds for EQUAL to \$3.266 million, but an additional \$3.266 million will be available through capital expenditures. 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.

XI. 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.

XII. Criminal Background Checks:

NYSHFA/NSYCAL supports Governor's proposal to maintain 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.

XIII. Antimicrobial Resistance Program:

NYSHFA/NSYCAL supports the proposal to require hospitals and nursing homes to establish and implement an antibiotic stewardship program that would meet or exceed the federal Medicare and Medicaid conditions of participation for such programs in healthcare facilities. NYSHFA/NYSCAL recommends exploring possible funding sources to support the programs, including the Civil Money Penalty (CMP) Reinvestment Program.

XIV. Polystyrene Ban:

NYSHFA/NYSCAL opposes including skilled nursing and adult care facilities under the proposed Styrofoam ban as the additional mandate would produce unsustainable costs for many providers. That said, long term care providers are supportive of efforts to combat climate change. A recent study found that "heat,

temperature variability, and air pollution increase mortality risk in older people, especially from cardiovascular and respiratory diseases. Floods are linked with increasing incidence of post-traumatic stress disorder, depression, and anxiety.”² The cost to providers has to be taken into account as the State continues its important work to reduce its environmental footprint.

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 and assisted living 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. New York cannot continue to cut funding to skilled nursing and assisted living programs and expect to be able to adequately serve our 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.

² Health Impact of Climate Change in Older People: An Integrative Review and Implications for Nursing. J Nurs Scholarsh. 2017 Nov;49(6):670-678. doi: 10.1111/jnu.12346. Epub 2017 Oct 10.

