Testimony

to the
Senate Finance Committee
and
Assembly Ways and Means Committee
on the
Proposed 2021-22 Executive Budget
for
Health and Medicaid

February 25, 2021

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Representing more than 600,000 professionals in education and health care
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Testimony of
Andrew Pallotta,
President
New York State United Teachers
to the
Senate Finance Committee
Liz Krueger, Chair
and
Assembly Ways and Means Committee
Helene E. Weinstein, Chair
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Chairperson Krueger, Chairperson Weinstein, honorable members of the Legislature and distinguished staff, I am Andrew Pallotta, President of New York State United Teachers (NYSUT). NYSUT represents more than 600,000 education and health care workers statewide. NYSUT's Health Care Professionals Council (HCPC) consists of representatives of NYSUT's professional registered nurses and other health care professionals working in public and private health care settings statewide. Our members work in hospitals, clinics and through home health care agencies. Additionally, our members include physicians, visiting nurses, therapists, lab personnel, school psychologists and registered professional school-based nurses throughout New York State. In addition, NYSUT represents nearly 250,000 retirees, many of whom use the state's health care system. On behalf of the HCPC and NYSUT, thank you for the opportunity to submit testimony today on the 2021-22 New York State Executive Budget proposal.

As I am sure you are aware, our health care professionals have been working diligently and tirelessly throughout this pandemic to care for those in need. Many of these health care workers have made personal, professional, emotional and physical sacrifices to provide care, well in excess of their usual capacity. Many, too many, have even lost their lives while helping others recuperate. NYSUT would be remiss to not acknowledge and honor them in our testimony.

I would like to thank you for the numerous legislative initiatives the Senate and Assembly have passed in the last several years that have aided both the public at large and our health care professionals in their workplaces. Many of these programmatic reforms clearly illustrate the empathy and appreciation the Legislature has towards those who have dedicated their lives to the health care profession. Your actions enable these health care professionals to continue to provide their patients with high-quality health care services.

Medicaid

The 2021-22 New York State Executive Budget for Medicaid (state share) continues a year-to-year cap on growth of no more than a 10-year rolling average of CPI (estimated at 3 percent) and continues to authorize the commissioner of the Department of Health to adjust the amount if spending exceeds the cap. Proposed increases in Medicaid spending, under the 2021-22 global cap, will total $20.1 billion — an increase of $580 million over 2020-21 spending. Under the executive budget proposal, any spending over the Medicaid cap will be the responsibility of the counties.

In addition to the Medicaid spending cap, the executive budget also continues the cost cutting recommendations of the 2020-21 Medicaid Redesign Team (MRT II), which proposes carving out $2.2 billion in Medicaid spending by the end of the 2021-22 state fiscal year.

While the proposed increase of $580 million over the 2020-21 Medicaid spending cap is appreciated, NYSUT believes that any cost-cutting measures placed on the state's health care spending will significantly compromise the delivery of health care services to all New Yorkers.

NYSUT is concerned that the effect of a perpetual cap on spending for our health care facilities will negatively impact the delivery of health care services and programs to our neediest citizens.

The COVID-19 pandemic, and its emerging variants, has caused the U.S. economy to contract. This has resulted in job losses for millions of New Yorkers, which has forced them to file for Unemployment Insurance. For many of those who have lost their job, this has also resulted in a loss of health insurance, which has led to an increase in Medicaid enrollment.

For nearly a year, hospitals have had to deal with the challenges of caring for an unprecedented number of COVID-19 patients, while simultaneously ensuring the delivery of quality health care services for non-COVID-related treatments and emergencies. We cannot compromise the integrity of our health care facilities by slashing their reimbursement rates for services rendered. Medical assistance and emergencies demand expert care from professional, trained staff.

Moreover, while enrollment in the Medicaid program continues to rise, the executive budget proposes the elimination of any cost-of-living rates for hospitals and nursing homes and will not address the issue again, even though increases have not occurred since 2005. Without any cost-of-living adjustments, many facilities have been forced to absorb all inflationary increases. This approach ignores the increased costs and the mix of services that providers offer and fails to distinguish between high and low occupancy facilities.

NYSUT is asking for a re-evaluation of the global cap for Medicaid so that the delivery of health care services and programs are not negatively impacted. It should also be noted that any proposed cuts to the Medicaid program carry with them a corresponding loss in matching federal funds.

In an effort to avert these proposed cuts to the state's Medicaid and health care systems, the state must pursue commonsense revenue generating proposals that NYSUT, along with a coalition of other labor unions, is advocating. They are, the billionaire's wealth tax, the ultra-millionaire's tax, the pied-à-terre assessment on luxury second homes in New York City and the repeal of the 2017 Trump tax cuts.

SUNY Hospitals

I would now like to talk about the SUNY hospitals. I want to thank the Legislature for its support and advocacy for the SUNY hospitals over the years. Unfortunately, the 2021-2022 executive budget proposal, building upon the failings of the last two executive budgets, continues the disappointing trend of adequately funding these vital health care institutions. As I am sure you recall, these teaching hospitals, which serve all New Yorkers, once received financial support that was improperly phrased as a "subsidy." As part of the 2018-19 New York State Executive Budget, the "subsidy" was eliminated. With your help we were able to get the money restored for what turned out to be the last time, as every budget proposal since has failed to include these vital monies. These funds, more properly characterized as "mission funding," helped to ensure the financial well-being of these hospitals and guaranteed access to health care for the communities that depend on them. We ask the Legislature to provide $87.9 million in critical mission funding to these hospitals.

The subsidy was a vital source of funding to the hospitals and was first provided in 2001, in lieu of debt service and fringe benefits, which the state had covered many years ago. The three hospitals have been at the forefront of the battle against COVID-19. SUNY Downstate was so critically important, it was designated as a "COVID-19 only" hospital. These hospitals operated by SUNY are the state's hospitals and, as such, the state should provide support to ensure their financial stability and viability by providing funding to grow and expand the services needed to keep up with the various advances in health care and the challenges posed by COVID-19. Properly funding these vital teaching institutions will help to ensure that New York is ready for the next health crisis.

In prior years, to keep within the global Medicaid cap, the state has reduced the state match. As the local sponsor for the three SUNY hospitals, the state has the financial obligation to provide the state match for these hospitals so that they can access federal DSH money for services provided to Medicaid and uninsured patients. As the state looks to reduce Medicaid spending, SUNY hospitals have been forced to pay the state match. These facilities must identify funds they can use to cover DSH costs. These funds are often drawn from accounts that could be used to improve patient services, provide capital improvements or hire additional staff to address shortages. Therefore, by not providing the hospitals their share of the DSH, the state has compromised the financial viability and the capacity of these facilities to serve their patients and communities. We urge the governor and the Legislature to fully fund the state match for the three SUNY operated hospitals. In the absence of a state match, SUNY hospitals would once again be forced to cover the state match from their own operating funds.

The loss of the state subsidy is also compounded by the elimination of the Enhanced Safety Net Hospital Payments program. The Enhanced Safety Net program provided the SUNY hospitals with additional funding in recognition of their role in providing vital health care to the uninsured and under-insured. The executive budget proposal also seeks to discontinue the state funded portion of the Public Indigent Care Pool (ICP) and reduce the hospital capital rate add-on by five percent. ICP funds are critically important to hospitals like SUNY Upstate and SUNY Downstate, which serve a high percentage of uninsured and Medicaid patients. Expecting these hospitals to continue to perform at the high levels they have been despite bad budget after bad budget, is unrealistic. Denying adequate funding, continuing to find new ways to cut funding and failing to recognize the sacrifices of our members who work at these institutions, is unfair.

While we are thankful for the executive budget proposal to include $150 million in capital funding for alterations and improvements to SUNY Upstate, SUNY Downstate and SUNY Stony Brook, these hospitals, and our front-line heroes that work in them, deserve more.

Income-Related Monthly Adjustment Amount (IRMAA) Medicare Part B

The 2021-22 New York State Executive Budget significantly alters the reimbursement of Medicare Part B premiums for retirees covered by the New York State Health Insurance Program (NYSHIP). Specifically, this proposal would amend the civil service law by freezing the reimbursement of Medicare Part B premiums at $148.50 (2021 federal level) for all NYSHIP retirees with Medicare primary insurance, regardless of their income. Additionally, it eliminates the reimbursement of the Income-Related Monthly Adjustment Amount (IRMAA) for certain retirees. IRMAA reimbursement has been preserved by the Legislature for the last nine years, while other retirees pay a standard premium, which is also reimbursed. This means that as the cost of Medicare Part B increases each year, retirees who are living on a fixed income will have additional out-of-pocket health care costs, which NYSUT believes, constitutes a diminishment of their established health care benefits.

This change not only affects state retirees for whom Medicare is their primary insurance, but also retirees from school districts and local governments who participate in the NYSHIP Empire Plan. Furthermore, asking people to spend out-of-pocket for medical insurance, during the COVID-19 pandemic, in an economic downturn, is unjustified.

These proposals were submitted as part of the executive budget in previous years but were ultimately rejected by the Legislature. Accordingly, we once again call upon the Legislature to reject these provisions in the enacted budget.

Sliding Scale Reimbursement Payments for Future NYSHIP Retirees

On the issue of retiree health care, NYSUT urges the Legislature to reject the executive budget proposal to amend NYSHIP retiree premiums for state employees who will retire after October 1, 2021. Under the executive budget, the premium payment cost for future retirees would be based on the years of service and those with fewer years would pay more. An individual with a minimum of 10 years of service would pay the highest premium rate and then progressively pay less of a premium with each additional year of service until they reach 30 years. This proposal would have an unanticipated negative financial impact on state employees who retire in 2021, with less than 30 years of service.

New York State Health Care Services

Funding for our state's health care system must be increased to meet the needs of all New Yorkers and the professionals who provide care to them. To this end, I ask that you join NYSUT in advocating for the enactment of provisions in this year's budget to improve the safety and well-being of both patients and workers. Specifically, NYSUT calls for the enactment of the following:

Anti-Mandatory Overtime Protections for Home care Nurses

The enactment of Chapter 495 of the Laws of 2008 provided protections to most nurses in New York State from being required by their employer to work overtime. The law states that a nurse cannot be required to work beyond their regularly scheduled work hours except in the case of an emergency. However, this law does not restrict the number of consecutive hours a home care nurse may be required to work. This means that nurses who make home care visits or work in a home care setting can be forced by their employer to work beyond their regularly scheduled hours with little or no warning and as frequently as the employer sees fit.

Without anti-mandatory overtime protections, NYSUT's home care nurses have reported being asked by management, on multiple occasions, to make unscheduled visits to patients throughout the workday that exceed a meticulously established care plan for the day or week. Unscheduled visits result in either some scheduled patients having their appointments cancelled, or nurses being forced to work longer hours to accommodate the increased number of patients.

This practice by management creates chaos for nurses in terms of care planning, travel, care delivery, contemporaneous documentation (best practice) and care coordination and communication between the various disciplines (nurses, physical therapists, occupational therapists, speech-language pathologists, medical social workers, nursing supervisors and physicians involved in care) and patient-selected caregivers.

Unscheduled visits unfairly tax the home care workforce, decrease nurse job satisfaction and negatively impact the patient-care experience through late or unannounced visits. Unscheduled visits increase the percentage of late reporting by clinicians who have worked an exhaustive schedule. These types of delays and potential errors can result in unfair discipline against the nurse. Job dissatisfaction, abusive caseload assignments and poor work-life balance often result in professional attrition. This is costly and does not meet the national need for retention and recruitment of home care nurses in either educational curricula or in workplace practices.

Due to nursing staff shortages throughout our state, home care nurses are often subjected to mandatory overtime. Working long hours in such a high-stress environment can take its toll on nurses and their patients. For nurses, one of the first casualties of mandatory overtime is adequate rest. Having the proper amounts of rest and downtime between patient home care visits minimizes the risk for medication errors, enhances the ability for nurses to thoroughly review patients' records and clinical assessments and carry out comprehensive patient-centered care plans. Adequate rest also enhances the clinician's ability to carefully follow the necessary pandemic protocols between themselves and their patients. Furthermore, when home care nurses are adequately rested and are not forced to work mandatory overtime, they are less likely to get into an accident while traveling between patient visits.

Over a prolonged period, exhaustion, as a result of forced overtime, often results in cumulative negative effects on the nurse during their shift, in their personal life and to their physical and mental health. Professional attrition due to health impairment is a common occurrence, especially during a nursing shortage and a pandemic.

The COVID-19 pandemic has created a heightened threat to the safety of home care nurses and their patients. Many recently released COVID-19 patients have not yet fully recovered (still positive and symptomatic) and prolonged exposure, through mandatory overtime requirements, increases the risk to home care nurses of contracting this disease.

Additionally, the difficulties of mandatory overtime and following COVID-19 safety protocols have affected home care nurses by adding a substantial amount of time to an already overscheduled day. The careful, proper donning and doffing (removal) of PPE in arriving to and leaving their workplace setting adds significant time to the workday. Also, clinicians must do a self-screening assessment at the start of each workday.

Patient care must also be factored into the home care nurse's day. Ideally, home care referrals should come with complete clinical documentation information attachments. If such information is incomplete, which is often the case, additional time is needed to sift through the patient record to ascertain pertinent baseline data — some of which includes COVID-19 status. Patients must answer a series of COVID-19 pre-screening questions prior to scheduling the visit. In most cases, nurses must provide additional COVID-19 support in educating the patient and their family about COVID-19 prevention and self-care management techniques.

No nurse should be forced to work hours that they are not regularly scheduled to work and/or did not initially agree to work because of poor staffing decisions by their employer. As a matter of parity, an employer in the home care industry should not be able to force its nursing staff to work extra hours under non-emergency conditions.

NYSUT urges the Legislature to restrict mandatory overtime hours worked by nurses in the home care setting by passing S.4885 (Savino)/A.181 (Gunther), or by including the provisions of this legislation in the enacted 2021-22 budget.

Safe Staffing Ratios

There is a clear connection between the amount of nurse staffing hours and the quality of care that patients receive. A growing body of evidence has shown that the rate of mortality in acute care settings decreases as the number of registered nurses-to-patients increases. Further, the rate of injury and infection decreases as the number of licensed nursing staff increases. Research shows that appropriate nursing interventions can reduce the length of stay in acute care settings and improve the quality of life in long-term care settings.

The enactment of safe staffing ratios is necessary to protect patient safety, ensure the delivery of quality health care and improve working conditions for health care professionals. Licensed nurses constitute the highest percentage of direct health care staff in acute care facilities and have a central role in the delivery of health care services. Inadequate and poorly monitored nurse staffing practices jeopardize the delivery of quality health care services and adversely impact the health of patients who enter acute care facilities, potentially resulting in dangerous medical errors and patient infections.

The 2019-20 New York State Enacted Budget required the Department of Health (DOH) to conduct a study to examine 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 by the end of 2019. The study was to have considered minimum staffing levels, initiatives for registered nurses, licensed practical nurses and certified nurse aids. DOH held hearings on this issue and NYSUT testified, however, as of today, the report has not been released. We find this troubling. For too long, our nurses have been overwhelmed by working in conditions that place their patients' health at risk.

A recent report from the New York State Attorney General (Jan 30, 2020) noted that low staffing levels, particularly during the onset of the COVID-19 outbreak, was a contributing factor in spikes in nursing home illnesses and deaths. Many nursing homes that were already understaffed prior to the outbreak, decreased staffing levels to dangerously low levels due to nurses falling ill. In some instances, nurses who became ill may have inadvertently infected nursing home residents, as some nurses were asymptomatic but not tested, so they were expected to come to work. Alternatively, nurses who did test positive or showed symptoms were required to follow quarantining protocols, which meant that nursing home patients were unable to get the proper direct care they needed — due to a lack of nursing staff. Nurses who were responsible for a significantly higher volume of patients reported having to work for 2-3 weeks straight for over 12 hours per day. The AG's report also highlighted data that showed a strong correlation between higher rates of nursing home residents' deaths and nursing home facilities that entered the COVID-19 pandemic with low staffing rates.

It is unconscionable to place nurses and patients in such a situation. Accordingly, I urge the Legislature to establish safe staffing standards for licensed nurses in acute care facilities and nursing homes by passing S.1168 (Rivera)/A.108 (Gunther), or by including the provisions of this legislation in the enacted 2021-22 budget.

Additional Health and Mental Health Professionals in the School Setting

It is uncertain as to how deep the immediate and prolonged mental and physical effects of the COVID-19 pandemic will be on our students. What must be certain, however, is that school districts are able to provide licensed/state certified health and mental health professionals in each school building to address the broad range of student needs.

School-age children are forced to deal with an ever-increasing number of issues such as anxiety, depression, suicide, peer pressure, sexual identity and abuse, bullying, academic problems, home life, learning disabilities, alcohol and substance abuse and the threat of school shootings. These are statewide issues that transcend race and economic background and must be addressed in each school building by properly trained professional staff.

Students spend a fair amount of time in school, which offers mental health professionals the opportunity to observe, connect with and relate to each member of the student body. When these professionals are in our schools, they are more accessible to students who require or seek their assistance. Students are more likely to access mental health services if they are readily available to them.

In addition to ensuring that there is a school nurse in every public school to address student health care needs, school counsellors and mental health professionals — who are specifically trained to evaluate and diagnose student academic and mental health issues — are needed in our schools to offer the proper individualized supports and services for students.

Health, mental health and collaborative counseling services help facilitate better outcomes in ensuring the wellness of each student. If left unaddressed, a student's mental health needs can have dire consequences, not only for the student but for the school community as well. A student's success in school and afterwards may depend on the support they receive in their school by the appropriate professionals.

For many students and schools, the 2020-21 school year is unique due to the COVID-19 pandemic and the safety protocols put in place around the school community. For nearly a year, school staff and students have been forced into a confusing, chaotic and unreliable learning environment — a blend of remote, hybrid and in-person learning. National studies that examine the effects of COVID-19 protocols are revealing that extended periods of isolation and detachment (from an in-person school setting) have significantly increased students' feeling of stress, anxiety, depression and contemplation of suicide. Students are also expressing their need to talk to someone and be heard. As this is the foundation for mental health treatment, it seems logical that school mental health professionals must be made available and readily accessible to students in their schools.

Accordingly, I urge the Legislature to ensure that additional mental health professionals are available to students, in the school setting, by passing S.4783 (Jackson)/ A.666 (Cahill); S.1969 (Jackson)/A.5019 (González-Rojas); and S.831 (Gounardes), or by including the provisions of these bills in the enacted 2021-22 budget.

New York Medical Supplies Act

The executive budget requires that when purchasing personal protective equipment (PPE) and medical supplies in any state contracts over $50,000, the PPE and medical supplies must be produced or made in the United States, however, the state may exclude contracts for which an invitation for bid, request for proposal or similar solicitation had been issued prior to that date.

Indigent Care Pool

The Indigent Care Pool (ICP) is a program that provides funding to hospitals to assist in paying for the cost of care to low-income individuals. The pool is part of the larger DSH Program run by the Department of Health for hospitals that serve a significantly disproportionate number of low-income patients and receive payments from the Centers for Medicaid and Medicare Services to cover the costs of providing care to uninsured patients. The executive budget discontinues the state-funded portion (approximately $74M) of the Indigent Care Pool payments to public hospitals. NYSUT urges the Legislature to restore this funding cut.

Elimination of Essential Plan Premiums

The Essential Plan (EP), managed by the New York State Department of Health, provides low- and moderate-income New Yorkers with an affordable health insurance option. The executive budget moves some New Yorkers from state-only Medicaid benefits, to coverage under a federally funded EP. Enrollees with income levels between 150 and 200 percent of the Federal Poverty

Level ($39,300 to $52,400 for a family of four in 2021) will not have to pay a ($20) yearly premium, thereby ensuring consistent health care coverage.

Comprehensive Regulatory Telehealth Reform

Due to COVID-19 protocols regarding interpersonal health care, the executive budget expands access to telehealth services by allowing patients to receive these services wherever they are geographically located (subject to federal approval). We agree that telehealth certainly has its benefits during a pandemic — for both health care professionals and patients — but stress the importance that any interstate exchange of health care services be performed by qualified licensed health care professionals, based on need of medical services and not solely on profit.

Conclusion

NYSUT's Health Care Professional Council is supportive of the various health care reforms proposed in the executive budget. However, we oppose any cuts that adversely affect the professional health care workforce or the facilities and environments in which they work, including the SUNY hospitals — especially amid the COVID-19 pandemic. Such cuts would restrict the ability of the state's health care system to provide direct, high-quality care to New York State residents. We believe the state must pursue commonsense revenue generating proposals that NYSUT, along with a coalition of other labor unions, is advocating. Those include the billionaire's wealth tax, the ultra-millionaire's tax, the pied-à-terre assessment on luxury second homes in New York City and the repeal of the 2017 Trump tax cuts. The passage and enactment of these measures will help to ensure that essential health care programs and services are not unjustly compromised.

We believe that you fully understand the important role that health care professionals play in each community across our state and nation, and through your actions, it is apparent to us that you appreciate the complex and often difficult environments in which our health care professionals must work. NYSUT looks forward to working with the Legislature and the executive to ensure that all New Yorkers have access to the highest quality of health care possible.

Thank you for your consideration and the opportunity to testify before you today.