



# SOUTHERN NEW YORK ASSOCIATION, INC.

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*Celebrating over thirty years of serving our members and the long-term care community*

**JOINT SENATE AND ASSEMBLY PUBLIC HEARING  
2021 EXECUTIVE BUDGET PROPOSAL:  
TOPIC HEALTH/MEDICAID  
FEBRUARY 25, 2021**

**TESTIMONY OF NEIL HEYMAN**

I am Neil Heyman, the CEO of Southern New York Association, whose members include sixty residential skilled nursing facilities in New York City, Long Island and Westchester.

I would emphasize at the outset that residential health facilities, caring for elderly and medically fragile residents, were uniquely vulnerable to the Covid-19 pandemic. This was not just a New York problem; it was true consistently throughout the United States and other countries. Even though New York was hit hardest in the pandemic's early days, when little was known about how to respond to a new and fast growing crisis, New York facilities' mortality and morbidity rates have been better than many other places. Our homes' dedicated staff and administrators worked and continue to work around the clock to provide the residents with the care they need and to show that the virus could be contained.

Federal and state quality metrics, frequent government surveys and inspections of nursing facilities, and the feedback from residents and their families, all show that most New York nursing facilities care well for their residents. At the same time, Medicaid funding rates, representing the bulk of facilities' revenue, have been cut back for years and are now significantly lower than the cost of providing care.

At a time when the State and facility operators have an identical interest in upholding quality of care and the operational stability of nursing facilities, the financial burdens that would be created by the proposed executive budget amendments would undermine both. More specifically:

- Not only are nursing facilities' operations highly regulated, there already exist restrictions on owners' equity withdrawals. A limit on the amount of private businesses' profit is well-nigh unprecedented in New York outside the realm of public utilities. This would create a strong disincentive for investors to provide ongoing capital for this vital sector, without any assurance of improved care. I submit also that whether or not New York looks to regulate the expenditure of State Medicaid funds, the State has no valid interest in how facilities spend revenue from Medicare or private payors.

- The proposed salary cap on executive and managerial staff would cripple facilities' ability to recruit and retain key employees. Capable, skilled executives and administrators are crucial to the safe, effective and legally compliant operation of these highly regulated facilities. The reality of the competitive job market dictates that this salary cap would leave facilities facing an exodus of experienced senior staff and near insurmountable difficulties in hiring acceptable replacements. Again, in any event the State should not regulate how facilities spend their non-Medicaid revenue.
- The proposed requirement that facilities spend designated minimum percentages of revenue on resident direct care and direct care staffing is a poorly targeted and ineffective way to improve quality of care. No meaningful evidence exists that these thresholds will improve performance. Further, the formulas as drafted imperil facilities' operations to an unsustainable degree. As before, non-Medicaid revenue should be excluded. It must be made clear that allowable minimum expenses and salary costs include indirect and non-comparable costs related to ancillary but necessary operating functions, such as dietary, recreation, laundry and maintenance. There is also no justification for penalizing the use of contracted

staff. Experience during the pandemic has made clear that engaging staff is a continuing challenge for facilities, and at times only contracted staff are available. Facility capital costs, which are treated as a pass through for reimbursement, should also be allowed. Facilities have no choice whether to pay their capital obligations, and failing to allow this would condemn facilities to deterioration and obsolescence.

New York's nursing facilities look forward to continuing to provide the health care that their residents and the people of New York State depend on. These proposed budget amendments would severely impair their operations and their ability to provide care without any meaningful offsetting benefit. We respectfully urge the Legislature to support these facilities and to reject the amendments.