Joint Legislative Hearing
FY2023 Executive Budget – Workforce Development
January 31, 2022
Written Testimony Submitted by the New York State Nurses Association

The New York State Nurses Association (NYSNA) is the leading union representing registered nurses in New York state, with over 40,000 members employed in direct care at the bedside in hospitals, nursing homes, home care, and other settings.

New York is facing a looming shortage of nurses. This shortage is the result of an aging population that will require significantly more health care services in coming years and ongoing problems in training and recruiting enough new nurses to fill vacancies as existing nurses retire or leave because of increasing work stress.

The pandemic emergency has greatly exacerbated existing recruitment and retention issues. Nurses have been working to provide care for large numbers of extremely sick patients, while themselves dealing with workplace exposure and illness. The nursing workforce is under extreme stress and in danger of collapsing. Nurses and other direct care workers are traumatized by the constant pressures of addressing the pandemic and morale is low because their employers and the government are not providing adequate support.

The Governor's budget presentation recognizes the severity of the crisis facing the nursing workforce and is proposing funding and other measures with the goal of increasing the healthcare workforce by 20% over the next five years. The Governor further noted in her briefing book that the current workforce in 2022 is 3% below pre-pandemic levels and 11% below where it needs to be if the five-year target is to be met. This is an acknowledgement of the severity of the nursing shortage and the need for serious efforts to fix the problem.

NYSNA supports the proposals in the Executive Budget to increase funding to foster recruitment and retention, improve legal protections for workers, and enhance DOL enforcement actions. We are concerned, however, that the proposals in the budget, as they relate to nurses and the needs of the healthcare workforce are insufficient to fully respond to the scope of the crisis we are facing.

According to the DOH staffing study released in 2020, 80,000 nurses were employed in hospitals and nursing homes, and about 190,000 within the broader healthcare system. To meet the Governor's target, we will need to keep the existing nurses in the workforce and add at least 16,000 more nurses in our hospitals and nursing homes. Moreover, the new state laws on hospital and nursing home

staffing will require additional nurses in the workforce to ensure safe patient care and improved nurse working conditions.

If nurses continue to leave the bedside at current rates because of insufficient pay and intolerable working conditions, New York will face a critical shortage of staff that will threaten quality of care and public health.

Accordingly, we urge the legislature to consider the following measures to address nursing workforce needs in the FY23 state budget:

1. Invest in Safe Staffing

Staffing in our hospitals, nursing home and broader healthcare system is a key component of addressing inequalities in care, poor patient outcomes and the stability of the healthcare workforce.

Poor staffing of RNs and other direct care workers is endemic throughout the hospital system and is worse in poorly funded safety net hospitals and other providers. When hospitals and nursing home are poorly staffed, patients receive poorer quality care and the exodus of nurses from the bedside is accelerated.

In 2021 the legislature enacted legislation to improve staffing in hospitals and nursing homes. The hospital legislation will require all general hospitals to form committees, adopt specific and enforceable staffing standards, and provide greater transparency and public information about staffing plans and actual staffing levels in our hospitals. The nursing home legislation imposes minimum uniform staffing standards for RNs, LPNs and Aides and requires that nursing homes make minimum spends on direct resident care and staffing.

The hospital legislation also requires the state DOH to implement new stand-alone minimum staffing standards for intensive care and critical care patients (requiring a 1:2 ratio or a minimum of 12 hours of RN care per day for each patient) no later than January 1, 2022. To date, the DOH has failed to issue the new regulations.

To fully address staffing inequities and stabilize the nursing workforce, NYSNA recommends that the legislature consider the following measures to improve staffing:

- **Direct the DOH to implement 1:2 staffing ratios for intensive and critical care patients as required by the new hospital staffing law;**

- **Increase DOH funding by $5 million in FY22 to hire staff to oversee and enforce the new hospital staffing laws**
  The recently enacted hospital staffing law (PHL Section 2805-t) requires clinical staffing committees in each hospital to develop staffing ratios, grids, or other specific staffing standards for all hospital units. The annual staffing plans developed by the committees must be implemented and complied with by each hospital. In addition, the adopted staffing plans and other data regarding hospital staffing and must be publicly posted and reported.

The new nursing home staffing law (PHL Section 2895-b) directly sets minimum nursing home staffing standards, expressed as "hours per resident per day" (HPRD), including a minimum of 3.5 HPRD, of which at least 2.2 HPRD must be nursing aide time and at least 1.1 hours HPRD of licensed nurse time for each patient.

The DOH is required to oversee and enforce compliance with the hospital staffing law and the nursing home law. In its mid-year updated budget, the DOH added $2 million to hire staff to enforce the nursing home staffing law. The FY22 and the FY23 Executive Budget, however, does not indicate added funding or staff to enforce the new hospital law. The legislature should add at least $5 million to the DOH budget dedicated to enforcement and implementation of the new hospital staffing law.

- **The legislature should consider further legislation to require minimum staffing ratios for emergency room, pediatric and other types of patients.**
  Understaffing in hospitals is a major cause of high turnover, job dissatisfaction, and ongoing recruitment and retention issues. Accordingly, NYSNA believe the legislature should add legislation amending the hospital staffing law to set uniform minimum staffing standards for more types of units and patients, including Emergency Rooms/Departments, pediatric units, psychiatric units, adult medical/surgical units, maternity units, and other units that continue to be understaffed or in which there are wide and inappropriate variations from hospital to hospital.

- **The state must increase funding for hospitals and nursing homes to support increased nurse staffing needed to comply with the new staffing laws**
  The state budget provides increases in across-the-board Medicaid reimbursement rates (rescinding a prior 1.5% rate reduction and adding a new 1% increase). The Executive Budget is also proposing to make the Local Distressed Hospital Funding Pool created in 2020 permanent and to increase funding from $250 million to $350 million per year. This additional funding is welcome but is not enough to allow hospitals and nursing homes to generate the operating income they will need to expand their workforces and recruit and retain nurses and other direct care staff.

  NYSNA support the creation of a dedicated funding stream to enhance nursing care in the FY2022-2023 budget of at least $500 million to $1 billion to support improved pay and benefits to recruit and retain nursing staff, comply with the new nurse staffing laws, and meet the Governor's workforce expansion goals.

  This funding should be primarily targeted to safety net hospitals that are financially precarious and will have difficulty finding the resources to recruit and retain needed nurses.

2. Improve Working Conditions to Retain Existing Nursing Staff

The legislature should consider adding the following measures to the budget to address the poor working conditions that are driving nurses from the bedside and hindering recruitment of new staff:

- **Amend the Executive Budget Proposal to Pay Retention Bonuses to Include All Nurses (Art. VII, Health and Mental Hygiene, Part C)**
  The Executive Budget proposes to pay $3,000 retention bonuses healthcare workers who stay in their positions for a year. The proposal, however, is capped at a salary of $100,000.

  This cap will end up excluding thousands of registered nurses who have borne the brunt of the pandemic. We estimate about 20,000 or our 40,000 members will not qualify for the retention bonus. This is particularly true in high-cost regions with higher wages (NYC, Westchester, Long Island), for the senior nurses who are the backbone of the nursing workforce, for nurses with specialty or advanced practice titles, and for nurses working night shifts and weekend positions.

  The Executive proposal also fails to properly consider that the regular full-time workweek in our hospitals and nursing homes is generally 37 ½ hours per week. The full $3,000 bonus is only payable to workers with a regular 40-hour workweek. As a result, even those nurses who meet the $100,000 salary cut-off will only be eligible for a partial bonus ($2,000), effectively treating them as part-timers.

  The exclusion of large numbers of nurses from eligibility will negatively affect morale and will be seen by nurses as insulting and yet another failure by the state to recognize the sacrifice of the frontline workforce. Offering a $3,000 bonus will not dissuade a nurse who is planning to retire or take a less stressful job, but denying the bonus to tens of thousands of nurses who worked through the hellish conditions of the pandemic will be embittering and may cause more nurses to make the decision to leave the bedside.

- **Implement and enforce minimum infectious disease protocols and standards in healthcare workplaces**
  The 2021 NY HERO Act (Labor Law Section 218-b) requires the state DOL to formulate industry specific standards to protect workers from COVID and other airborne infectious disease. The DOL has issued regulations for various industries, but has not created a standard for hospitals and other healthcare settings. Existing DOH standards and guidance to employers rely on CDC guidelines, but these are ineffective and fail to provide consistent minimum protective standards. Moreover, the federal OSHA emergency temporary standard (OSHA ETS) for healthcare workplaces expired and has not been renewed.

  The legislature should require the DOL to issue a COVID/airborne infectious disease standard that is based on the expired OSHA ETS and includes the following provisions: standardized minimum PPE and source control protocols; environmental controls (ventilation, negative pressure rooms, physical barriers); consistent and scientifically determined testing, contact tracing and isolation standards to protect workers and patients from exposure; and fully paid leave benefits and relief from work for ill or exposed workers. A full list of the elements that should be included in a safe and proper COVID infection control standard for healthcare workers can be accessed at: https://www.nysna.org/omicron-demands#.YehJbVlOnIU.

- **Amend the mandatory overtime law to crackdown on employer abuses**
  Mandatory overtime is a major source of job dissatisfaction and during the COVID crisis, employers have used the ongoing emergency to force nurses to work overtime shifts.

  The legislature should include enact the following changes to Labor Law Section 167 as necessary to effectively address nursing workforce issues:
    - Limit the duration of emergency exemptions to the assignment of mandatory overtime (A8874/S8063);
    - Increase the penalties for employer violations (A286-A/S1997-A); and
    - Extend the reach of the law to include nurses employed in home care (A181-A/S4885-A).

- **Classify COVID as an occupational disease for Workers Comp claims filed by front line essential workers**
  Nurses and other essential workers who work in public-facing jobs during the pandemic were exposed to COVID and many were sickened. Current law requires these workers to establish that they contracted the virus on the job and many employers and insurance carriers routinely challenged their eligibility for workers compensation benefits.

  The legislature should enact budget legislation (A6117-A/S1241-A) to create a rebuttable presumption that nurses and other frontline essential workers with COVID contracted the disease at work and qualify for workers compensation.

- **Improve the Tier 6 pension to recruit and retain nurses in the public sector**
  In 2012 the Cuomo administration pushed through a new Tier 6 pension plan for public sector workers that included a higher retirement age, lowered pensions, and higher mandatory employee contributions.

  The new Tier 6 pension system has had a negative impact on recruitment and retention of nurses in public sector hospitals and public health systems. Wages for nurses in the public sector have generally been significantly lower than comparable jobs in the private sector. The adoption of Tier 6, coupled with lower wages, has made retention of nurses in the public sector more difficult.

  The Tier 6 pension plan should be restructured to create a more attractive pension structure for registered nurses and other hard to recruit health care workers as follows:
    - Lower the regular retirement age to 60 from 63;
    - Reduce employee pension contribution rates for the first 10 years and eliminate contributions after 10 years of employment;
    - Create a new special 55/25 retirement plan applicable to Tier 6 nurses and other hard to recruit health care workers.

3. Take Effective Step to Support the Education, Training, Recruitment and Retention of Nurses

The Executive Budget proposes to increase the number of new nurses in the workforce by creating a new Nurses Across New York program to provide loan forgiveness in exchange for a commitment to work for 3 years in an underserved community.

The budget proposal (Article VII, Health and Mental Hygiene, Part A), however, is only funded at $2.5 million in FY23 and $3 million per year thereafter. The funding level being proposed is totally inadequate to attaining the goal set by the Governor to increase the nursing workforce by 20% over the next five years. At most, this program will be available to no more than 125-150 nurses per year.

In order to effectively increase recruitment and retention of new nurses in the workforce, NYSNA would propose the following more robust measures, and significant additional funding to allow their implementation:

- **Substantially increase tuition support and loan forgiveness programs for direct care nurses**
    - Make nursing students eligible for STEM scholarships/tuition support
    - Increase funding for the Nurses Across NY proposal in Part A
    - Create additional tuition support/loan forgiveness programs (with substantial funding) to (a) promote long-term commitments to work for a non-profit hospital or nursing home anywhere in New York state; (b) to work for a safety-net provider; (c) to work in high-need or hard to recruit units or areas (emergency departments, pediatric or obstetrics, primary care, etc.); (d) to work in professional shortage areas; (e) to provide mentorship or preceptor support for younger nurses; and, (f) other similarly broad targeted areas to broadly support and encourage new graduates to stay and work throughout the healthcare system.

- **Expand Nursing School Capacity**
    - Add significant funding to expand class-room facilities and equipment/technology to ramp up the number of slots in nursing schools;
    - Increase existing tuition support/loan forgiveness for nurses to qualify as instructors;
    - Allow a wider range of nurses to teach based on experience and practical knowledge rather than solely on qualifying degree earned;
    - Encourage nurses retired from public hospitals to become faculty by waiving the public pension plan limits on earnings (the Executive Budget includes a proposal in Article VII, Education, Labor and Family Assistance, Part HH to waive the limits, but only for public school teachers);
    - Provide direct salary support to nursing schools to increase instructor pay and benefits;
    - Allow the use of simulation training where appropriate and provide funding for expanding the availability of clinical placements in hospitals and nursing homes;

- **Residency and Preceptorship Programs to Support New Nurses**
    - Provide funding for hospitals and other providers (particularly to safety-net providers) to establish nursing residency programs to in partnership with nursing schools;
    - Provide funding, including funds to pay for backfilling facility staff, to support robust preceptorship programs in every hospital and nursing home.

- **Address the abusive business practices of traveler/temporary nursing agencies subcontractors**
  Many hospitals and nursing homes have grown increasingly reliant on contracting with agencies to provide supplemental staffing of nurses and other providers. Before the pandemic, this phenomenon was fostered as a means of reducing labor costs and implementing a flexible or "just in time" approach to staffing the facility.

  In many cases this approach was also pursued as part of an anti-union strategy (reducing the number of regular staff and shifting to more temporary workers can reduce labor solidarity and segmentize the workforce).

  The pandemic revealed the failure of over-reliance on temporary agency and traveler nurses to meet staffing needs. The simultaneous spike in demand for care across regions, coupled with insufficient regular full-time staff led to a bidding war for agency nurses and travelers. The high rates paid to these temporary workers, often double or triple what the regular staff were being paid, tempted even more staff to quit and take these temporary jobs (often in other states or regions that paid more).

  Though temporary agency workers can play a necessary role in providing surge capacity or to address short term staff shortages, they are no substitute for a stable regular nursing workforce.

  The budget should include provisions to regulate the business practices of temporary agencies to prevent disruptive price gouging of healthcare providers that use their services, prevent anti-competitive practices, and require transparent contracts and prices charged.

4. **Provide Money for Hospitals to Recruit, Hire, Train and Retain Nurses: Increase hospital reimbursement rates**
   The Executive Budget includes proposals to provide a 5.8% COLA for human services workers, as well as the $3,000 retention bonus that is targeted to lower paid titles and workers.

   These measures are well-intentioned, but do not address the core problem – namely that wages and benefits in the health care sector are too low and need to be substantially increased.

   This can only be addressed by increasing reimbursement rates and supplemental payment pools to allow providers to substantially increase wages, health benefits, pension/retirement benefits, paid leave benefits, and staffing.

The need to increase funding is particularly acute for safety-net providers that provide disproportionate level of care to Medicaid and uninsured patients, or serve low-income urban or rural populations.

The recission of the prior 1.5% Medicaid rate cut and the proposal to increase Medicaid rates by an additional 1% are not sufficient to allow hospitals and nursing homes to meet the need for additional nurses and other staff.

The state should, accordingly, consider further increases in Medicaid reimbursement rates, as well as supplemental, dedicated funding the allow hospitals and nursing homes to increase staffing levels. This funding should, in addition, be targeted to provided additional assistance to safety net provider that care for disproportionate numbers of Medicaid, uninsured and underinsured patients.