



Testimony Submitted on behalf of CVHSA
2022 Joint NYS Legislative Budget Hearing on Health

Next Steps to Advance Equity in New York's Health Care Delivery Systems

Last year, the New York State Legislature passed the Health Equity Assessment bill (S1451A/A191A), sponsored by Senate Health Committee Chair Gustavo Rivera and Assembly Health Committee Chair Richard Gottfried, who aptly described it as “landmark” legislation. Signed into law in late December by Gov. Kathy Hochul, this new act will for the first time require hospitals and most other health facilities to provide state health regulators with an independent assessment of how proposed transactions, such as reductions or elimination of services, are likely to affect medically-underserved people. The immediate impetus for this legislation was our recognition of the inequities in access to health care services that were so starkly revealed by the COVID-19 pandemic. Those inequities were partly the result of more than two decades of hospital consolidation, downsizing and closures across our state, and will take a number of steps by this legislature, the Executive Chamber and the New York State Department of Health (NYS DOH) to correct.

The organizations participating in Community Voices for Health System Accountability (CVHSA), listed at the end of this testimony, want to thank you for your leadership in making this important change and encourage you to continue advancing health equity in the way health care delivery resources are distributed across New York State. The Health Equity Assessment Act is the first of several steps New York State can and should take to ensure that communities whose voices are often marginalized are not left behind in a market-driven health delivery system.

Most importantly, we urge that the NYS DOH be given both legislative direction and budgetary support for creating a robust system of health planning that can, on an annual basis, predict the need for health care delivery capacity by geographic region of the state and identify existing gaps in the delivery system. Regional offices of the NYS DOH and county departments of health could be strengthened and supported in gathering and analyzing data and patient experiences to inform this planning. Such a system would enable the Department to prioritize approval of health facility transformation and capital improvement funding for projects that would fill identified gaps. It would also clearly communicate public need for additional or changed capacity by region, providing a basis for evaluation of health facilities' Certificate of Need (CON) applications for proposed projects as to whether they would address identified gaps, exacerbate those gaps or, conversely, create additional capacity where it is not needed. With repeated waves of new COVID-19 variants, with hospital capacity severely stressed again this winter in communities from Buffalo to Long Island and with the mass disabling impact of “long COVID,” we urge that New York state policies generally assume that all existing hospital capacity is needed for the foreseeable future.

Here are some additional steps CVHSA recommends to advance health equity in New York's health delivery system and which could be incorporated into budget bill language this year:

- **Require the Department of Health to ensure transparency and robust participation by health advocacy and community-based organizations in the rulemaking process for implementation of the Health Equity Assessment Act.** Non-profit health advocacy organizations have expertise in the needs of medically-underserved individuals, and can help ensure that the intent of the Act is fulfilled in implementing rules. The Executive Chamber's extension of the rulemaking period for this act from the original six months out to 18 months should provide ample opportunity for engagement of knowledgeable health advocates.
- **Require transparency, use of health equity principles and use of regional and statewide health planning in the process of awarding the \$2.4 billion in health facility capital improvement and transformation grants included in the Executive Budget.** We urge the Legislature to require the Department of Health to make public the guidelines for awarding of these grants, and ensure that such guidelines prioritize improvements in access to health care for medically-underserved individuals and communities, and do not facilitate reductions or eliminations of essential services. In the past, some of these health facility awards have been used to enable large health systems to take over community hospitals, which they then downsize or close, to the detriment of the community. We urge that the Department of Health be required to demonstrate how an award would address an identified gap in the health delivery system in the geographic region served by the recipient hospital or health system.
- **Ensure that the Executive Budget's proposed changes to the Public Health Law¹ are not opening the door to for-profit operation or ownership of more types and numbers of health facilities in New York or lessening scrutiny of owners' character and competence.** We urge the Legislature to ensure that any changes to this language explicitly preserve our state's de facto prohibition on the operation of hospitals and health systems by for-profit corporations. Because of this prohibition, New York has been spared the experiences of some other states where private equity firms have acquired community hospitals and then loaded them up with debt, cut services and staff, sold hospital buildings for profit and even closed entire hospitals. Moreover, we urge that any changes to the requirements for evaluating the character and competence of proposed owners of health facilities in New York are designed to strengthen state scrutiny and do not inadvertently create loopholes through which unscrupulous owners could slip.
- **Amend the Public Health Law to require at least six months advance notice to the affected community and a public hearing in the hospital's catchment area in the evening or on a weekend before a general acute care hospital can submit a closure notice to the state Department of Health.** A summary of comments provided at the public hearing must be provided to the NYS DOH and addressed in any closure plan approved by the state Health Commissioner. Currently, Public Health Law only requires a public hearing in the affected community 30 days AFTER a hospital closes, which is obviously too late to gather comments from the community about the likely impact of a hospital closure and what steps could be taken to ameliorate that impact and ensure that the community does not lose access to services.

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51 Section 1. Subdivision 3 of section 2801-a of the public health law, 52 as amended by section 57 of part A of chapter 58 of the laws of 2010

- **Direct the NYS Department of Health to remove from the category of “limited review” Certificate of Need applications and place into the “full review” category any CONs that would eliminate entire service lines or units, such as psychiatric services, intensive care units, labor and delivery units or cardiac surgery.** In recent years, hospitals have used the “limited review” application process to dismantle services piece by piece, rather than submit a full plan of proposed closures for full review, which would include public meetings of the Public Health and Health Planning Council.
- **Incorporate into the state budget, or separately pass, the revisions to Indigent Care Pool distribution outlined in A6883/S5954.** The ICP funding must target public and private enhanced safety net providers as defined in NYS PHL Article 2807-c (34). \$275 million of ICP funding would be converted to increased reimbursement rates for “enhanced safety-net hospitals” and to “qualified safety-net hospitals,” meaning that more money would be available for true safety-net hospitals. Implementing these corrective measures would fix the unfair distribution of NY State Indigent Care Pool (ICP) Funds, which provide support to hospitals to offset their losses by providing care to financially needy patients. The Assembly and Senate Health Committees Chairs and some of the members have supported changes and the recent “Peoples Budget” from the Black, Puerto Rican, Hispanic & Asian Legislative Caucus supports in concept reforms to ICP.
- **Require transparency and detailed accounting for all the pandemic relief funding that has gone to New York hospitals since the spring of 2020.** We urge the Legislature to require the state Department of Health to prepare and submit a report listing each hospital that has received relief funding and the cumulative amount each facility has received to date. This report should also detail each hospital’s contribution to treatment of patients with COVID, including cumulative numbers of patients receiving inpatient treatment for COVID and their total patient days, with racial/ethnic demographic breakdowns of such patients. We also urge a public accounting of the amount and use of public funds given to hospitals for COVID preventive measures, such as vaccinations and mask distribution. We believe strongly in the need for the Legislature’s public oversight of how these funds have been used.

Submitted on February 4, 2022, by CVHSA coordinator Lois Uttley on behalf of the organizations participating in Community Voices for Health System Accountability. These include the Center for Independence of the Disabled, the Children’s Defense Fund, the Coalition for Asian American Children and Families, the Coalition to Save and Transform Mount Vernon Hospital, the Commission on the Public’s Health System, Community Catalyst’s Hospital Equity and Accountability Project, the Community Service Society-NY, Empire Justice Center, March of Dimes, Medicaid Matters-NY, Metro NY Health Care for All, Neighbors to Save Rivington House, the New York Immigration Coalition, Schenectady Coalition for Healthcare Access and the StateWide Senior Action Council.

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