

January 23, 2024

Hon. Helene Weinstein
Chair NYS Assembly Ways and Means Committee
Room 923 Legislative Office Building
Albany, NY 12248

RE: Joint Legislative Budget Hearing on Health NYS FY 2024-25

Dear Assemblymember Weinstein,

New York Providers Alliance (NYPA) represents over 50 skilled nursing facilities in Upstate New York. Our members care for over 6000 residents in the Upstate area and employ over 3000 individuals from Erie to Orange Counties. We are submitting this testimony to ask that the proposed ten percent cuts to the capital portion of the Medicaid rate be rejected, and that the legislature support a sixteen percent increase in the Medicaid operating rate for nursing homes.

Nursing homes need rate relief. Some 80% of nursing home residents are funded by Medicaid. There is no cost shifting to other payers that can be done to find relief. Facilities have largely employed all of the tools that they have to make current funding stretch as far as possible.

During last year's budget discussions, providers insisted that a 20% increase to the Medicaid rate was necessary to continue to operate, and that it would require an increase closer to 40% to address the legacy funding shortfalls of previous years. After debate and consideration, providers received an increase of 6.5%, with a promise that if the Federal government approved, there would be an additional 1% increase. Additionally, funds that had been designated to support Safe Staffing legislation that was slated to be enforced in 2023 was absorbed into the 6.5% increase. Although passed in April, the 6.5% increase was not received by providers until November of 2023, during which time accounts payable and staffing costs continued to pile up. It is concerning that providers have not seen the other promised 1% Medicaid rate increase.

With that recounting of the 2023 budget process, to understand the dire straits that nursing homes now face due Medicaid funding shortfalls, one must understand the 15-year history of insufficient rates, the new stresses that the pandemic placed on operators, and the current outlook for the industry. As the industry has been saying between 2007 and 2022, there had been no operating rate increase to the nursing home Medicaid rates. In 2022 there was a meager one percent increase in the rates, which only addressed the rate reduction seen the year before. Over that 15 year period, cumulative inflation topped 40 percent. In addition, in 2020 nursing homes were already experiencing wage pressures, not only for skilled labor of registered and licensed nurses, therapists, and other skilled positions, they were struggling to compete for unskilled labor against the likes of big box retailers and fast food.

As the industry grappled with staffing shortages, the pandemic began. Suddenly facilities were mandated to pay employees COVID pay, have separate staffing for COVID and non-COVID residents, stock scarce and expensive PPE

to a previously unheard-of extent, and pay for staff and resident testing for COVID. During the lock downs that ensued, providers found themselves paying double and triple the cost for in-house overtime and agency staff. The result of this was that starting wages skyrocketed to avoid overtime and agency fees. The Federal government provided some relief through the Provider Relief Program that allowed nursing homes to be able to bear these wage increases. While still not able to staff to desired levels, this general wage increase that averaged 30% across nursing and therapy staff was borne by facilities through the use of these federal monies. Provider Relief Funding ended in 2022, leaving facilities with a higher wage structure and no additional funding to compensate.

To ignore the terrible toll that the pandemic took on residents would be a disservice to both the residents and those that cared for them. It's hard to know exactly how many New York State residents died due to the pandemic; the debate still goes on today. Suffice it to say there were thousands. The deaths that were reported did spur concerns from the general public, and as a result NYS government, that staffing must be increased in nursing homes. The Governor and the Legislature decided that nursing homes needed to have 3.5 hours of direct care from nursing staff for each resident each day or suffer a \$2,000 per day fine. To help nursing homes comply, the legislature assigned funding to pay for the rule. Unfortunately, most of the funding never reached the providers. In fact, the designated funding for staffing in 2023 budget was rolled into a 6.5 percent increase, the benefit of which providers have yet to fully realize.

Today, after some small amount of financial relief from the 2023 Medicaid rate increase, providers are still dealing with an inflation rate that averages 8%, wage rates that must go higher to retain and attract staff, a scarcity of workers in all categories both skilled and unskilled, and on top of it all, a \$2,000 per day fine if they cannot achieve the 3.5 hours of nursing care required by statute. In response, many facilities are contemplating selling, others are waiting for regulatory approval to be sold. For others, buyers cannot be found, and the facilities have closed or are in the process of closing. Soon, closing will be the only option, because there will be no buyers.

NYPA industry experts examined nursing home rates in all of New York. To do the analysis, the state's roughly 600 nursing homes were divided into deciles based upon the losses they were experiencing from Medicaid underfunding. What we found was that only three deciles (roughly thirty percent of facilities) were either making money or breaking even. The other 70 percent of facilities located principally in Upstate, were losing between \$27.36 and \$81.73 per Medicaid resident per day.

We are asking for a sixteen percent increase in funding to save facilities that serve the neediest in their communities from ruin and to preserve local good paying jobs. Other areas which we ask for you to support or reject include:

Support:

- A 16 percent Medicaid rate increase to nursing homes (\$515M State share)
- A proposal to allow medication technicians with appropriate training to administer medications under the supervision of an RN
- Language that codifies the rebasing of nursing home Medicaid rate calculation

Reject:

- The proposal to reduce the capital component of the rate by 10 percent
- The proposal to reduce the VAPAP by \$75M

Hon. Helene Weinstein – 3
January 23, 2024

New York State can no longer take this seesaw approach to nursing home funding, giving small Medicaid rate increases one year and reductions the next. Our seniors deserve more. We must pay the cost of care if the goal is to staff our facilities and maintain a healthy long term care provider community and a healthy New York.

Sincerely,



Keith Chambery
Executive Director

cc:

Majority Leader Stewart Cousins
Speaker Heastie
Deputy Majority Leader Gianaris
Majority Leader Peoples-Stokes
Senator Rivera
Senator Breslin
Senator Kennedy
Assemblymember Paulin
Assemblymember Weprin