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NYSHFA
New York State Health Facilities Association

NYSCAL
New York State Center for Assisted Living

Testimony of:

NEW YORK STATE HEALTH FACILITIES ASSOCIATION
and
NEW YORK STATE CENTER FOR ASSISTED LIVING
(NYSHFA/NYSCAL)

on the

2014–15 New York State Executive Budget Proposal
Health & Mental Hygiene
Article VII Bill

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Introduction

Good afternoon. My name is Stephen Hanse and I have the privilege of serving as Vice President of Government Affairs & Counsel for the New York State Health Facilities Association and the New York State Center for Assisted Living. Joining me today is Mark Olsen, Administrator for the Kingsway Arms Nursing Center in Schenectady and Chair of our Legislative Committee.

NYSHFA and NYSCAL members and their 57,000 employees provide essential long term care to over 44,000 elderly, frail, and physically challenged women, men and children at over 280 skilled nursing and assisted living facilities throughout New York State.

As we sit here today, New York's long term care providers face significant challenges as a result of the State's transition to managed long term care, recent State budget constraints, and certain initiatives proposed in the 2014-15 Executive budget.

Recent Budgets

Over the past seven years, funding cuts to New York's long-term health care sector have exceeded $1.5 billion. Initiatives implemented by the Medicaid Redesign Team ("MRT") have resulted in approximately $500M in additional cuts over the past two fiscal years, and the potential for additional federal Medicare cuts only exacerbates New York's already fragile long term care finances. For example, at $51.96 per patient per day, New York unfortunately leads the nation with the largest shortfall between Medicaid payment rates and the cost of providing necessary patient care.

As providers enter into their 6th year without a trend factor for inflation, New York's long term care facilities have worked hard to endure these past budget cuts, and this is demonstrated by the fact that nursing home spending is often below the Medicaid Global Spending Cap enacted under the MRT.

As New York's long term care providers enter into year three of the State's new pricing methodology for reimbursement, transition to a managed care environment,

and continue to work with the Department of Health to reconcile ongoing payment issues associated with Superstorm Sandy, it is critical that the 2014-15 Enacted Budget provide financial stability to ensure the continued delivery of high quality long term health care services throughout New York.

2014-2015 Executive Budget

With these issues and constraints serving as a backdrop, I would like to briefly address certain proposals included in the 2014-15 Executive Budget.

First, there are several proposals that could benefit long term care residents and their providers of care.

For instance:

1. NYSHFA/NYSCAL supports the Executive's proposal to eliminate the 2 percent across-the-board provider rate cut effective April 1, 2014. The State's own data has demonstrated that providers are below the Medicaid Global Spending Cap and that these funds should be restored.

2. NYSHFA/NYSCAL supports the Executive's proposal to establish a shared savings dividend program for distributing savings under the Medicaid Global Cap. This proposal would allow for 50 percent of available distributions to be directed to financially distressed providers.

3. NYSHFA/NYSCAL supports the Executive's proposal to require that the nursing home fee-for-service rate shall be the guaranteed Benchmark Rate of payment in the absence of a negotiated rate of payment between a nursing home and a Medicaid managed care plan.

4. NYSHFA/NYSCAL supports the Executive's proposal to establish a $1.2 billion "Capital Restructuring Financing Program" to support bond financing

of capital projects for residential health care facilities, hospitals and other medical providers.

5. NYSHFA/NYSCAL supports the Executive's proposal to increase funding for the VAP program.

6. NYSHFA/NYSCAL supports the Executive's proposal to authorize up to five business corporations to participate in a private equity health care facility demonstration program to encourage the investment of private capital in certain health care facilities (publically traded entities would not be permitted to participate).

7. NYSHFA/NYSCAL supports the Executive's proposal to extend for two years, through 2016, the planning period under which the Commissioner of Health would be authorized to phase in 6,000 Assisted Living Program beds.

While these proposals are beneficial, unfortunately, there are two proposals included within the Executive Budget that eclipse all the benefits of these initiatives and adversely impact New York's long term care providers and individuals we serve.

NYSHFA/NYSCAL Opposes the Proposed 2% Cap on Case Mix

The first initiative is the Executive Budget proposal to cap case mix increases for nursing homes at two percent for any six month period prior to January, 1 2016.

Case Mix reimbursement is the most common payment system for Medicaid nursing home care in our nation. In addition to the Federal Government using a case mix payment system for Medicare reimbursement to nursing homes, New York and 34 other states utilize this system for reimbursing care provided to Medicaid recipients at skilled nursing facilities.

In New York's case mix system, residents are evaluated based on the level of care they require and then are grouped with other residents based on similar care needs. Each long term care provider is assigned an average cumulative "case mix index"

by the Department of Health which represents the resources utilized by the residents and the facility's payment rate is adjusted by the Department based upon this index.

A provider's case mix index is adjusted up or down based on changes in direct care provided to residents. In this system, case mix increases are presently capped at 5 percent. The State reimburses providers for costs above 5 percent only subsequent to an audit by the Office of the Medicaid Inspector General.

The benefits of New York's present case-mix system are that it:

- Ensures access to care for high acuity individuals – those individuals with significant care needs;
- Enhances quality of care by linking reimbursement to the acuity of care; and
- Improves efficiency and contains costs by paying providers prospectively.

From 2006 to 2009, case mix payments were frozen at 2006 levels as the State transitioned from a Patient Review Instrument ("PRI") screening methodology to the federally mandated Minimum Data Set ("MDS") clinical assessment of Medicaid patients.

As a consequence of this freeze, nursing home admissions tended to be directed at care for lower acuity patients because providers were insufficiently reimbursed for the costs of providing care to high acuity residents. Once the State's freeze ended and providers became more familiar with the MDS, facilities increased admissions of higher acuity patients which, not surprisingly, resulted in an increase in case mix. The State was not prepared for these changes, which ranged from a high of 7.07% in 2009 to a decrease of -3.21% in 2011.

Among other things, the 2014-15 Executive Budget proposal to cap case mix at 2% will:

- Restrict access to necessary care for New York's frailest residents, as increased nursing and therapy services for those residents will no longer be sufficiently reimbursed;

- Take away the ability for nursing homes to care for the increased needs of high acuity patients resulting in increased re-hospitalizations and further driving up costs to New York's overall health care system;

- Contradicts the fundamental principles of having a case mix system because the proposal eliminates the incentive to admit high acuity residents by limiting payment for their increased costs of care; and

- Jeopardize the State's estimated 150 "Financially Disadvantaged" nursing home facilities because these facilities are serving a high acuity population that have greater needs than they are being paid to serve.

  In fact, the only hope for these 150 facilities - other than a costly State bailout – is to maintain the current case mix system which will provide a mechanism for these facilities to receive sufficient funds to care for their high acuity residents. However, under this Budget proposal, the operational losses of these financially disadvantaged facilities will never be corrected because providers will not have adequate reimbursement which reflects the true cost of the care they provide. Without such payments, these facilities will not be able to refinance their buildings at lower interest rates or secure additional financing from lending institutions because they lack sufficient revenue to secure the debt service.

This proposed 2% cap is unwarranted in that New York's nursing homes continue to provide access to high quality care to ever increasing populations at levels below the Medicaid Global Spending Cap. To be sure, the State projects to be $75 million under the Medicaid Global Spending Cap for FY 2013-14 and at least $225 million under the cap for FY 2014-15.

Ultimately, this Executive Budget proposal contradicts the policy of the State to ensure that care is being provided in the least restrictive setting. As the Department of Health continues to encourage the placement of lower acuity patients in

community based settings, the Executive's proposal will have the unintended consequence of increasing the case mix of nursing homes as lower acuity residents are transitioned out of their facilities and into the community – setting in motion the further degradation of the economic condition of long-term care providers in New York State.

For these reasons, NYSHFA/NYSCAL respectfully requests that this proposal not be included within the enacted 2014-2015 New York State budget.

NYSHFA/NYSCAL Opposes the Standard Rates of Compensation Proposal

The second and equal area of significant concern for long term care providers throughout New York State is the Executive Budget proposal to mandate so-called standard rates of compensation.

The 2014-15 Executive Budget once again proposes to mandate that managed care contracts with nursing homes require providers to pay prevailing wages to all nursing home employees throughout the State.

By compelling the payment of standard wage rates in a health care environment where the State has imposed a strict Medicaid Global Spending Cap and has eliminated the trend factor for inflation, this unfunded mandate would negatively impact quality of care by forcing providers to reduce staff to meet the wage mandate and stay below the Global Spending Cap requirements.

There are significant financial and human capital costs associated with wage mandate initiatives – as evidenced Home Care Worker Wage Parity Law. Moreover, there is no provision in the Executive Budget to fund or offset the increased costs associated with establishing an across the board prevailing wage law for New York's long term care providers.

Additionally, this special interest proposal would serve to limit patient access as a consequence of its requirement that a provider deemed out of compliance could be prohibited from accepting new admissions.

It is critical to note that in establishing a Benchmark Rate for reimbursing nursing homes - which would be the Fee for Service cost of a provider - the 2014-15 Executive Budget safeguards long term care employees by incorporating the cost

of labor for nursing homes in the Benchmark Rate thereby ensuring that wages will not be reduced to compete in a managed care environment.

Through the establishment of a Benchmark Rate, the Executive Budget proposal eliminates any so-called "race to the bottom" argument that managed long term care plans will only contract with those providers with the lowest labor costs.

As such, NYSHFA/NYSCAL respectfully requests that the Legislature once again reject this mandate that threatens both access and the high quality of long term care in New York.

Conclusion

In conclusion, the 2014-15 Executive Budget contains several positive initiatives that will be far eclipsed by the detrimental patient care and cost implications associated with the 2% patient Case Mix Cap and the unfunded Standard Wage mandate.

There are many expenditures in state government that lend themselves to being capped at 2% to achieve budget surplus savings. However, capping access to long term care for the neediest New Yorkers (especially when the provider community is below the Global Spending Cap) is no way to secure such savings.

Moreover, needlessly mandating prevailing wage rates without providing the necessary funding in a State where Medicaid reimbursement rates fail to sustain the cost of providing care will force providers to reduce direct care staff and the hours they work which will decrease overall access and adversely impact the high quality of long term care.

As always, the New York State Health Facilities Association and the New York State Center for Assisted Living will continue to work together with the Governor, the Legislature and all affected constituencies to ensure the continued delivery of high quality, cost effective long term health care services throughout New York.

Thank you.