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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

2016–17 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 Deanna Stephenson, Director of Managed Programs for the New York State Health Facilities Association and the New York State Center for Assisted Living.

NYSHFA and NYSCAL members and their 60,000 employees provide essential long term care to over 44,000 elderly, frail, and physically challenged women, men and children at over 350 skilled nursing and assisted living facilities throughout New York State.

As we sit here today, New York's long term care and assisted living 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 2016-17 Executive Budget.

Recent Budgets

Over the past 9 years, funding cuts to New York's long-term health care sector have exceeded $1.7 billion. Initiatives implemented by the Medicaid Redesign Team ("MRT") have resulted in approximately $700M in cuts over the past three fiscal years, and the potential for additional federal Medicare cuts only exacerbates New York's already fragile long term care finances. For example, at $48.43 per patient per day, New York unfortunately has the Nation's second largest shortfall between Medicaid payment rates and the cost of providing necessary patient care.

As providers enter into their 8th 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.

Recognizing these constraints, it is important to note that the 2014-15 enacted budget eliminated the MRT imposed 2 percent across-the-board provider rate cut

for nursing homes effective April 1, 2014. This initiative would have restored $280 million to long term care providers throughout New York State over the past two fiscal years, however, the State has yet to enact the approved restoration of these needed monies.

As New York's long term care providers enter into year five of the State's pricing methodology for reimbursement, transition to a managed care environment, face numerous economic pressures and navigate the State's evolving Delivery System Reform Incentive or "DSRIP" program, it is critical that the 2016-17 Enacted Budget provide financial stability to ensure the continued delivery of high quality long term health care services throughout New York.

2016-2017 Executive Budget

With these issues and constraints serving as a backdrop, I would like to briefly address three areas concerning the 2016-17 Executive Budget:

I. The impact of the proposed minimum wage increase on long term care and assisted living providers;

II. Issues concerning the State's transition to Long Term Managed Care; and

III. Issues that NYSHFA/NYSCAL respectfully request be included within the 2016-17 enacted budget.

I. Minimum Wage

As you are well aware, the State just increased the minimum wage on December 31st and in his Executive Budget the Governor proposes to further increase the State minimum wage from the current $9.00 an hour to $15 an hour.

You may be familiar with the assertion that "a rising tide lifts all boats" with regard to increasing the minimum wage. Certain economists view this assertion as true for those businesses and employers who are able to pass increased labor costs

through in higher prices for their products or services to the end consumer. However, this assertion is not true for the State's Medicaid providers who provide essential long term care to New York's most frail and infirm women, men and children.

This is true because there is one major problem: providers of long term care, and the patients we serve, are almost completely dependent on government programs for the payment of necessary care. As such, while other boats may be lifted with the tide, New York's skilled nursing and assisted living providers are not able to pass through the increased labor costs of an increase in the minimum wage as a consequence of being tethered to the "anchor" of Medicaid.

Our residents are often discharged from a hospital needing extensive care and rehabilitation. In addition to stroke patients, ventilator dependent residents, cancer patients, dementia patients, TBI patients and other high acuity patients, a majority of our residents need considerable assistance with their activities of daily living. Caring for our residents is a challenging privilege that requires training expertise, patience and significant resources. We perform this difficult work every day with dedication and compassion.

Presently, 76 percent of all nursing home residents in New York rely on Medicaid to pay for their care.

And as I mentioned earlier, at $48.43 per patient per day, New York unfortunately has the Nation's second largest shortfall between Medicaid payment rates and what it costs to provide necessary patient care. Care that includes, among other things, room, 24-hour nursing services, at least 3 meals with special requirements, medication, therapy, and many other special services and activities. Moreover, there are significant additional costs associated with wage differentials paid at nursing homes and assisted living facilities to provide necessary care for evening, night and weekend shifts to name just a few.

Consequently, nursing home and assisted living providers face a unique and difficult position: first we cannot simply raise the price of our services to reflect

higher labor costs due to an increase in the minimum wage. Second, we do not have the ability to change the makeup of our patient mix or shift costs to other residents. And third, we are not willing or able to reduce needed services or the quality of care we provide.

Nursing home care is extremely labor intensive. In fact, labor costs represent 70 percent of all nursing home operating costs. As such, without full financial support from the State, the proposed minimum wage increase will have an unbearable economic impact on the State's skilled nursing providers.

Working collaboratively with other statewide associations representing nursing homes, hospitals and home care providers, and utilizing the best currently available data, NYSHFA conservatively estimates the Executive's minimum wage proposal would increase costs for skilled nursing providers by $600 million and more than $50 million for assisted living providers.

These figures were established employing a methodology that considers three factors:

1. the direct impact of increasing the hourly wage of workers making below $15 per hour;

2. the impact of wage compression on labor costs – that is – wage increases in one set of wages within an organization necessitate increases in other, higher wage groups to maintain a level of wage differences; and

3. an increase in the indirect labor costs associated with mandatory benefits such as social security, workers' compensation, and unemployment and disability insurance.

Given the significant costs associated with the proposed minimum wage increase from $9 per hour to $15 per hour, coupled with the unique inability of skilled nursing and assisted living providers to raise the price of our services to absorb any

mandated increase, it is vital that the State fully fund the increased labor costs resulting from the implementation of a minimum wage increase.

Quite simply, the proposed minimum wage increase places skilled nursing providers in a uniquely detrimental situation. We are dependent upon State and federal funding for payments of almost 90 percent of our residents. These payments already do not meet the cost of providing care at the State's current minimum wage level.

As other states have done when increasing the minimum wage, New York must financially acknowledge the unique nature of skilled nursing and assisted living providers and fund this increase through a provider rate increase that is outside of the Medicaid Global Cap to ensure the continuation of access to high quality long term resident care.

II. Managed Long Term Care

Turning now to the State's transition to Long Term Managed Care. There are several proposals in the 2016-17 Executive budget addressing certain aspects of the State's efforts to move long term care residents to managed care. However, these proposals do not address the three key issues providers face as the State enters this uncharted territory.

Extend the Nursing Home Benchmark Rate

In 2015, the State established a "benchmark rate" that would be paid by managed long term care plans to contracted skilled nursing facilities for a 3-year period.

Generally speaking, the benchmark rate is the current fee-for-service Medicaid rate and is set to sunset in 2018. In establishing the benchmark rate, the State acknowledged that it will assess the impact of its long term managed care policies and consider extending the benchmark rate beyond the 3-year requirement.

The benchmark rate provides vital rate stabilization and has secured the capital rate component necessary to fund needed facility renovations in order to optimize

resident care. As such, the benchmark rate has served to provide a level of certainty to providers that will be necessary for the program to continue beyond the rates sunset date. This certainty is essential, especially as many providers face delays in timely payments for care from long term managed care plans. A stabilized Medicaid benchmark rate will also add to a provider's ability to commit to the Fully Integrated Duals Advantage ("FIDA") initiative which coordinates resident care between the State and federal governments.

Health Plan Solvency

Stabilizing resident care rates through the benchmark rate not only benefits providers and the residents we serve, it benefits managed care plans by ensuring that premiums will be sufficient to serve our vulnerable population.

At the start of the State's transition to managed long term care, there were approximately 45 managed long term care providers. Throughout 2015, we witnessed the failure, reformation and collaboration of many of these plans. Earlier in 2015 HHH Choices Health Plan filed for bankruptcy, leaving behind creditors including nursing home providers. Consequently, increased scrutiny by the State as to the financial health of long term managed care plans is needed to protect both consumers and providers.

Eligibility Determinations

It is the State's policy that individuals not enrolled in a MCO or newly eligible individuals in need of nursing home care will need to obtain eligibility through their local social service district. Under the State's policy, local districts have 45 days from the date of a completed Medicaid application to determine eligibility. To date there are numerous documented reports of counties failing to meet the required timeline of 45 days, therefore jeopardizing necessary payments for nursing home care. If these extended eligibility timeframes continue, the goals of the State's long term managed care initiative will not be achieved as enrollment numbers will be greatly reduced.

III. Issues to be Included Within the 2016-17 Budget

Lastly, I will turn briefly now to three critical issues that NYSHFA/NYSCAL respectfully requests be included within the 2016-17 enacted budget.

1. Return on Equity

The first of these issues dates back to a 2011 MRT initiative and is referred to as "Return on Equity."

In 2011, there were numerous initiatives included among the enacted MRT proposals that affected New York's long term care providers. Included among these initiatives were proposals affecting all long term care providers addressing statewide pricing, bed hold policies and nursing home rate appeals. However, only one proposal was enacted - §2808(20)(d) of the Public Health Law - that was aimed exclusively at proprietary nursing homes.

§2808(20)(d) of the Public Health Law granted the Commissioner of Health the authority to reduce or eliminate the Return on Equity in the Medicaid rate capital component for services provided by proprietary health care facilities for rate periods on and after June 1, 2012.

The Commissioner eliminated the Return on Equity, and in doing so, unreasonably imposed adverse financial impacts only upon proprietary skilled nursing facilities. By doing this, providers are no longer being reimbursed a Return on Equity in their land and buildings.

This initiative was approved with little discussion or understanding. Whereas the State's Medicaid capital reimbursement system recognizes the cost of the physical buildings in the case of not-for-profit nursing homes by allowing for the depreciation of their real property, proprietary long term care facilities received a comparable benefit through a return on equity.

In addition to being unfair, the elimination of Return on Equity is now counterproductive in that the State should be encouraging all facilities to be taking advantage of historically low interest rates.

However, the lack of Return on Equity inhibits the ability of providers to refinance their buildings because Return on Equity is viewed as a key element of the underwriting. Consequently, the State continues to pay a higher Medicaid rate for capital.

The elimination of Return on Equity has inequitably and disproportionately impacted all proprietary skilled nursing facility providers. When enacted, the Department estimated a small savings of $6.3 million State share.

While this is insignificant in the context of a $145 billion budget and would be offset by lower Medicaid payments for capital through additional mortgage refinancing's, the impact is significant and discriminatory on all of New York's proprietary skilled nursing facilities.

This disparate impact has limited the ability of proprietary nursing home providers to fully reinvest in their facilities and provide optimum resident care. As such, NYSHFA/NYSCAL respectfully requests the reinstatement of Return on Equity §2808(20)(d) of the Public Health Law sunset on March 31, 2015.

2. Supplemental Security Income Increase for Adult Care Facilities

The second issue we respectfully request consideration of is an increase in the Supplemental Security Income rate for Adult Care Facilities.

New York has not increased the state portion of the Supplemental Security Income ("SSI") rate for low income elderly and disabled individuals in Adult Care Facilities in 8 years.

The current $40 per day is clearly insufficient to provide room, board, meals, activities, case management, supervision and medication assistance for our SSI recipients.

While the State portion of the SSI rate has remained frozen for 8 years, facility costs for food, labor, health insurance and utilities, among other things, have increased year after year.

Consequently, NYSHFA/NYSCAL respectfully requests the Legislature increase the State portion of the Supplemental Security Income rate to help increase the quality of care and services to low income SSI recipients and prevent continuing closures of SSI facilities.

3. Assisted Living Program Rate Increase

The third issue we respectfully request consideration of is an increase in the Assisted Living Medicaid rate.

Assisted Living facility Medicaid rates under the Assisted Living Program are based on 1992 costs, receiving only minimum inflationary trend adjustments through 2007. Since 2007, like skilled nursing facilities, assisted living providers have not received any inflationary trend factor adjustments to their rates.

Moreover, most ALP facilities do not receive a capital component as part of their rate, and are therefore not reimbursed for capital improvements, a necessary ongoing cost they must absorb.

Although initially designed to represent approximately 50 percent of a skilled nursing facility rate, reimbursement rates for ALPs have fallen below this level. Depending on region, in some instances, an ALP rate pays as little as $43/per resident per day. Given this shortfall, NYSHFA/NYSCAL respectfully requests an increase in ALP rates to ensure the continuation of necessary resources to care for our residents in a lower cost, more homelike setting.

Conclusion

In conclusion, it is vital that the 2016-17 enacted budget fully fund all costs associated with an increase in the minimum wage to ensure the continued delivery of high quality cost effective long term and assisted living care.

Moreover, we respectfully request that the enacted budget implement safeguards that will protect the continued provision of cost effective resident care as the State continues to pursue its transition to managed long term care.

Lastly, we respectfully request legislative support to end the discriminatory Return on Equity statute and direct increased State funding for Assisted Living providers and Supplemental Security Income Adult Care Facilities.

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.