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2016-2017 State Budget Testimony HANYS' Healthcare Policy Recommendations

Joint Legislative Hearing
Senate Finance and Assembly Ways and Means
Committees

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Good afternoon, Chairwoman Young, Chairman Farrell, Health Committee Chairs Hannon and Gottfried, and Committee members. Thank you for the opportunity to comment on the Executive Budget proposal for state fiscal year (SFY) 2016-2017. We appreciate your longstanding support of healthcare and look forward to continuing our partnership with you during this critically important legislative session.

I am Dennis Whalen, President of the Healthcare Association of New York State (HANYS), the only statewide hospital and continuing care association in New York State, representing 500 non-profit and public hospitals, health systems, nursing homes, home care agencies, and other healthcare organizations.

This is a critical year for our hospitals and health systems. They are undergoing rapid and fundamental transformation.

Our hospitals and health systems are embracing the imperatives to:

- deliver patient-centered care—increasingly through outpatient services;
- continue their achievements in quality and patient safety;
- focus on health improvement in their communities;
- invest in new technologies and research to bring the best and newest of care; and
- keep costs down and fulfill their missions in the most effective and efficient ways.

They continue to demonstrate their critical role as the 24/7/365, ever-ready healthcare resource for essential care as well as for emergency, disaster, trauma, and disease outbreak care. At the same time, state and federal reform initiatives are changing how healthcare is both reimbursed and delivered.

Our hospitals and health systems are pivotal to the economy of our state and communities. They are responsible for \$138 billion in economic activity annually—more than 10% of the state's entire Gross Domestic Product, and are among the largest employers in every region of the state, generating more than 777,000 jobs.ⁱ New York's hospitals also provide nearly \$8 billion every year in free and subsidized care to those in need.ⁱⁱ

The Legislature and Governor enacted critical investments over the past two years to support and promote transformation. HANYS supported and worked with you on these proposals, which were necessary for meaningful reform to be successful. These investments included critically-needed capital funding to update and modernize healthcare infrastructure; targeted resources for safety net facilities, rural and critical access hospitals, and financially struggling providers; broad-based investments that recognize hospital quality improvement; and across-the-board relief through the elimination of past, ill-advised budget cuts.

But the proposed 2016-2017 Executive Budget falls short in articulating a multi-year vision and agenda for healthcare to provide needed predictability—because

transformation is a long-term process involving changes that take place over several years. The proposed Executive Budget also avoids addressing key issues that will have enormous fiscal impact on healthcare providers—the proposed minimum wage increase (\$570 million impact on hospitals and health systems)ⁱⁱⁱ and the outstanding Health Republic receivables (\$200 million).^{iv}

As it currently stands, the proposed budget also cuts healthcare capital on a year-to-year basis, redistributes capital monies that were designated in last year's budget for upstate (Oneida County), and makes them available on a statewide basis. The new capital dollars that are proposed for statewide availability are much needed, but should represent new monies rather than a redistribution of previously promised funds.

In addition to these concerns, we ask the Legislature to consider the dismal record of the Department of Health (DOH) in getting previously approved and appropriated funds out the door so that these funds can address the critical needs for which they were intended.

To date, there are \$3.4 billion in outstanding commitments to hospitals and health systems across the state. These outstanding commitments are comprised of \$2.9 billion held up by slow and inefficient implementation of state initiatives, including more than \$2.5 billion in capital funding; and more than \$550 million due to delayed federal matching funds.

New capital investments in New York's healthcare system are necessary to allow those institutions that face special challenges such as rural and critical access hospitals to transform; to enable hospitals seeking a partner to stabilize their balance sheets; to enable stronger hospitals and health systems to enter into partnerships without weakening their own balance sheets; and to enable hospitals that will remain independent to do so.

The legislative session could also bring forth damaging initiatives that, if enacted, would dramatically increase the costs for hospitals and health systems, such as harmful, non-comprehensive medical malpractice legislation, and arbitrary, mandatory nurse staffing ratios.

These pressures would be challenging for any group of hospitals and health systems, but as we have discussed in past years, New York's hospitals and health systems already face a critical situation. Our hospitals have the second-lowest operating margins in the country. There are 28 hospitals on DOH's "watch list" in recognition of their tenuous financial condition and more than that number will move to the watch list if things do not change. New York's hospital infrastructure is the sixth oldest in the nation.

We look forward to continuing our close partnership with the Legislature and Governor to enact policies that build on the progress achieved to date, and that will help our health system to move forward with the work of transformation.

RECOMMENDATIONS

HANYS asks for your careful consideration of our priorities for this year:

- **Reject cuts and redistribution of previously dedicated healthcare capital funds.**
- **Add needed new capital investments in healthcare.** The continued and urgent demand for capital dollars exceeds the amount available, and we ask that you provide increased healthcare capital funding in the state budget.
- **Keep past promises.** Healthcare providers are waiting for \$3.4 billion in outstanding commitments as a result of inefficient state implementation and delays in federal matching dollars.
- **Fully fund any new minimum wage mandate without negatively impacting the Medicaid global spending cap.** The healthcare system cannot pass on or absorb the \$2.9 billion impact without critical adverse effects on access to care.
- **Address the nearly \$200 million in unpaid hospital claims related to Health Republic and establish a guaranty fund** to protect consumers and providers from future health plan failures.
- **Oppose damaging new mandates** such as imbalanced medical malpractice proposals and mandatory staffing ratios.
- **Increase operational and targeted support** for safety net providers, financially struggling facilities, those approaching financial fragility, and rural hospitals.
- **Provide regulatory relief** through the removal of barriers that impede efforts to transform the system and promote new models of care.

The appendix provides greater detail on these issues and our recommendations, and as always, we look forward to working with you, the committees, and your staffs to assist in analysis of the Executive Budget and to improve the work that it has started so that healthcare transformation can continue at a robust level in 2016-2017 and beyond.

Thank you.

NEW YORK'S HEALTHCARE LANDSCAPE

As the Legislature begins considering important health policy proposals during the state budget and legislative session, it is important to be aware of the trends impacting the health system and the role that our providers play in their communities.

The Financial Condition of New York's Hospitals is Among the Worst in the Country^v

The imperative for operational and capital support is highlighted by our health system's financial indicators:

- New York's average statewide hospital operating margin is the second worst in the country and far below the national average.
- Nearly 50% of New York's hospitals have negative operating margins and 70% are in fair or poor financial condition.
- New York's healthcare facilities are the sixth oldest in the nation.
- Hospitals lose billions of dollars each year treating Medicaid and Medicare patients due to government underpayment. In New York, Medicaid pays 76 cents for each dollar of care provided; Medicare pays 97 cents.
- The commercial insurance reimbursement rate for New York hospitals is the fifth worst in the country.

New York's Hospitals Generate Billions in Economic Activity and Community Benefit^{vi}

Legislative actions that impact the health system should be done within the context of how providers impact their communities through job creation and community investment:

- New York hospitals generate \$138 billion in economic activity, which makes up more than 10% of the state's entire Gross Domestic Product.
- Our hospitals are among the largest employers in every region of the state, directly and indirectly generating more than 777,000 jobs. Four of New York's top ten private sector employers are hospitals and health systems.
- Adhering to their charitable mission, New York's private, non-profit hospitals provide free care and financial assistance to people in need; subsidize care and services to low-income, elderly and under-served communities; and invest in community health improvement programs at a total cost of \$7.8 billion annually—13.4% of total expenses. Importantly, this statewide figure

is on top of the billions of dollars New York's 23 public acute care hospitals expend on these activities each year.

Hospitals' Number One Priority: Care Quality and Patient Safety

Our health systems continue their significant work and achievement on quality and safety:

- Hospitals across New York State are participating in the national Partnership for Patients (PFP) initiative, aimed at reducing hospital-acquired conditions and preventable readmissions.
- As a result of PFP, New York hospitals have seen 25,000 fewer patient readmissions, a 41% reduction in central line-associated bloodstream infections, a 30% reduction in falls with moderate or greater injury, and a 90% reduction in early elective deliveries.
- The New York State PFP was recognized as one of the nation's highest performing programs, and our hospitals were highlighted by a U.S. Department of Health and Human Services report in May 2014.
- DOH recently released its 2014 hospital-acquired infections report, showing a decline in all reportable infections.
- These results show the commitment of New York's hospitals and health systems to continuously optimizing quality, safety, and the efficacy of care. Our providers continue to engage in numerous quality-focused initiatives, including efforts centering on sepsis, antibiotic stewardship, and infections.

MORE THAN \$3 BILLION IN UNPAID COMMITMENTS TO HOSPITALS AND HEALTH SYSTEMS

Today, through the current state fiscal year, there are a total of \$3.4 billion in outstanding funding commitments to New York's hospitals and health systems.

Of this total, \$2.9 billion of the outstanding commitments are the result of slow implementation of prior state budget initiatives and other promises, including:

- \$1.2 billion in Capital Restructuring Financing Program (CRFP) funds, enacted two years ago in the SFY 2014-2015 budget;
- nearly \$1.4 billion in capital funding allocated in the SFY 2015-2016 budget, including: \$700 million for Brooklyn; \$355 million for essential healthcare providers; and \$300 million for Oneida County (reduced and re-programmed in this year's proposed budget);
- important funding enacted last year, including statewide investments via a hospital quality improvement initiative and targeted initiatives for rural hospitals; and

- promised Delivery System Reform Incentive Payment (DSRIP) dollars to certain providers to address inequities created by the initial rollout of program funding.

HANYS recommends that the state keep its prior commitment to Oneida County healthcare capital and include new capital funding of more than \$195 million. The state should also consider a multi-year commitment of capital funds to ensure predictability.

Shortfalls in federal Medicaid matching dollars are responsible for more than \$550 million of the outstanding commitments, including payments targeted to hospitals that treat the largest share of uninsured and Medicaid patients, and federal funds to remove an across-the-board Medicaid cut that was eliminated in the 2013-2014 budget and to match investments made in the SFY 2015-2016 budget.

HANYS and our regional partners continue to work with, and provide technical assistance to, DOH and the Centers for Medicare and Medicaid Services as they work to resolve the technical issues that are preventing the release of these federal funds.

The state should fulfill its promises to providers, even if it means making up for expected federal funding that does not materialize.

BACKGROUND ON EXECUTIVE BUDGET ISSUES

Minimum Wage Increase: \$2.9 Billion Cost for Providers

HANYS and the state's nursing home and home care associations estimate that this proposal, when fully implemented, would increase costs to hospitals, nursing homes, and home care providers by at least \$2.9 billion annually. This impact includes the direct effects of raising workers' wages to \$15 per hour, wage compression, and increased benefits and other indirect costs. Wage compression is an especially important factor to consider, as a new wage floor will require employers to make investments in other wage bands, creating a ripple impact through the wage scale and even impacting providers located in wage areas downstate, including New York City.

HANYS and our partner statewide associations estimate conservatively that the impact of this proposal would be \$570 million on hospitals, \$600 million on nursing homes, and more than \$1.7 billion on home care agencies.

New York State's healthcare providers are affected by this proposal differently from other business sectors because a labor cost increase cannot easily be passed onto consumers, and tax breaks to offset these increased costs do not help non-profit providers. Public payers—Medicare and Medicaid—pay for the care of most hospital patients in New York. The reimbursement rates for Medicare are generally set by the federal government, and Medicaid managed care premiums do not support providers' increased labor costs. Further, the state recently approved lower-than-requested commercial insurance premiums, which makes negotiating commercial rates that address a new wage floor virtually impossible.

- HANYS recommends that the state fully fund any new minimum wage mandate without negatively impacting the Medicaid global spending cap.

Health Republic Collapse

New York is the *only* state that does not have a health insurance guaranty fund, which would provide coverage to individuals for medical costs if their insurer were to become insolvent. A guaranty fund is not an ongoing tax on insurers or consumers and would only be assessed in the event of plan insolvency. Guaranty funds have been instrumental tools in protecting consumers and providers in other states when co-op plans have failed.

- HANYS recommends the establishment of a guaranty fund to protect consumers and providers and to avoid any shortfalls related to future health plan insolvency.

- HANYS recommends the state address the approximately \$200 million in unpaid claims that providers have sustained due to the Health Republic shutdown.

Funding for Safety Net and Financially Fragile Facilities

The Executive Budget proposal again re-shuffles and re-programs the Vital Access Provider Assurance Program (VAPAP), Value-Based Payment Quality Improvement Program (VBP QIP), and the VAP program in a way that cuts overall funding for SFY 2016-2017 by about \$100 million from what was enacted in the SFY 2015-2016 budget.

A full commitment to promised funding is essential to fully support healthcare transformation. Leveraging VAPAP and VBP QIP funding, the state's financially fragile hospitals are working diligently to define a pathway to sustainability. Other hospitals have leveraged VAP funding to position themselves for new payment models and changes in care delivery.

- HANYS urges the Governor and Legislature to fully fund the promised commitments to these essential programs and restore VAP funding to allow for a new round of VAP transformation support.
- Additionally, HANYS urges DOH to continue working to exhaust all options to secure federal matching funds for these important programs.

Excess Medical Malpractice Program

- HANYS urges the Legislature to reject the proposed Excess Medical Malpractice Program funding cut. This program provides a critical level of insurance protection to all eligible physicians regardless of specialty or location. The Executive Budget also proposes to re-distribute excess coverage according to a vaguely-defined formula to be developed by the Department of Financial Services. Much greater clarity is needed on how the proposed coverage would be re-shuffled and its impact, given that physicians in every specialty and location are eligible.

Improve Doctors Across New York

The Doctors Across New York program is a vital tool in addressing New York State's significant physician shortage in under-served rural and urban areas. However, since the program was originally enacted eight years ago, only three cycles of awards have been made.

- HANYS recommends that state funding be increased to allow for 100 new loan repayment awards.
- HANYS recommends that Doctors Across New York awards be distributed on an annual basis and on the same date each year, which would provide more regularity and predictability in the awarding process, with the ultimate

goal of encouraging more medical students and residents to choose primary care.

Medicaid Copayment Reduction for Low-Income Medicare Beneficiaries

The Executive Budget proposes to stop paying any portion of the Medicaid copayment associated with Medicare Part C services provided to dual-eligible and other low-income Medicare beneficiaries when the total payment to the provider is higher than the Medicaid payment rate.

- HANYS urges the Legislature to again reject this proposal, which would result in reimbursement reductions to physicians, hospitals, and other outpatient providers.

Behavioral Health

- HANYS supports the budget proposal to extend authorization for the Comprehensive Psychiatric Emergency Program until July 1, 2020, and strongly supports extending the professional licensure requirement exemptions for certain social work and mental health professionals—which is crucial for hospitals to continue delivering critical behavioral health services and to meet the workforce demands created by state initiatives.

Long-Term Care

The Executive Budget includes a proposal to modify the eligibility criteria for new enrollees into the managed long-term care (MLTC) program. HANYS is evaluating the proposal to determine the impact on our membership.

- HANYS supports establishing the new paraprofessional role of advanced home health aide, indicated as upcoming legislation in the budget briefing book. Authorizing a new level of aide prepared with advanced education and skills, who can provide added care under the supervision of a registered nurse, will allow more people to remain in their homes and communities.

The proposed budget would permit the Office of Mental Health (OMH) to use either an MLTC program with wraparound community support, or a skilled nursing facility to serve approximately 100 long-term care patients.

- HANYS supports inter-agency collaboration for the coordination and continuity of care for OMH long-term care patients, but urges the state to ensure that the wraparound services and funding for those services are in place before any transition. Additionally, we urge the state to expand this initiative to any Medicaid beneficiary who needs both OMH and long-term care services.
- HANYS also recommends more transparency and timeliness regarding managed care premium rates.

Increasing Awareness and Screening for Breast and Prostate Cancer

The Governor announced initiatives to increase the rates of screening for breast cancer and prostate cancer, including education and outreach campaigns, treatment coordination, and research. This effort to expand access to mammography is expected to include regulatory changes related to hospital-based screening facilities.

- HANYS supports efforts to increase cancer screening and looks forward to working with our members and the state on this initiative. HANYS will work with the state to ensure needed access for mammography in hospital-based screening facilities, with appropriate balance, flexibility, and consideration of the needs of each community.

Regulatory Reform Needed to Advance Care Transformation

The Certificate of Need (CON) process has been updated recently to include some improvements sought by HANYS and other groups; however, more significant changes are needed to streamline this antiquated, outdated, and slow-moving process. Further, HANYS continues to believe that the DSRIP regulatory waivers are not expansive enough and come with too many strings attached. The continued need for many projects to go through CON even though they were part of the DSRIP programs already approved by the state will cause backlogs and negatively impact PPSs' ability to succeed and meet DSRIP metrics.

ⁱ HANYS' analysis of 2014 hospital Institutional Cost Report (ICR) data combined with regional multipliers from Regional Input-Output Modeling System II (RIMS II) developed by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA).

ⁱⁱ HANYS' analysis of 2013 Internal Revenue Service (IRS) Form 990, Schedule H.

ⁱⁱⁱ HANYS' analysis of hospital survey results from December 2015 and 2014 hospital Institutional Cost Report data.

^{iv} HANYS/Greater New York Hospital Association survey results, December 2015.

^v 2014 Hospital Audited Financial Statements; American Hospital Association Hospital Statistics, 2015 Edition; HANYS' analysis of 2014 hospital Institutional Cost Report data and Medicare Cost Report data.

^{vi} HANYS' analysis of 2014 hospital ICR data combined with RIMS II regional multipliers from BEA; HANYS' analysis of 2013 IRS Form 990 Schedule H; *CGR Releases List of Top 20 Private Employers in NYS in 2013: Employers in Health Care Field Dominate*, Center for Governmental Research, May 15, 2014, <https://www.cgr.org/cmsb/uploads/ur-top-20-employers.pdf>.