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**Testimony of:**

**NEW YORK STATE HEALTH FACILITIES ASSOCIATION  
and  
New York State Center For Assisted Living  
(NYSHFA/NYSCAL)**

**on the**

**2012–13 New York State Executive Budget Proposal  
Health & Mental Hygiene  
Article VII Bill**

**Before the Senate Finance and Assembly Ways & Means Committees**

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### **Introduction**

Good morning, I am Robert Murphy, Executive Vice President for Governmental Affairs. My testimony is being presented on behalf of the New York State Health Facilities Association and New York State Center for Assisted Living (NYSHFA/NYSCAL) representing some 260 skilled nursing and assisted living facilities in the state, serving approximately 44,000 patients and residents while employing over 57,000 people. We appreciate the Senate Finance and Assembly Ways & Means Committees affording us the opportunity to share some thoughts with you regarding Governor Cuomo's proposed Health and Mental Hygiene Budget and the accompanying Article VII bill. In addition to our comments we want you to know our association is pleased to continue to offer our services as a resource to the legislature regarding long-term health care issues.

### **Recent Budgets**

To understand where we are heading we must first know where we have been. Over the past five years, funding cuts to the long-term health care sector have exceeded \$1.2 billion. We won't over burden you with the details of those cuts at this time as we have documented them to you in earlier testimony. As you are also equally aware, the actions of the Medicaid Redesign Team (MRT) to reduce Medicaid spending by \$2.8 billion resulted in direct cuts to nursing homes alone of approximately \$200 million in fiscal year 2011/12 and as a part of the two year proposals these cuts will continue in 2012/13. This coupled with significant cuts imposed to Medicare payments to nursing homes by the Federal Government have, to say the least, placed significant strain on providers of long-term health care services. As New York continues, rightfully, to address its fiscal woes, you should none the less be aware, that a study by national consulting firm, ELJAY, LLC ranks New York as having the largest per day short fall of any state between Medicaid rates of payment and costs of services (\$42.48). This is not a situation that can be sustained.

### **Reimbursement System Remains in a State of Flux**

Over the past number of years the state moved to a rebased reimbursement system in New York State. Whereas the intent of the original proposal passed by the legislature in 2006 was to provide a much needed refreshing of the base year used to calculate rates, by the time the new system was put in place last year, numerous budget cuts over that time, rendered minimal relief to some and caused huge reductions to others. Sensing the major disruptions taking place and as an added way of simplifying the administration of the system, the Department of Health proposed implementation of a Pricing System. To their credit the Department reached out to the various Associations for input and recommendations. The end result was a new system phased in over six years, which though it included individual elements troublesome to various groups, was on a balance a genuine effort to achieve their goals. Again the result was a shifting of significant dollars in rates paid to individual facilities. It is now the state's intention to move nursing homes to a managed care system which will undoubtedly result in more reimbursement shifts. As I hope you can see between budget cuts and implementation of new systems, it has been an extraordinarily tumultuous time for nursing homes, a time when meaningful planning for

the future has been virtually impossible. Additional cuts and shifting of dollars has and will make it virtually impossible for some providers to continue operations in the future.

### **2012/13 Executive Budget**

Key elements of the 2012/13 Executive Proposal as found in the Health and Mental Hygiene as well as the Article VII bill of interest to us include:

- Continuation of the Medicaid Redesign Team's proposal from last year (elimination of the trend inflation factor, reduction in payments for holding a patient's bed when hospitalized and imposition of a cap on the amount of rate appeals paid to facilities.) Whereas we understand these were two year cuts as proposed by the MRT, we still wish you to understand the negative impact these cuts will continue to have on operations.
- It appears that in Part H of the Governor's bill, Sections 1 and 2, the legislative authority to set a trend (inflation) factors is being repealed. Instead it would appear that the discretion to develop an annual adjustment would be ceded to the Department of Health "based on factors to be determined by the Commissioner" and require the concurrence of the Division of the Budget. If this is indeed the intent, we are most concerned with the practical impact of this change and urge the legislature not to give up this authority. Please keep in mind the trend factor has been a very important element in a providers ability to provide well deserved raises and benefit increases to employees.
- The bill also revisits the issue of payment made to facilities for holding a bed for a nursing home resident who is hospitalized. Rates would be cut to save the state \$40 million. We believe that bed hold policies are good for our patients, but if the state is unwilling to pay for holding the beds, then they should cancel the policy and they should duly inform the patients and families.
- Section 3 of Part H of the bill deals with administrative costs and executive compensation paid by facilities. We continue to try and assess the ramifications of this proposal, but need more specifics before we can consider a position.
- Although a tough issue, the concept of allowing a spouse to refuse to pay for care of an institutionalized spouse, thereby defaulting payment to the state or facility as payor, needs to be addressed. We commend the Governor for taking on this issue.
- A federal mandate requires nursing homes to be "fully sprinklered" by 2013. Though all facilities have sprinkler systems, some of the older buildings cannot meet the definition of "fully sprinklered" without significant costs for retro-fitting. As a payor, Medicaid should consider ways for facilities to access capital expeditiously to meet this mandate.
- The bill also appears to limit the growth of supportive housing (assisted living) to savings achieved from decertification of nursing home beds. We are concerned this will negatively constrict the needed growth of necessary services.

### **Conclusion**

Whereas the level of challenges presented to us in 2011 was truly daunting, we would be remiss if we didn't acknowledge the extraordinary and unprecedented level of collaboration between the Associations and the Department of Health to address these challenges. The seemingly impossible problems of the 2009 – 2010 nursing home rates and many other previously passed but never implemented negative budget adjustments, absent of our collective effort, would have

resulted in even greater negative consequences to the profession. Solutions were found, which sometimes were neither perfect nor pretty, but which allowed us to move forward so that collaboratively we could address the issues of the Medicaid Pricing system which is now in its final form.

In addition to the many fiscal challenges and programs which we have had to work on, nothing exemplifies the need for collaboration more than the Hurricane Irene and Tropical Storm Lee disasters. During that time an unprecedented 5,000 plus residents were temporarily relocated away from the storm path with no reported negative long-term health care consequences resulting. Care givers and the state worked together with mutual understanding that the safety of patients was our joint priority. It is our belief that the same approach should be taken with respect to quality of care. It is the responsibility of us all to work together, not only to maintain, but to improve quality of care during these extremely difficult fiscal times. A good example of this shared responsibility is the Gold Stamp program which is currently funded with a grant from the New York Health Foundation working in collaboration with many of the associations as well as the Department of Health. We are all convinced Gold Stamp will have a significant impact on reducing pressure ulcers in all settings.

As we work on quality and implementing a pricing system, we must introduce into our discussion the word "Value" in healthcare. "Value" is the combination of quality and cost efficiency that will serve us all well as we move forward into the Managed Care environment for all New York Medicaid providers and recipients.

The New York State Health Facilities Association and New York State Center For Assisted Living is fully committed to this type of continued collaboration as we look forward to working with all of the stakeholders involved. We would be pleased at this time to answer any questions you might have.