

2014-2015 State Budget Testimony

Joint Legislative Hearing
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Thank you Chairman DeFrancisco, Chairman Farrell, Health Committee Chairs Hannon and Gottfried, and committee members, for the opportunity to comment on the state fiscal year 2014-2015 budget. We look forward to working with you during this legislative session to address important health care policy issues affecting all New Yorkers.

I am Dennis Whalen, President of the Healthcare Association of New York State (HANYS), which represents hospitals, nursing homes, home health agencies, and other health care providers throughout the state.

This is a time of tremendous transformation and reform for health care—an opportunity to continue our work to make our system as effective and efficient as it can be. New York’s hospitals and health systems are implementing innovative patient-centered, coordinated care models that provide safe, state-of-the-art care; meet patient needs; and reduce costs. This is occurring at a time when hospitals, nursing homes, and home care agencies face significant financial challenges. New York hospitals’ operating margins are the third worst in the country.

As hospitals and health systems embrace this change, they continue to be steadfast in their mission to provide high-quality care around the clock and remain prepared to respond to the next emergency or natural disaster.

HANYS’ Agenda

Hospitals and health systems in this state are advancing change and the transformation of health care delivery. They are leaders in innovation and are expanding their role in their communities as they develop new ways to keep populations healthy, prevent illness, and coordinate patient care. But significant financial and regulatory challenges are slowing the pace of care transformation.

HANYS asks that you carefully consider our priorities for this year:

- Reinvest in New York’s health care system through shared savings, including the Governor’s proposal to eliminate the 2% across-the-board Medicaid reduction.
- Support the Governor’s proposed Capital Restructuring Financing Program.
- Secure immediate approval for the state’s \$10 billion 1115 Medicaid waiver proposal, which is vital and necessary to transform New York’s health care system.
- Rebalance our regulatory system so that we have common-sense approaches that eliminate barriers to health system transformation and ensure access to care is protected for patients.
- Oppose harmful proposals or new mandates that will further weaken providers and serve as obstacles to transformation.

The State of New York's Hospitals

The fiscal environment for hospitals, nursing homes, and home care agencies is one of serious peril as they struggle under the cumulative impact of more than \$27 billion in recent and anticipated federal and state cuts:

- New York's hospitals have a paper-thin average operating margin of 0.89%.
- The pace of hospital closures has accelerated; since 2000, 35 hospitals and 78 nursing homes have closed.
- In Washington, D.C., as Congress negotiates a Medicare "doc fix" and other budget-related issues, hospitals could be targeted for even more cuts.
- Most recently, a federal proposal emerged to extend unemployment benefits by extending provider sequestration cuts for an additional year, which would result in an estimated \$240 million hit for New York's hospitals.

Hospitals face additional pressure from misguided federal programs and policies, such as Medicare Recovery Audit Contractors (RACs) and the "two-midnight" rule, both of which are pulling out and tying up millions of dollars from our hospitals and causing mass confusion for patients:

- Medicare RACs continue to recover millions of dollars from hospitals in New York State. Nationally, while there are extremely long backlogs, hospitals are appealing half of claims denials and seeing more than two-thirds overturned. *(See Notes.)*
- CMS finalized its "two-midnight policy." HANYS estimates this will cost hospitals millions each year. HANYS is part of a coalition that is pursuing a judicial path to permanently stop this ill-advised policy. *(See Notes.)*

Embracing the Challenge of Transformation

Despite the obstacles they face, hospitals and health systems have made remarkable progress in developing innovative ways to redesign health care delivery, including population health management; using telemedicine; and testing new models of care, such as Health Homes, Patient-Centered Medical Homes, and Accountable Care Organizations (ACOs).

Our members are focusing on what they do well to provide high value, upgrading information technology, aligning physicians, and focusing on the quality and safety of the patient experience. Models differ, depending on local culture, scale, and the ability to engage collaborative partners, and must have the regulatory flexibility to develop. As government and commercial payers offer "risk-based" payment methodologies, hospitals and health systems are applying these risk-based payments to evolving care models.

Some examples of the innovative work include:

- A total of 172 hospitals are collaborating in the New York State Partnership for Patients, an initiative to improve patient outcomes. This work has resulted in:
 - √ a 30% decrease in the rate of central line infections; and
 - √ a 72% decrease in early elective deliveries.
- New York's program to reduce pressure ulcers in hospitals, nursing homes, and home care has improved the health of patients and saved Medicaid \$28 million.
- Seventy-five New York State hospitals, which include 1,100 providers at more than 300 care practices, are strengthening diabetes care and management through the HANYS Diabetes Campaign Coalition.
- New York State hospitals are also engaged in the Medicare Bundled Payment Collaborative, Health Homes, Patient-Centered Medical Homes, the Medicare ACO program, the federal meaningful use program, and other efforts.

The Special Role of Hospitals

Hospitals have a unique role in our health care system. We rely on them for their traditional services of treating illness and disease, but often forget the other important aspects of their service to our communities that make them special:

- They are always available and open, ready to treat everyone regardless of ability to pay; in New York, hospitals provide about \$2 billion in uncompensated care each year.
- Hospitals provide vital special services to meet community needs, including trauma, obstetrics, and burn care.
- They serve as centers of clinical research and medical education.
- Hospitals often become the providers of primary care in communities that have insufficient medical services in both urban and rural areas, and serve as a means of recruiting medical and health professionals.
- Communities rely on hospitals and other providers for disaster readiness and response.

Obstacles to Transformation

Hospitals and health systems in New York do not lack the vision or initiative to transform; they have made significant progress already. However, they face outdated regulatory and policy frameworks that inhibit change and disadvantage

hospitals, a too-slow process for changing regulations and policies, and the need for resources.

The Governor's Executive Budget proposes important means for making investments in hospitals and health systems to further their transformation. The efforts on regulatory reform, while welcome, need to go further. Our members still struggle with outdated, lengthy Certificate of Need (CON) and other application processes. Too often, applications/proposals for projects or designations that aim to improve care in communities are stymied by a cumbersome, inefficient regulatory apparatus. In addition, the process for changing regulations is inefficient and time-consuming.

New York's hospitals and health systems face a fundamental challenge of fulfilling their mission of caring for patients in their communities and redesigning care delivery for the future—with fewer resources, given the deep cuts already on the books and the threat of more. Additionally, many need to make long-overdue upgrades to aging physical plants, and build or upgrade facilities to implement new models of care. These major projects require capital.

Recommendations to the Legislature

The following are the key items on HANYS' Advocacy Agenda. We look forward to working with the Senate and Assembly during the 2014-2015 session on these and other important issues.

HANYS' ADVOCACY ISSUES

MRT Waiver

HANYS strongly supports the state's request for a \$10 billion Medicaid waiver, and its overall goal of reducing potentially-preventable hospitalizations by 25% over five years.

These funds are vital to improving health care delivery throughout New York State, and would be implemented through a statewide Delivery System Reform Incentive Payment (DSRIP) plan and the state plan amendment. Our key concerns are ensuring:

- statewide use of funding;
- recognition of the diverse characteristics of safety-net providers across the state and the different environmental conditions that contribute to their fragile finances; and
- meaningful but achievable metrics and goals.

- HANYS encourages members of the Legislature to urge federal officials and the New York State Congressional Delegation to support immediate approval of the \$10 billion waiver.

Shared Savings/Global Cap

Health care providers have kept costs below the Medicaid global cap, while Medicaid enrollment has increased. Funding saved by staying under the cap should be shared with providers.

- HANYS supports the Governor's proposal to eliminate the 2% across-the-board Medicaid reduction.
- HANYS supports global cap shared savings in the proposed budget in the form of a proportional "dividend" to all Medicaid providers, but consultation with the Global Cap Workgroup should be required.
- Other opportunities for shared savings must be explored, including a mechanism to recognize the increased costs that hospitals shoulder as the providers of comprehensive, "24/7" care in their communities.

Access to Capital

Successfully transforming the delivery system depends on recognizing the cost of transformation and ensuring access to capital.

- HANYS supports the proposed \$1.2 billion Capital Restructuring Financing Program as a critically important start to address the very significant needs for investment. Priority projects will focus on aligning hospital and nursing home bed capacity to regional needs, enabling facility integration, expanding primary care, and enhancing care management.
- The budget proposal also includes authorization for private equity pilots. The pilots would allow no more than five business corporations to be approved by the Public Health and Health Planning Council. The proposal would not allow a publicly-traded entity or one that has more than 35 stockholders. Our members strongly support the need for increased access to capital. The use of private equity for this purpose is viewed with enthusiasm by some and with reservation by others. We look forward to working with DOH and the Legislature to strike a proper balance that addresses concerns.
- HANYS strongly supports the reductions in Dormitory Authority of the State of New York financing fees.

Vital Access Provider (VAP) Program

HANYS supports the Governor's proposal to increase VAP program funding as a critical support for safety net providers. The most recent VAP application process included requests from more than 150 providers totaling more than \$1 billion—the need for assistance far outstrips available funds.

Critical Access Hospitals (CAHs)

CAHs serve the most rural corners of New York State. Last year's state budget allocated much needed safety-net funding to CAHs and took a step toward reviewing the longer-term viability of these small facilities by requiring DOH to analyze the adequacy of rates for CAHs and to develop recommendations for consideration in preparing the state fiscal year 2014-2015 budget.

- Unfortunately, the budget does not include any such recommendations. HANYS looks forward to working with you to develop a proposal to address this important issue this year.

Regional Planning

HANYS supports the goal of regional collaborations to improve population health, with a neutral convener of stakeholders.

- If Regional Health Improvement Collaboratives (RHICs) are established, HANYS urges that they do not duplicate existing efforts, and that they do not have a regulatory role, such as in the CON process.
- RHICs should not create barriers that delay progress toward health system transformation.

Regulatory Reform

New York's regulated health care providers are undergoing tremendous change to adapt to the evolving needs of patients and to respond to health care reform at the state and federal level. HANYS urges you to support the following proposals:

- Level the playing field between hospitals and private practitioners with respect to regulatory requirements and obligations to care for the uninsured and Medicaid beneficiaries.
- Incorporate timely processing requirements in the CON program. While some progress has been made, some CONs continue to take years and, in the meantime, either unregulated providers swiftly set up shop or physicians and other providers give up on waiting for hospital CON approval.
- Eliminate CON review for projects that do not change the scope of services provided by facilities.

- Enable the use of standing orders and practice protocols in the same manner as the federal government to enable faster treatment, improve quality, and provide for better patient outcomes. This is particularly important for rapid response to inpatient emergencies and for busy emergency departments.
- Authorize and pay for practitioners employed by hospitals and clinics to make house calls. The ability to treat chronically ill patients in their homes reduces hospitalizations and improves quality of life.
- Expand Medicaid coverage for telemedicine and require other payers to provide coverage. Telemedicine and telehealth have been shown to be a cost-effective way to extend health care services to the rural and urban under-served.
- Conform New York regulations to national standards that support hands-on mentoring programs for training new registered nurses in the emergency department.

Doctors Across New York (DANY) and Primary Care Service Corps

DANY is vital to addressing the physician shortage. We thank you for making important changes in the 2012-2013 budget, which were critical to removing obstacles in the application process. However, more needs to be done. HANYS recommends additional funding to support 250 new DANY loan repayment and practice support awards and further improvements to the application process.

The Primary Care Service Corps is another vitally important program to recruit health care professionals to health professional shortage areas. The improvements made to the DANY application process should also be made in the Primary Care Service Corps.

Consumer Information, Transparency, and Technology

Consumers should always receive meaningful information on health care costs to help them make informed choices. HANYS supports the proposed \$65 million investment in health information technology to support the All-Payer Claims Database and the Statewide Health Information Network for New York (SHIN-NY). These efforts are important steps toward making health information more readily available. HANYS believes developing useful information will require a cooperative effort by all stakeholders—the state, providers, insurers, employers, and consumers.

The media attention typically focuses on “charges” produced by hospital “chargemasters” that are an artifact from the past, but required by federal law. In New York, it is rare that anyone actually pays charges because New York has a generous Financial Assistance Law (supported by HANYS and enacted by you) that ensures hospitals provide free or discounted care for uninsured families with

incomes below 300% of poverty. For those with insurance—a growing group as a result of the Exchange/Affordable Care Act—their insurance companies negotiate rates with providers, and how much consumers pay out-of-pocket is a function of the type of insurance policy they have. HANYS has established a workgroup and committee process of hospital and health system representatives to develop recommendations to increase transparency of hospital costs.

Out-of-Network Coverage

HANYS supports insulating consumers from surprise bills and balance bills for emergency and hospital-based services. However, the state must ensure fair arbitration and reimbursement for physicians who provide critical on-call services. Required disclosures should be reasonable and practical for providers and consumers. Several proposals have been put forward; we look forward to engaging with you to achieve a workable solution.

Home Care Worker Wage Parity

The proposed budget includes funding related to the home care worker wage parity law enacted in 2011. We are currently awaiting more details about this funding and timing, as the latest requirements from the law are effective March 1.

Nursing Home Standard Wage

HANYS urges the rejection of the statewide nursing home standard wage proposal. This proposed mandate is not funded in the budget. Its potential fiscal impact is unknown. This is a potentially significant unfunded mandate that, given no additional funding, could result in reductions in both services and staff.

Nursing Home Case Mix

HANYS urges the rejection of a proposed arbitrary limit on Medicaid payment for case-mix increases in nursing homes.

Nurse Staffing Ratios

HANYS urges legislators to oppose harmful proposals that would impose prescribed nurse staffing ratios. Quality patient-centered care is the number one priority of New York's hospitals and nursing homes. Maintaining appropriate staffing to meet each patient's unique needs is key to achieving this goal. Nurses and other health care professionals are vital to the care of patients. Proposed legislation would impose arbitrary staffing ratios and would not improve care quality. Instead, it would prevent experienced local health care professionals from making appropriate staffing decisions to meet patient needs, jeopardize patient access to care, and add \$3 billion

to the cost of care in New York. HANYS supports a number of other initiatives to support nurses and other caregivers.

Basic Health Program

The budget includes authority to implement a Basic Health Program (BHP) if it is in the financial interest of the state. If BHP works as intended, it will extend coverage to individuals with incomes between 139% and 200% of the federal poverty level who would otherwise be eligible to purchase insurance through the Exchange.

HANYS has participated in the state BHP workgroup and looks forward to receiving additional data and analytics that would inform whether New York can use BHP to reduce the cost of health insurance for lower income patients that are more price-sensitive and typically have high rates of uninsured individuals. It is unclear if this is still a viable option since many consumers are receiving lower subsidies than originally anticipated and because Advance Premium Tax Credits received by patients for exchange products are not as high as first thought.

New York State of Health

HANYS commends the state's rollout of the New York State of Health Marketplace which now provides coverage for 351,605 enrollees. We recognize the enormity of the efforts by DOH and others to get the Marketplace open and functioning but are extremely concerned about several issues:

- No plan in the individual market offers an out-of-network benefit (except two products in Western New York).
- The proliferation of narrow network products, when it is the result of a plan's exclusion of particular hospitals that wanted to participate but are not offered contracts, or the offer of inadequate reimbursement rates or the exclusion of physicians or physician groups connected to particular hospitals.
- Larger patient cost shares for lower level insurance products that will increase collection issues for hospitals.
- The lack of transparency as to which providers are included in a plan's network, and the difficulty consumers face when trying to understand what hospitals and doctors participate in their plan before receiving health care services.
- The inability of "shoppers" in the Marketplace to ascertain easily which hospitals and physicians are in a participating plan's network.

We hope the state will require products on the exchange to make available an out-of-network benefit and also hope that the entire process of plan participation, scope of products offered, and provider participation can become more transparent in this coming year.

Managed Care

HANYS will propose specific reforms to address managed care market conduct practices. We continue to strive for administrative simplification and advocate for fair reimbursement practices to ensure hospitals and consumers are protected when interacting with managed care organizations. HANYS' legislative proposals will:

- deem the failure of a utilization review agent to make a determination within the required timeframe to be an approval, not a denial;
- provide coverage of court ordered behavioral health and substance use treatment;
- further limit the acceptable use of administrative denials;
- prohibit health plans from refusing to communicate with hospitalists and physician advisors during the appeals process; and
- allow a provider to be considered a participating physician during the application/credentialing period for the purpose of claims payment.

Thank you again for the opportunity to comment.

Notes:

Recovery Audit Contractors are believed by many provider organizations to over-reach in their audit activities and cause hospitals to spend enormous energy and resources simply to retain or recover monies that had been properly paid for medically necessary services.

CMS' "two-midnight policy" arbitrarily reduces inpatient payment by considering only hospital admissions that span two midnights to be inpatient admissions, with very few exceptions. In contrast, hospital stays of less than two midnights are generally considered outpatient cases, regardless of clinical severity, with limited exceptions.