



Testimony of:

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

on the

2015–16 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 300 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 2015-16 Executive budget.

Recent Budgets

Over the past 8 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 \$44.88 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 7th 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 last year's 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 restore \$140 million to long term care providers throughout New York State, 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 four of the State's pricing methodology for reimbursement, transition to a managed care environment, face added economic pressures from minimum wage and other staff salary increases and navigate the State's evolving Delivery System Reform Incentive or "DSRIP" program, it is critical that the 2015-16 Enacted Budget provide financial stability to ensure the continued delivery of high quality long term health care services throughout New York.

2015-2016 Executive Budget

With these issues and constraints serving as a backdrop, I would like to briefly address three areas concerning the 2015-16 Executive Budget:

- I. Issues included within the Executive Budget that could benefit long term care and assisted living residents and their providers of care;
- II. Issues included within the Executive Budget that adversely impact long term care and assisted living residents and their providers of care; and
- III. Issues that NYSHFA/NYSCAL respectfully request be included within the 2015-16 enacted budget.

I. At the outset, there are several proposals in the 2015-16 Executive Budget that could benefit long term care residents and their providers of care. For instance, among other things:

1. NYSHFA/NYSCAL supports the Executive's proposal to provide \$1.4 billion in funding for capital investments to make infrastructure improvements and provide funding to stabilize health care providers to advance the State's healthcare transformation goals. While NYSHFA/NYSCAL supports this initiative, we encourage the inclusion of

language in the enacted budget to protect New York's long term care and assisted living residents by allocating specific funds to such providers.

2. NYSHFA/NYSCAL further supports the Executive Budget allocation of \$400 million to support debt restructuring and other capital projects to help transform the provision of health care in rural communities.

Again, NYSHFA/NYSCAL encourages the inclusion of language in the enacted budget to ensure that these funds are accessible by long term care and assisted living providers serving rural communities throughout the State.

3. NYSHFA/NYSCAL supports the Executive's proposal to provide \$1.3 million in funding to support the administration of criminal history record checks for staff at adult care facilities to ensure that providers receive needed reimbursement for fingerprinting costs associated with each prospective direct care employee.

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

1. NYSHFA/NYSCAL Opposes the Elimination of a Trend Factor

The Executive once again proposes the elimination of the ability to set inflationary trend factor adjustments for nursing homes, assisted living program beds and other Medicaid sectors. Additionally, the Executive proposes to permanently continue the exclusion of the 1996-1997 trend factor from nursing home and inpatient rates.

We oppose these proposals for the reason that it has been 7 years since the State afforded a trend factor, costs have increased above the CPI, and our providers strive to provide salary increases to ensure the retention of well-trained qualified staff.

2. NYSHFA/NYSCAL Opposes the Elimination EQUAL Funding

Specifically, the Executive Budget proposes to eliminate the approximately \$6.5 million in funding that sustains the Enhancing the Quality of Adult Living or “EQUAL” Program and directs one-half of these funds for the purpose of moving adult home residents to community housing while saving \$3.3 million for the State.

EQUAL funding is a formula based grant program centered on the number of SSI residents served within an individual facility. While \$6.5 million may seem inconsequential in the context of a \$141.6 billion budget proposal, EQUAL funding is essential to enhancing the quality of care, services and life experience of residents in adult care facilities. Small and mid-sized adult homes serving SSI residents throughout New York State rely on EQUAL grant funding to better meet resident needs and improve the physical environment of their home.

Without this essential grant funding, the quality of life of residents will be directly impacted and small adult care facilities that rely on this funding to benefit their residents may be forced to close.

III. Lastly, I will turn briefly now to three critical issues that NYSHFA/NYSCAL respectfully requests be included within the 2015-16 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 \$141 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 that §2808(20)(d) of the Public Health Law sunset on March 31, 2015.

2. Assisted Living Program Rate Increase

The second 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.

3. Supplemental Security Income Increase for Adult Care Facilities

The third 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 7 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 7 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.

Conclusion

In conclusion, while the 2015-16 Executive Budget contains several positive initiatives, it is vital that these initiatives include language to ensure necessary support is provided to New York's essential long term care and assisted living providers.

Moreover, we respectfully request your rejection of the Executive proposals to permanently eliminate inflationary trend factors and abolish the EQUAL grant funding program.

Lastly, we respectfully request legislative support to sunset 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.