FY 2023 Joint Legislative Budget Hearing – Health

Senate Finance Committee, Assembly Ways and Means Committee, Assembly Health Committee, and Senate Health Committee

February 8, 2022

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GREATER NEW YORK HOSPITAL ASSOCIATION

Committee Chairs and Members, thank you so much for the opportunity to testify today. I am Kenneth E. Raske, President of the Greater New York Hospital Association (GNYHA). GNYHA's members include hospitals across New York State as well as in New Jersey, Connecticut, and Rhode Island. Our members also include not-for-profit and public nursing homes.

First, I would like to take this opportunity to congratulate Chairman Gottfried on his many years of service to the health care community and the people of New York State. We look forward to working with you over the coming months on one more budget that will improve the health care of all New Yorkers. You have been a wonderful friend and colleague, and I wish you all the best in the future.

I would like to start by praising our hospitals and health care workers. They have met the challenge of the COVID-19 epidemic like no other group of hospitals and workers in the country. For twenty-three months now they have been battling COVID-19 and saving thousands of lives. This has not come without a cost, however. Our brave hospital and nursing home personnel have endured and survived an unprecedented onslaught of illness, at both an emotional and, often, physical cost.

Recognizing this, Governor Hochul has put together a terrific budget and an excellent starting point to begin this year's budget process.

We have rarely seen an Executive Budget that zeroes in so comprehensively on the workforce needs of the health care community. **GNYHA strongly supports the bonuses for hospital and nursing home personnel as a short-term retention strategy and to reward workers for their sacrifices.** We would like to work with the Legislature and Executive to make sure the process is as simple and streamlined as possible and includes all of those who came into regular contact with COVID-19 patients. We support the loan forgiveness proposals contained in the Doctors and Nurses Across New York proposals and the interstate licensure compacts for doctors and nurses, both of which will help alleviate health care professional shortages over the longer term. We also support expanding the roles of pharmacists and nurse practitioners, to provide more flexibility in health care settings.

Regarding Medicaid for hospitals, we have two critical priorities: increasing woefully low Medicaid rates and increasing support for safety net hospitals so they cannot just survive but can thrive.

We are pleased that the Governor's budget eliminates the 1.5% across the board Medicaid payment cut that was imposed during the pandemic, at a time of extreme financial stress for New York's hospitals and nursing homes. We are also pleased that the Governor has proposed increasing Medicaid rates by 1%. However, given the increased costs during the pandemic, including, for example, supplies and labor, and the fact that Medicaid providers have not received an inflation rate increase in 14 years, 1% is simply not enough. Given the current inflation rate, a 1% increase will cause Medicaid rates to continue to erode in value. Already, Medicaid hospital payments cover less than 70% of the cost of caring for

Medicaid patients. Without a higher rate increase, this situation will only grow worse, putting hospitals that treat large volumes of Medicaid patients at even more financial risk.

One area where hospital Medicaid rates are particularly low is for inpatient and outpatient mental health services. We have a mental health crisis. That was true before the pandemic but has been greatly exacerbated by it. We see this not just in New York City but across the State. Governor Hochul and New York City Mayor Eric Adams have both called for more resources to deal with mental health problems, particularly among the homeless and on the City's subways. Hospitals provide the bulk of behavioral health care for the Medicaid population, both through inpatient programs and outpatient programs. Hospitals are the most likely providers to treat the severely and persistently mentally ill as well as others with severe mental illness. There is a critical need to increase mental health bed capacity in hospitals, as many patients spend an inordinate amount of time in emergency rooms awaiting an inpatient bed. And yet the Medicaid rates for mental health services are extremely low, and without more funding, it is extremely difficult for hospitals to maintain current capacity let alone increase it.

For instance, one of our New York City hospital systems reports that Medicaid only pays 55% of costs for inpatient bipolar disorders, and only 52% for inpatient schizophrenia cases. This is the time to increase Medicaid rates for hospitals who care for the mentally ill, including children, adolescents, and adults.

Another critical priority for Medicaid and hospitals is to provide much more support for our **safety net systems, voluntary and public, and individual safety net hospitals**. While we are grateful for current and past efforts by the State to keep safety net hospitals afloat, simply surviving does not allow safety net hospitals to thrive and improve care for their communities. The strategy of providing just enough support so high-Medicaid hospitals can keep the lights on does not allow for the predictability needed to successfully manage the huge, complex enterprise that is a hospital, nor the margin to allow hospitals to reinvest in transformation and improving care for vulnerable communities. Very high percentage Medicaid hospitals have put forward sustainability proposals for this year's budget. For instance, a coalition of voluntary safety net hospitals in New York City has identified a gross need of up to $1.5 billion in State support (including support they are already receiving). Other systems, both voluntary and public, also have identified needs. We would like to work with the Legislature and Executive to enact them.

We strongly support the Governor's proposed **$1.6 billion for the Healthcare Transformation program**. Capital projects are very costly, and many hospitals and nursing homes do not have the wherewithal or creditworthiness to access capital on their own. We are very supportive of the provision to provide $450 million to fund previously applied-for projects without the need for a new application, which will facilitate getting much-needed funds to the facilities that need them.

Regarding **nursing homes**, we strongly support the $187 million in gross Medicaid funding to help nursing homes that meet the State's 70%/40% spending ("70/40") requirement to cover the costs of the 3.5 nursing hours mandate. Most of our nursing home members, all

public or not-for-profit, do meet the 70/40 requirements, which reflects their missions of providing high-quality care and investing in resident care and staffing. However, given the current staffing shortages across the State, it is important to provide funding to help nursing homes meet the 3.5 hour requirement. In addition, we support the proposals in the budget to provide further **revenue exemptions from the 70/40 requirement**, including excluding assessment revenue for all nursing homes and the concept of excluding the capital per diem portion of the Medicaid rate for high-performing nursing homes. We are having discussions with our nursing homes to understand if the CMS Star Rating system is the best metric to use and will make recommendations on this part of the proposal as soon as possible. We also support the **$100 million increase in the Vital Assistance Program for nursing homes** and would like to see the funding used for an increase in the CINERGY program for high-performing not-for-profit nursing homes; financially distressed nursing homes; and increasing the nursing home quality pool.

There are several proposals in the Executive budget that we have concerns about. These include:

- **Excess Medical Malpractice**: the budget contains a radical change in how physicians and their hospital employers are reimbursed for the premiums under the Excess Medical Malpractice pool program. Specifically, physicians would be required to pay the premium at the beginning of the policy year; however, they would be reimbursed 50% of the premium a full year later, and the remaining 50% two years later. There is a significant risk that physicians will forego buying excess insurance if they must pay out of pocket for it and wait two years for full reimbursement. This would also add costs to hospitals, either for paying the contribution on behalf of employed physicians, if the hospital can afford it, or in the form of expanded exposure. This proposal would most significantly affect safety net hospitals and lower-income physicians.
- **Surprise Billing Amendments**: the budget contains provisions to better align New York's surprise billing law with the Federal No Surprises Act; however, there are two provisions that we oppose that have nothing to do with aligning with the Federal law. First, it adds an insurance plan's median regional in-network rate as a consideration in the dispute resolution process for out-of-network services. This change is not required by the No Surprises Act, is inconsistent with the stakeholder agreement that led to the enactment of New York State's landmark law, gives insurers unreasonable leverage over providers in contract negotiations, and will limit patient access by reducing insurer provider networks. Second, GNYHA also opposes making providers financially responsible for insurance company provider directory errors.
- **Managed Long Term Care Competitive Bidding**: the budget contains a change in how the State licenses and approves managed long term care (MLTC) plans. Our not-for-profit nursing home members who have such plans have expressed concern about this proposal, fearing that it may cause disruption for plans and consumers alike. We would like to better understand the goals of the proposal so that perhaps we could work with the State and the plans to minimize disruption.

Attached to this testimony we have provided a detailed table outlining all the provisions of the budget of interest to hospitals and nursing homes. Thank you for the opportunity to share this testimony with you, and we are happy to answer any questions you may have.

SFY 2023 NEW YORK STATE EXECUTIVE BUDGET HEALTH CARE PROPOSALS, GNYHA POSITIONS

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New York's hospitals and health care workers are proud to be the first line of defense against COVID-19. Our hospitals had by far the most cases in the world in spring 2020, and we continue to treat thousands of COVID-19 patients today. Our not-for-profit and public nursing homes also cared for thousands of COVID-19 residents. Hospitals and nursing homes have incurred greatly increased costs and reduced revenues as New Yorkers deferred needed hospital care and chose nursing home alternatives. During this turbulent time, hospitals and nursing homes also suffered Medicaid cuts imposed by New York State.

GNYHA President Kenneth E. Raske issued this statement in response to the Executive budget:

> *Governor Hochul's proposed State budget includes major health care investments that will help ensure that New Yorkers have a world-class health care delivery system for years to come. The hospital community especially applauds the Governor's sweeping proposals to strengthen and grow New York's heroic, challenged health care workforce.*
>
> *The Governor's budget is an excellent foundation to build upon. Key areas of common concern include our safety net hospitals and the Medicaid payment system. We look forward to offering the Governor and the State Legislature sound, practical considerations in these areas.*

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
MEDICAID: ALL PROVIDERS		
Medicaid Rates	Eliminates the 1.5% Medicaid across-the-board cut for all providers enacted in the last budget and increases Medicaid rates for all providers by 1%.	GNYHA **supports** increasing investments in Medicaid rates. While the State intended to provide a one-time 2% trend factor increase for hospitals and a 1.5% increase for nursing homes in 2018, those increases were more than wiped out by the 1.5% cut the Executive budget would restore. While we strongly support eliminating the 1.5% cut, this merely brings us back to payment amounts from early 2020, prior to the pandemic. Therefore, hospitals and nursing homes have had no true Medicaid rate inflation increases since 2008. GNYHA supports **increasing** the 1% for hospitals and nursing homes to keep pace with current inflation and to make up for 14 years of no inflation updates.

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
Global Cap	Changes the metric for the global cap from the 10-year rolling average of the medical component of the consumer price index to the five-year rolling average Medicaid spending within the National Health Expenditure Accounts produced by the Centers for Medicare & Medicaid Services (CMS) actuary. This is expected to increase the global cap by $366 million in State fiscal year (SFY) 2023.	GNYHA **supports** reforming the global cap to better reflect the underlying drivers of Medicaid costs, including enrollment. Without reform, GNYHA would support allowing the global cap to expire.
DSRIP Waivers	Extends Delivery System Reform Incentive Payment (DSRIP) program regulatory waiver authority through April 1, 2025.	GNYHA **supports** this proposal, which facilitates continued scaling or replication of successful programs developed under DSRIP.
MEDICAID: HOSPITALS		
Rate Rebasing	Delays hospital rate rebasing until no earlier than January 1, 2024, due to concerns about potentially destabilizing swings in reimbursement during the pandemic, as well as the impact of unusual costs on rebasing.	GNYHA **supports** this proposal.
Financially Distressed Hospitals	Provides some additional funding for safety net hospitals, allocating $2.8 billion (gross) over four years in payments directed to safety net hospitals, including the $250 million Distressed Provider Assistance Account and a $100 million distressed hospital pool. Total funding available to safety net/distressed hospitals in SFY 2023 is estimated at more than $1.5 billion. Also creates a three-year, $1 billion (State share, over three years) "transformation and sustainability" health care reserve fund.	GNYHA **strongly supports** these investments in safety net institutions and will advocate to increase these investments. Additional funding is needed to address safety net hospital structural financial gaps and ensure they have the funding necessary to not only sustain services but to make critical transformational investments to better serve their communities. Increased investment in safety net hospitals, both public and voluntary, is sorely needed and has only been underlined by the ongoing COVID-19 pandemic. Both public and voluntary safety net providers have proposals to increase support to fund their unique missions, and we strongly support those proposals. One way to finance these proposals would be to dedicate the transformation and sustainability reserve fund to further support safety net institutions.

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
CAPITAL FUNDING		
Capital Funding	Provides $1.6 billion in capital funding for hospitals, nursing homes, and other providers. The capital funding is divided into these categories: • $750 million for health care transformation, the creation of innovative and patient-centered models of care, and to ensure health care provider financial sustainability • $450 million for traditional capital investments, including funding already-submitted proposals from providers that were not funded in earlier rounds, and continuing the mandated minimum amounts of $50 million for nursing homes, $25 million for community-based providers, and $25 million for behavioral health centers • $200 million to modernize emergency departments of "regional significance" • $150 million to enhance telehealth capabilities • $50 million to support the Green House nursing home initiative	GNYHA **strongly supports** the capital funding provisions in the Executive proposal.
MEDICAID: CONTINUING CARE		
Funding of 3.5 Nursing Hours Mandate	Provides $187 million (gross) ($64 million from last year's budget plus $122 million in new funds) to cover the costs of the mandated 3.5 hours of nursing-related care per resident per day for those nursing homes that meet the requirement to spend 70% of their revenue on resident care and 40% of their revenue on staffing.	GNYHA **strongly supports** this provision. The vast majority of public and not-for-profit nursing homes meet the 70%/40% standard, but most are in need of funding to meet the 3.5 hour standard, particularly given severe workforce shortages.
Revenue Exempted from 70%/40% Spending Requirement	Excludes revenue to reimburse the Medicaid share of the 6% nursing home tax from the 70%/40% requirement. Further, excludes the capital per diem portion of the Medicaid rate for nursing homes with CMS star ratings of four or five and, on a case-by-case basis, for nursing homes with star ratings of three.	GNYHA **supports** these exemptions. We would like to work with the State to ensure that the capital exclusion is available to all high-performing facilities, and that there are no unintended consequences based on the time frame used for the determination of exemptions.

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
Vital Assistance Program (VAP)	Increases funding for the nursing home VAP by $100 million.	GNYHA **supports** the VAP increase. GNYHA supports using the pool for the following purposes: 1) increase funding for the CINERGY Collaborative (comprised of 40 not-for-profit nursing homes), 2) create a financially distressed nursing home pool, and 3) increase funding in the nursing home Quality Pool.
WORKFORCE		
Health Care Worker Bonuses	Provides $1.2 billion in bonuses of up to $3,000 for frontline, hands-on health and mental hygiene workers making less than $100,000 per year. We understand that this would be paid in two installments of up to $1,500 each, based on employment tenures of at least six months and number of hours worked. Hospitals, nursing homes, and other providers will need to submit data to the State to determine the allocation to the provider to then pay to the workers. The Medicaid Inspector General would conduct audits and reviews of employers under the program.	GNYHA **supports** rewarding our hard-working health care workers who have given their all during the pandemic and who are committed to staying employed at our hospitals and nursing homes. We would like to work with the Legislature and the Executive to ensure that the proposal encompasses an appropriately broad view of health workers and that the tiered approach to determining bonus amounts and the administrative process for employers is as streamlined and clear as possible to avoid inadvertent non-compliance—especially in light of the audit process and potential penalties. We also will advocate for an audit process that is as reasonable and non-punitive as possible.
Workforce Training and Pipeline Initiatives	Continues the Doctors Across New York program and the Empire Clinical Research Investigator Program; creates the Nurses Across New York program, which provides loan repayment for three years for nurses who agree to serve in underserved areas; and funds a New York State Workforce Innovation Center.	GNYHA **supports** these investments to incentivize the health care workforce to practice in underserved areas and other innovations.
Professional Oversight	Transfers authority of all health professions from the State Education Department to the Department of Health (DOH) as of January 1, 2023.	GNYHA is reviewing the implications of this provision. We support enhanced coordination of the oversight of the health professions with the oversight and regulation of the facilities and settings in which those professions work. GNYHA believes regulatory oversight of the health workforce should provide flexibility and agility, ensure that laws and requirements reflect innovative approaches to the workforce, and eliminate unnecessary

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
Professional Oversight (continued)		barriers to the ability of hospitals and nursing homes to attract and retain the qualified professionals that they need. If this can only be done by transferring responsibility to DOH, we support the proposal.
Interstate Licensure Compacts	Authorizes New York State to join the Interstate Medical Licensure Compact and Nurse Licensure Compact, which would remove administrative redundancies, facilitate the exchange of information around adverse actions, enable physicians and nurses licensed in other states to more easily practice in New York State, and allow New York State clinicians to practice in other Compact states (such as New Jersey and Pennsylvania).	GNYHA **strongly supports** this proposal.
Health Care Worker Scope of Practice	Makes certain changes to allow pharmacists to take on expanded roles; removes nurse practitioners who practice primary care from certain documentation requirements; creates the role of medication aides; and permits nurses and physicians to assign the task of administering tests for COVID-19, influenza, or other respiratory viruses under proper supervision.	GNYHA generally supports workforce flexibility and believes that each of these proposals should be evaluated to ensure patient safety and that there are no unintended negative effects on other members of the workforce.
PUBLIC HEALTH		
Maternal Health	Provides $20 million to enhance pre- and post-natal care services. The Executive Chamber has also said it will work with the Biden Administration to increase Medicaid postpartum coverage to one year from 60 days regardless of any income change.	GNYHA **strongly supports** these steps, which will lead to improved and more equitable health outcomes.
Gun Violence	Establishes the Office of Gun Violence Prevention within DOH to track emerging gun violence hotspots, deploy resources to those areas that need it most, and fund innovative prevention programs.	GNYHA **strongly supports** this proposal and would also support the State applying for approval from CMS to fund hospital violence prevention programs through Medicaid.

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
INSURANCE / MANAGED CARE		
Competitive Bidding for Medicaid Managed Care	Creates a moratorium on applications for participation in the Medicaid managed care program effective April 1, 2022. Establishes a new competitive bidding process for participation in Medicaid managed care programs, including managed long-term care (MLTC), and limits participation to no more than five plans per region. This would reduce the number of mainstream and MLTC plans operating in the downstate market.	GNYHA is studying both the mainstream managed care proposal and the MLTC proposal. Our continuing care members have major concerns about the MLTC proposal. We would like to work with the Executive and the Legislature to minimize any disruption to enrollees of these plans.
Managed Care Quality Pools	Restores $77 million to the mainstream and MLTC quality pools. Invests $34.7 million to increase HIV special needs plans and MLTC premiums.	GNYHA **supports** these provisions.
Essential Plan (EP) Investments	Increases the income limit for Essential Plan (EP) eligibility from 200% of the Federal Poverty Level (FPL) to 250%. The Executive estimates this move would allow 14,000 uninsured New Yorkers to enroll in the EP free of cost and make coverage more affordable for an additional 92,000. Also expands the EP to cover individuals with long-term chronic illnesses. These changes are subject to CMS approval.	GNYHA **supports** efforts to enhance coverage for New Yorkers.
Child Health Plus (CHP) Reforms	Eliminates the $9 monthly CHP premium for children in families with incomes between 160% and 222% of the FPL. Enhances benefits by adding coverage for prenatal and post-partum care, ambulance services, medical supplies, certain support services, home and community-based services, and residential treatment services.	GNYHA **supports** efforts to enhance coverage for children.
Surprise Billing/ Dispute Resolution Process	Makes various changes to New York law in response to enactment of the Federal No Surprises Act. This includes expansion of the law to additional providers and elimination of the safety net exemption from dispute resolution. The proposed budget also:	GNYHA **opposes** adding the median in-network rate as a consideration in the State out-of-network dispute resolution process. This change is not required by the No Surprises Act, is inconsistent with stakeholder agreement in support of New York's law, gives insurers unreasonable leverage over providers in contract negotiations, and will limit

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
Surprise Billing/ Dispute Resolution Process (continued)	• adds the plan's median regional in-network rate as a consideration in the dispute resolution process • makes providers financially responsible for provider directory errors for which they are at fault • gives the Department of Financial Services (DFS) enforcement authority over Federal law/regulations • Imposes a State requirement for provider disclosure of balance billing protections	patient access by reducing insurer provider networks. GNYHA also opposes making providers financially responsible for directory errors.
Telehealth	Mandates telehealth reimbursement parity for Medicaid and commercial plans with limitations on reimbursement of facility fees in certain circumstances.	GNYHA **supports** this proposal to require reimbursement parity, which is similar to legislation we have supported in the Legislature. Providers may be reluctant to fully embrace telehealth if reimbursement levels remain inadequate. GNYHA is reviewing the facility fee limitations.
Dual Eligibles	Allows more low-income senior citizens and disabled New Yorkers to maintain Medicaid eligibility after they become eligible for Medicare. Specifically, this proposal eliminates the resource eligibility test and raises the eligibility income level to 138% of the FPL.	GNYHA **supports** this proposal.
Cancer Coverage	Requires health plans participating in Exchange coverage, the EP, and Medicaid to contract with National Cancer Institute–designated cancer centers in their service areas that agree to provide cancer treatment services to all enrollees in these programs. Establishes the Medicaid rate as a payment floor for these services.	GNYHA is studying this proposal.
Pharmacy Benefits Bureau	Invests $5 million to establish a Pharmacy Benefits Bureau within DFS focused on reducing drug prices and regulating pharmacy benefit managers.	GNYHA **supports** this proposal.

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
FUNDING: NON-MEDICAID		
School-Based Health Centers (SBHCs)	Provides $17.1 million in grant funding for SBHCs. For the past four years, the Legislature has provided $3.8 million in additional funding to address an SFY 2017-18 budget cut and subsequent DOH administrative redistribution that disproportionately harmed many urban, hospital-sponsored SBHCs.	GNYHA **supports** funding SBHCs at the same level as previous years at minimum. SBHCs provide critical primary care services to underserved public school children across the State.
MEDICAL LIABILITY		
Rate of Interest on Judgments	Ties the rate of interest on certain judgments and accrued claims to the one-year US Treasury bill rate rather than the current statutory provision of 9%.	GNYHA **supports** this provision. The current 9% rate amounts to a windfall for litigants. It may impede defendants' exercise of due-process rights, as it adds to the cost of seeking a post-judgment appeal and litigating wrongful death claims.
Medical Indemnity Fund (MIF)	Continues funding for the MIF, which covers the ongoing medical needs of neurologically impaired newborns, at $52 million.	GNYHA **strongly supports** full funding for the MIF, a landmark medical liability reform.
Excess Medical Malpractice Pool	Requires up-front, direct payment of premiums by physicians and dentists eligible to purchase excess insurance, with the State reimbursing 50% of the premium cost at the conclusion of the policy period and the remaining 50% of the premium cost one year later.	GNYHA **strongly opposes** this proposal. There is a significant risk that physicians will forego buying excess insurance if they have to pay out of pocket for it and wait two years for full reimbursement. This would also add costs to hospitals, either for paying the contribution on behalf of employed physicians, if the hospital can afford it, or in the form of expanded exposure, if physician codefendants forego excess coverage, because they cannot afford it. **This proposal would more significantly impact safety net hospitals and lower-income physicians.**
PHARMACY		
Collaborative Drug Therapy Management (CDTM)	Permanently extends CDTM, which allows pharmacists to play a larger role in patient care and medication management, especially for patients taking multiple medications. CDTM is currently scheduled to expire on July 1, 2022.	GNYHA **supports** making CDTM permanent, as proposed by the Executive. Many GNYHA member hospitals have operated CDTM programs for years, and independent studies confirm that CDTM leads to better patient outcomes.

ISSUE	EXECUTIVE PROVISION	GNYHA POSITION
BEHAVIORAL HEALTH		
Behavioral Health Initiatives	The Executive proposes multiple initiatives to improve behavioral health, including: • Expanding CHP mental health benefits to align with Medicaid • $2.9 million to develop, expand upon, and replicate innovative services for senior citizens to address social isolation and elder abuse • $400 million to enhance Office of Addiction Services and Supports programs and services to combat the opioid epidemic • Reinvesting $111 million from Medicaid managed care recoupments into behavioral health services, including rate increases for community-based providers and clinics • Various initiatives to strengthen the State's suicide prevention programs, implement the 9-8-8 crisis hotline, invest in peer support for veterans, expand services for homeless individuals, and strengthen mental health services for children and families	GNYHA **strongly supports** these proposals. GNYHA also strongly supports increasing Medicaid rates for hospital inpatient and outpatient mental health services, which are woefully underfunded.