New York State NURSES ASSOCIATION One strong, united voice for nurses and patients

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Joint Assembly and Senate Hearing on the FY 2022 Executive Budget: Health

Testimony on behalf the New York State Nurses Association
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The New York State Nurses Association (NYSNA) represents more than 40,000 registered nurses across New York State for collective bargaining. We are the state's largest RN union and are on the forefront of the fight to expand health care to all New Yorkers, to protect the rights of nurses and other healthcare workers, and to maintain safe, high quality care

The FY22 Executive Budget proposal continues to the assault on vital healthcare funding in the midst of a global pandemic emergency. The proposed cuts are particularly onerous for local public health efforts and threatening to the financial stability of the safety net providers that disproportionately provide care for the communities that have been hardest hit by COVID – low-income communities, essential workers, and communities of color.

1. NYSNA strongly opposes budget cuts to health care funding in the FY2022 Executive Budget - New York should not be cutting billions in health care funding in the midst of an ongoing pandemic

NYSNA is particularly opposed to the following health care cuts proposed in the FY22 Executive Budget:

- **Extension of the Medicaid Global Cap: Billions lost in federal matching money**
  Medicaid enrollment is up by 700,000 (11.7%) during the crisis, but Medicaid cap limits spending growth to 2.9%; the State should eliminate cap, increase funding for healthcare to address the need for care, and maximize our draw down of Federal matching money.
- **Additional 1% Across-the-Board Medicaid reimbursement cuts - $217 million**
  This is in addition to the 1.5% across the board cuts already implemented in 2020; these cuts disproportionately threaten financially stressed safety net hospitals with the higher rates of Medicaid and uninsured patients; these cuts will only save the state $94 million, but cost providers $217 million; Medicaid reimbursement rates should not be reduced, and if enacted, the cuts should not be applied to safety net hospitals.

- **Elimination of the state share ICP funding for Public Safety Net Hospitals - $139 million**
  The State should not jeopardize the viability of these vital safety net hospitals – it should rescind the ICP cuts for public hospitals.
- **Implementation of 340B Drug Program Cuts to Safety Net Hospitals - $200 million or more**
  The FY2021 budget made changes to this federal program that subsidizes safety-net providers by giving direct discounts on drugs which they use to help fund their services to Medicaid and uninsured patients; the state changed the program to allow it to pocket these savings, leaving safety-net providers with less funding; the Executive Budget proposes to create a $102 million "340B Reimbursement Fund" to compensate FQHCs and clinics for the devastating loss of revenues, but this fund does not cover safety-net hospitals. The state should rescind the change to the 340B program or set aside additional funds to reimburse safety net hospitals.
- **Additional Hospital Cuts - $135 million, including:** $99 million in Vital Access Provider Assurance Program (VAPAP) funding; $17 million reduction in Hospital Capital Rate Add-On rates (from 10% to 5%); $20 million reduction in Value Based Payment funding pool (supplemental funding for the transition to new reimbursement models.
- **Additional Health Care Cuts - $263 million, including:** $232 million in long-term care funding; $30.8 million by eliminating "prescriber prevails" protections in Medicaid;
- **Cuts in Local Health Care Assistance Programs - $121 million, including:** $11 million in early intervention programs such as the Family Nurse Partnership program; $3.2 million for the Rural Health Program; $10 million in DASNY loans for the Health Restructuring Program; and $38 million in cuts to New York City funding for local public health programs.
- **Additional undetermined across the board health care cuts if federal assistance to the state does not reach at least $15 billion:** Though it appears increasingly likely that the Biden administration will pass a large amount of state and local aid in the "American Rescue Plan", the Executive Budget proposes to apply additional health care and other cuts to balance the budget in FY22; New York should not cut any vital programs, but instead use higher taxes on the rich to expand services to counteract the economic and health emergency and expand health care infrastructure.

2. NYSNA Supports Bold Action to increase health care funding, expand access to care, address social and racial equity in our health care system

NYSNA supports additional funding, paid for with increased taxes on the wealthiest New Yorkers and corporations, to address the following critical issues:

- **Implement minimum safe staffing standards in hospitals and nursing homes – Enact the Safe Staffing for Quality Care Act (A108/S1168)**
  NYSNA and other patient care advocates have long noted that the hospital and nursing home industry remain chronically understaffed.

Nurses and other caregivers routinely are assigned more patients than they can properly care for, resulting in staff burn-out and turnover, and directly impacting the quality of patient care and patient outcomes. In addition, the lack of minimal uniform staffing standards results in wide variations in staffing levels and the quality of patient care based on geography, race, socio-economic standing and the source of insurance coverage.

Even before the onset of the COVID pandemic, the lack of minimum staffing standards created a two-tiered healthcare system in which communities of color, working people, immigrants and the uninsured received lower quality of care and fewer health care services.

The issues that NYSNA and others have been raising were directly implicated in the high death toll in New York nursing homes in a report issued by the State Attorney General on January 28th. The report found that poor staffing, particularly in for-profit facilities, was the key contributing factor in nursing home deaths from COVID.

Poor staffing not only lessened the quality of patient care, but also undermined efforts to impose strict infection control protocols. The AG report directly links low staffing with inadequate infection control and higher death tolls.

There is also ample evidence that lower staffing contributed to higher COVID mortality rates in our hospitals. A recent study in peer-reviewed BMJ Quality & Safety documented poor staffing ratios in New York City and State hospitals even before the COVID pandemic. (http://bit.ly/BMJStaffing). The New York Times reported on July 1, 2020 that the better staffed and resourced flag-ship hospitals of large NY City area systems had lower mortality rates than their own less resourced and understaffed hospitals in the outer boroughs (See: Why Surviving Covid Might Come Down to Which NYC Hospital Admits You - The New York Times (nytimes.com). The Wall Street Journal reported on September 17, 2020 on the impact on mortality rates in hospitals using "lean" staffing plans that rely on supplemental temporary staff to respond to surges in demand (See: Why Did Covid Overwhelm Hospitals? A Yearslong Drive for Efficiency - WSJ).

The legislature should immediately enact the "Safe Staffing for Quality Care Act" (A108/S1168) or similar legislation to improve staffing in our hospitals and nursing homes.

- **Expand local public health infrastructure**
  The COVID crisis has revealed the weaknesses in our local public health infrastructure. The State DOH and local health departments struggled to find the resources and staff to implement widespread COVID testing, contact tracing and other basis public health

functions that would have limited the spread of COVID and reduced hospitalizations and deaths. In many cases, we have been forced to build these vital services almost from scratch.

The state budget should provide substantial funding on a permanent basis to allow local governments to build up this vital public health infrastructure to battel COVID and, after the crisis has abated, to provide ongoing services to local communities and have an infrastructure in place to respond to future pandemics or other emergencies.

- **Protect safety net hospitals**
  Safety-net hospitals, particularly those meeting the definition of Enhanced Safety Net Hospitals under PHL Section 2807-c(34), play a vital role in providing health care to working people, the poor and communities of color.

  NYSNA opposes the proposed cuts to Medicaid and other programs in the Executive Budget that were discussed above, as these cuts will have a greater impact on and will imperil the viability of public and private safety net hospitals across the state.

  Given the important role of these hospitals in our broader hospital care system, NYSNA supports the following measures that should be included in the state budget:
  a. Restructure the ICP/DSH funding mechanism to target money to Enhanced Safety Net hospitals and eliminate ICP/DSH funding for hospitals that provide disproportionate levels of care and services to Medicaid and uninsured patients;
  b. Increase reimbursement rates for Enhanced Safety Net hospitals;
  c. Reject any cuts to safety net hospital funding in the budget.

3. Other health care issues in the executive budget

NYSNA supports the following Executive Budget proposals:

- **Eliminate of Essential Plan premiums and expand coverage (Article VII HMS, Part H):**
  The Essential Plan is an ACA program that allows NY to provide health coverage to residents with incomes up to 200% of the federal poverty level; the proposal would eliminated the monthly $20 premium charged to about 400,000 of the 800,000 currently enrolled in the program; NYSNA strongly supports efforts to expand health coverage for low income New Yorkers and applauds the elimination of the premium contributions, which will prevent unnecessary disruptions in care and allow more people to join the program.

- **Regulation of nursing home quality of care (Article VII HMS, 30-day Amendments Part GG)**
  The Executive Budget, recognizing the state's failure to protect nursing home residents and the high death toll of COVID, proposes to significantly increase fines and penalties for non-compliance with resident care regulations.

  The Executive Budget further proposes to impose minimum ratios of spending on direct patient care (70%) and on staffing (40%) as a proportion of total revenue in nursing homes.

  NYSNA strongly supports this proposal, but would further propose (a) that the legislation includes minimum hours of resident care per day (including specifically minimum hours of RN, LPN and Aides hours) as set forth in the Safe Staffing for Quality Care Act, including a minimum of 0.75 hours of RN care per resident, 1.30 hours of total nursing care, and 2.8 hours of care by nurse aides.

  NYSNA would also urge the legislature to consider similar minimum allocations of spending on patent care and on direct care staff be formulated and applied to hospitals as well.

- **Regulation of Pharmacy Benefit Managers (Article VII HMH, Part J)**
  This provision amends the Insurance Law to require all pharmacy benefit managers (PBMs) to register with the State DFS, undergo certain training and disclosure requirements, and provide lists of all clients for which it provides drugs or pharmacy management services; PBMs would also be required to disclose all discounts, rebates, claw-backs, fees, or other incentives or refunds provided to insurers, providers and recipients; the state would more strictly regulate PBMs and strengthen enforcement action to stop abusive practices (price manipulation, reimbursement abuses, surprise billing, anti-competitive practices, gouging, spread-pricing practices, etc.); NYSNA support more stringent regulation of insurers, including PBMs to protect patients from abusive or predatory practices.

NYSNA opposes the following proposal:

- **Expansion of Pharmacist scope of practice (Article VII HMH, Part P)**
  This proposal would expand pharmacist scope of practice to authorize pharmacists to prescribe medications, to refer patients for lab tests, authorize pharmacists to administer any vaccines to adults as recommended by the federal CDC, and permanently codify the "collaborative drug therapy management" demonstration project.

NYSNA opposes the sweeping expansion of Pharmacist's scope of practice as it relates to prescribing power and their role within collaborative drug therapy management relationships with medical practitioners. We are concerned that further study and regulation is necessary to protect patient care.

NYSNA is also opposed to the provisions which would allow pharmacists to administer vaccinations without a physician's or Nurse Practitioner's order to adults for any vaccine on the authority of the CDC. Current New York Law limits the vaccines which may be administered. This proposal would cede NY State's authority to determine which vaccinations can be administered without an order and allows that authority to be usurped by a federal agency without state oversight and approval.

The legislature should reject this proposal.

NYSNA has concerns about the following proposals in the Executive Budget:

- **Telehealth expansion (Article VII HMH, Part F)**:
  This proposal would expand existing telehealth authorization by allowing patients to receive telehealth services from their homes or any other location; allowing telehealth services to be provided by providers based in neighboring states; and requiring insurers and providers to make telehealth a core part service.

  NYSNA has no objection to making telehealth more widely available, but has concerns that any expansion must be properly regulated to protect patient safety and to maintain state standards of professional practice.

  To that end, any legislation must include strict guidelines to restrict telehealth services to services for which it is appropriate and safe. We also oppose allowing out-of-state providers to practice telehealth in New York State. For regional systems that cover neighboring states, the telehealth provider of direct services should still be licensed to practice as a professional in New York.

- **Medical Respite pilot program (Article VII HMH, Part G**
  The bill would add a new Article 29-J to the Public Health Law, allowing the DOH to run pilot programs to create post-discharge supportive housing programs for homeless or imminently homeless people needing continued medical care.

  NYSNA supports this program as an important step to addressing the special health problems of homeless patients. Currently many hospitals just discharge patients back to the streets where their ongoing post-discharge care is often compromised; other

hospitals, particularly public and private safety net providers often extend their hospitalization at significant cost to the hospital to protect these patients; creating post-discharge temporary supported housing will address this problem. NYSNA is concerned, however, that any regulations must ensure that post-discharge care is provided by competent licensed personnel and that this pilot project focuses on the needs of the patients, not the financial interest of hospitals looking to reduce costs.

NYSNA's comment on the Mental Hygiene sections of the Executive Budget were separately submitted on February 5, 2021.