

Joint Legislative Hearing: FY 2023-2024 Health Budget
February 28, 2023
Testimony of the New York State Nurses Association
Presented by Pat Kane, RN, Executive Director

The FY24 Executive Budget continues to provide significant support to expand healthcare coverage, reduce the numbers of the uninsured, increased funding for the Medicaid program, added funding for mental health programs, and increased support for safety-net providers.

NYSNA applauds the State’s continued emphasis on addressing healthcare needs of New Yorkers.

We are concerned, however, that the proposed funding is not sufficient to provide universal health coverage and to fully address chronic underfunding of safety-net providers which endangers the availability of care in our most vulnerable communities and undermines the state’s goal to fix the systemic inequities the continue to plague our healthcare system.

We are also concerned that the proposed budget does include sufficient funding for hospitals and other providers to stabilize the nursing workforce or proposals that will improve working conditions, increase staffing levels or support recruitment and retention of nurses who are working at the bedside. We also note that some proposals to address

NYSNA main areas of concern include:

1. Expand the RN Workforce: Recruitment, Retention, and Improved Working Conditions

In the FY2022-23 Budget, the Governor set a goal of increasing the healthcare workforce by 20% over the next five years in order to address ongoing staffing shortage, improve the quality of care and keep pace with projected needs of an aging population.

The Executive Budget makes no proposals to address the ongoing nursing shortage in our hospitals and nursing homes, except to propose that New York joins the interstate nurse licensure compact to allow more out-of-state licensed nurses to practice in New York.

The main cause of the nursing workforce shortages, however, is not a lack of licensed nurses. The nursing shortage in New York is primarily the result of poor working conditions, inadequate pay and benefits, and abusive employer practices. The wave of nurses and other practitioners leaving

healthcare employment has been accelerated by the ongoing traumatic conditions of the COVID pandemic and is widely documented.

According to the NYS Education Department, New York has more than 355,000 nurses licensed to practice in New York, of whom 258,000 are New York residents. Of these licensed nurses, however, only 188,000 are actually working as nurses according to the federal BLS. According to federal BLS data, however, only 188,000 of them are currently working as nurses, including approximately 80,000 employed in hospitals and nursing homes.

The key to solving the ongoing shortages is to increase the pipeline of new graduate nurses entering the profession, to encourage the more than 165,000 licensed nurses who are *not* working in healthcare to return to the bedside, and to keep the 80,000 nurses who are working in our hospitals and nursing home to stay on the job.

To that end, NYSNA makes the following recommendations regarding efforts to improve recruitment, retention, and staffing levels in our hospitals and nursing homes:

- **Increase funding for the Nurses Across New York and other tuition and loan forgiveness programs to increase the number of new graduates and encourages employment in staffing shortage areas and safety-net providers.** We note that the Executive Budget proposes significant increases in funding for physician loan forgiveness programs, but no increase for nursing. The Budget should include a significant increase over the current funding level of \$3 million for the NANY program. Any nurse who commits to working for a safety-net provider or in a designated staffing shortage area of the state should receive a full tuition support or loan forgiveness.
- **Increase funding for DOH oversight and enforcement of the new hospital staffing law (PHL Section 2805-t).** The provisions of the new staffing law requiring hospitals to comply with their adopted staffing plans took effect on January 1, 2023, and the DOH has responsibility to take enforcement action against non-compliant hospitals. During the initial staffing committee process, NYSNA and other worker representatives filed numerous complaints, and the DOH has thus far failed to complete any investigation or to issue any compliance orders to hospitals that violated the process. Now that the staffing plans are in effect and must be complied with, we expect that the number of complaints will increase significantly. The DOH should have funding dedicated to enforcement of the new law that is sufficient to allow prompt investigation and resolution of complaints. The DOH must have the capacity to protect the quality of patient care and to prevent further deteriorations in nursing working conditions that will only accelerate the exodus of nurses from the hospital workforce. NYSNA recommends the inclusion of at least \$10 million in funding to allow DOH to hire and train more staffing law enforcement staff.
- **Increase funding for SUNY and CUNY nurse education programs and support for nursing faculty.** As noted above, we need to increase the pipeline of new nurses entering the workforce and address bottlenecks in the educational system the restrict the number of nursing school graduates. The Budget should include measures to increase funding for the most affordable nursing programs and the number of available slots for students in the public

SUNY and CUNY systems. The legislature should also consider measures to increase the availability of faculty in nursing programs, including by lifting the pension restrictions that keep retired public sector nurses from taking faculty positions and the educational requirements of faculty to allow experienced nurses to teach students.

- **Take further measures to improve the Tier 6 pension system and encourage nurses to take jobs or remain employed in the private sector.** Public sector nurses working in hospitals and in local health department programs played a vital role in the response to the pandemic and will be the backbone of our response to future public health emergencies. Nurses working for state and city hospital systems are chronically underpaid in comparison to nurses working for private-sector hospitals or for nurse travel agencies. In addition to increasing wages and providing pay-parity for public sector nurses, the state should also make public sector service more attractive by improving the Tier 6 pension plan to provide better benefits, improved early retirement options for those who commit to a career in the public sector, and reduced nurse contributions to offset the lower pay scales.
- **Classify COVID as an occupational disease for Workers Compensation claims filed by nurses who are sickened while protecting the public.** Nurses and other direct care health workers heroically risked their health and safety and that of their families during the pandemic and many became sickened or died in the line of duty. Despite their sacrifices, nurses who apply for Workers Compensation benefits often found themselves having to prove that they became sick at work. The legislature should fix this now by amending the workers compensation law to classify COVID as an occupational disease for nurses.

2. Protect Nursing Practice Standards and Quality of Patient Care

NYSNA believes that high professional standards of nursing practice are inextricably intertwined with the quality of patient care in hospitals and nursing homes and lead to higher nurse job satisfaction and retention. The Executive Budget includes numerous proposals to relax or eliminate practice standards that it are wrongly supposed to help alleviate the pressures on the workforce. These proposals are just wrong, and they will only exacerbate current staffing shortages, expose patients to poorer care and direct harm, and will serve only to further increase the extraction of profits by unscrupulous providers. The legislature should reject any provisions in the budget that promote de-skilling of nurses and the erosion of the quality of patient care.

- **Reject the proposal that New York join the interstate Nurse Licensure Compact (Article VII HMM Legislation, Part W, Section 31).** Allowing nurses licensed in other states to practice in New York will only negligibly increase the number of nurses working in the state, but it will entail a loss of sovereignty for New York to regulate nursing practice, will allow lesser qualified nurses from other states to freely practice in New York, and could allow other states to discipline or attack the licenses of New York nurses who provide abortion and reproductive health services.
- **Reject the proposal to transfer oversight of nursing and other healthcare professions from the NY SED to the DOH (Article VII, HMM Legislation, Part CC).** The Education Department has always exercised oversight of nursing and other licensed profession and has the staffing

and expertise to maintain and properly regulate the educational and practice standards of nurses. The proposal to immediately transfer all oversight to the DOH will be disruptive of current processes for regulating nursing practice. We are also concerned that the DOH will be more likely to accommodate industry pressures to loosen practice and licensure standards to cut staffing costs for providers in a way that undermines the quality of patient care, adds further burdens to an already stretched nursing workforce, and accelerates the exodus of nurses from the bedside.

- **Reject the proposal to allow the expansion of Community Paramedicine programs (Article VII, HMM Legislation, Part S).** The Executive Budget proposes to expand the scope of practice of emergency medical services personnel beyond the treatment of patients at the site of an emergency and their prompt transfer and handoff to the appropriate care setting (usually an emergency department of a hospital). This proposal is largely targeted at improving EMS response times and improve the emergency treatment of patients and NYSNA supports those portions of the proposal that would provide greater coordination of emergency services across the state. The proposed legislation, however, includes a proposal to expand paramedicine programs that will allow EMS operators to expand into the provision of public health services, at-home visits, public health education and other similar services. This proposal will undermine the ability of EMS to provide timely emergency services when they are needed, will increase the stress and workloads of EMS personnel, and allow an opportunity for for-profit and corporate EMS operators to increase their profits at the expense of their workers and patients. NYSNA urges the legislature to reject this proposal in the Budget and to allow a more deliberative legislative process to ensure that any changes to the EMS system are properly considered before enactment.
- **Reject the proposal to allow DOH to create a new title of “community health workers” who will be eligible for Medicaid reimbursement (Article VII, HMM Legislation, Part Q).** This proposal would allow the commissioner of the DOH to unilaterally create a new community health worker title. Though the proposal specifically precludes the new title from engaging in any functions that are within the scope of practice of licensed nurses or other healthcare professionals, we are concerned that it will contribute to de-skilling and expose patients to inadequate care. This provision should not be included in the budget legislation and should be handled through the regular legislative process with broad public input and a more deliberative discussion to protect nursing practice and patients. We should not be expanding access to primary care by diluting practice standards or having unqualified personnel providing nursing or other types of licensed professional care. We also note that this proposal is target specifically to Medicaid program providers and may worsen existing racial and social inequities faced by those patients.
- **Reject the proposals to alter scope of practice standards applicable to pharmacists, physicians, nurses, nurse practitioners, physician assistants and advanced home health aides (Article VII, HMM Legislation, Part W, Sections 1 to 26).** The Executive Budget includes proposals to expand the authority of physicians and NPs to issue non-patient specific orders for various kinds of testing to be carried out by nurses, pharmacists and other professionals. This Part also loosens the level of RN oversight over advanced home health aides without

removing RN liability for any errors or poor practices by these aides. NYSNA does not object these proposals in their entirety and is open to expanding the authority to issue non-patient specific standing orders where appropriate. We believe, however, that these proposals are not appropriate for budget legislation but should instead be handled through a more deliberative and thorough legislative process to ensure that practice standards are not undermined and that patient safety and quality of care is protected.

- **Reject the proposal to create a new “certified medication aide” title (Article VII, HMM Legislation, Part W, Sections 27 to 29).** The Executive Budget proposes to create a new title that would be permitted to administer medications to residents in long-term residential care facilities. The proposal is intended to address the nurse recruitment and retention problems of nursing homes by allowing unqualified personnel to administer medications under direct RN supervision. This misguided proposal will expose residents to serious harm and will only worsen the nurse staffing problems in residential care settings by increasing the workload and pressure on the existing nurse workforce. The nurses will not only be responsible for their own direct duties, but will now have the added responsibility to supervise the aides who will be administering drugs for which the nurse will bear liability. The solution to the problem is to increase the numbers of nurses willing to work in these residential care facilities, not to drive more of them away from the bedside.
- **Reject the proposal to allow unlicensed personnel to perform delegated nursing duties in OPWDD facilities (Article VII, HMM Legislation, Part FF).** NYSNA is concerned that this proposal will increase pressures on the nursing workforce and worsen the lack of nursing staff while undermining quality of care and patient safety. This proposal should be considered in a more deliberative manner under the regular legislative process.

3. Provide Universal Healthcare Coverage and Address Health Equity

The Executive Budget includes numerous proposals to increase health care access and coverage and to improve the quality of services offered under the state Medicaid program and through private insurance coverage. NYSNA is generally supportive of these incremental improvements, but remain fully committed to universal and equal healthcare coverage for all New York residents, regardless of socio-economic or racial background, immigration status or ability to pay. To that end, NYSNA recommends the enactment of the single payer health coverage that would be provided under the **New York Health Act**.

In the absence of such universal coverage, however, NYSNA supports inclusion in the budget of the following provisions:

- **Reject the extension of the Medicaid Cap (Article VII, HMM Legislation, Part A).** Last year’s budget included provisions to loosen the global cap on Medicaid spending by changing the formulas for calculating the cap. NYSNA continues to hold the position that there should be no artificial cap on annual Medicaid spending growth. Medicaid is a safety-net program that currently covers about 35% of New Yorkers. The program should be expanded as necessary to

meet variations in eligibility and need resulting from economic conditions and not based on arbitrary budget caps. The legislature should repeal the cap in its entirety.

- **Expand the coverage and benefits of the Essential Plan (Article VII, HMM Legislation, Part H).** The Executive Budget proposes to delay the implementation of coverage for undocumented seniors that was to take effect on 1/1/23 for one year. We also note that the budget does not include any proposals to implement the commitment made last year to expand coverage to include all undocumented immigrants between the ages of 18 and 65. The Essential Plan receives significant federal funding under the ACA and currently holds unspent reserves of approximately \$8 billion. At the same time, there are still about 1 million New Yorkers who are uninsured, including about 400,000 undocumented immigrants. NYSNA urges the legislature to include provisions to expand the Essential Plan to immediately expand the Essential Plan to include all uninsured New Yorkers, regardless of their ability to pay or immigration status. The state should seek federal approval and participation for such coverage, or in the alternative it should pay for the coverage expansion by utilizing the unspent reserves or paying the costs with state funds.
- **Expand federal eligibility waivers for Medicaid (Article VII, HMM Legislation, Part K).** NYSNA supports the proposal to include mental health services provided by psychiatric institutions in Medicaid coverage.
- **Allow Medicaid buy-in option for employed people with disabilities (Article VII, HMM Legislation, Part N).** NYSNA supports the proposal to give disabled people who are employed the option to purchase health care coverage through Medicaid program. This will allow the disabled who work to continue to receive Medicaid coverage by buying in to the program on an income based sliding scale.
- **Expand Medicaid coverage to include nutritionist/dietician services (Article VII, HMM Legislation, Part R).** NYSNA supports the inclusion of nutritionist/dietician services in Medicaid preventative care coverage, but has concerns about the proposal to include arthritis self-management training and education. The legislature should amend the proposal to ensure that any training or education is carried out in a manner consistent with scope of practice rules and to preclude untrained or unqualified personnel from carrying out these functions or impinging on nursing scope of practice.
- **Insurance reforms to improve access to behavioral health services (Article VII, HMM Legislation, Part II).** The Executive Budget proposes a package of measures to crack down on private insurers that avoid or deny payment for various out-patient and community mental health services, requiring insurers to use OMH criteria for determining the appropriateness of care and provider reimbursement, creating payment parity for remote services, mandating coverage of overdose reversal medications, and providing enforceable standards for the timeliness of mental health care services and adequacy of provider networks. These measures will reduce insurer abuses intended to deny payment for care entirely or to dissuade its use through excessive delays in appointments.
- **Directive to private hospitals to reopen closed psychiatric in-patient beds, expansion of state psychiatric bed capacity and increased penalties for non-compliance (Article VII, HMM Legislation, Part JJ).** The Governor will order hospitals to restore 850 “temporarily closed” in-

patient acute psychiatric care beds and to open an additional 150 state facility beds. In order to effectuate the proposal, the Executive Budget proposes to increase the power of the DOH to enforce the order through substantial daily fines. NYSNA strongly supports this directive and the supporting legislation to give it teeth. In-patient psychiatric bed capacity has been substantially slashed in the last 20 years. Many private hospitals and hospital systems have closed beds to convert to more profitable purposes, leaving the community with inadequate services and shifting the burden to safety-net and public providers

- **Reject the elimination of “provider prevails” for Medicaid drug prescriptions and unilateral DOH authority to remove drugs from the Medicaid formulary (Article VII, HMM Legislation, Part D).** Medicaid patients have the right to access medications they need based on their prescriber’s best medical judgement and should not be subject to lesser standards of care because they are poor. In addition, the DOH should not have unilateral authority to remove drugs from the Medicaid formulary without oversight and review to protect the quality of care. The legislature should reject this proposal.

4. Funding for hospitals and safety-net providers

The Executive Budget includes positive measures to increase funding for hospitals and other providers of vital healthcare services, but many of the proposals are not adequate to address the problems faced by safety-net hospitals and other providers of services to Medicaid and uninsured populations or to address their precarious finances. We also believe that the budget proposals, while generally positive, do not go far enough to address health equity issues raised by a two-tiered healthcare system:

- **Increase Medicaid reimbursement levels for in-patient hospital services (Article VII, HMM Legislation, Part E, Section 9).** The Executive Budget proposes a 5% across-the-board increase in Medicaid in-patient reimbursement rates. Though this is a welcome increase, we feel that it is not enough to adequately support safety-net providers with high Medicaid volume and lower privately-insured patient volume. We would urge the legislature to consider a higher percentage increase and to target the extra Medicaid reimbursements to hospitals based on their percentage of Medicaid patient volume.
- **Preserve the 340B drug subsidy program.** The 340B program allows safety-net providers to receive drugs from manufacturers at discounted prices and to use the spread between the discount and the charges to insurers or payers to fund their safety-net functions. This program is critical to financial viability of many safety-net providers and is slated to expire in 2023. NYSNA strongly urges the legislature to repeal or further delay the expiration of the 340B program in New York. The proposed funding to compensate provider is not sufficient, and many FQHCs and safety-net hospitals will face significant financial losses if the program is eliminated.
- **Tighten restrictions on insurers to crack down on delayed provider payments and “churning” of provider claims (Article VII, HMM Legislation, Part J).** The Executive budget proposes to amend the Insurance Law to require managed care plans to follow a “pay now

and challenge later” to prevent denials of payment that are meant to increase profits by delaying or reducing provider payments. The legislation would also restrict insurers use of “audits” to challenge practitioner findings of medical necessity on claims. NYSNA support restriction on the ability of insurance companies to maximize profits by employing abusive business practices that affect patient care and the viability of safety-net providers.

- **Tighten restrictions on insurers use of “site of service” clauses in contracts to deny coverage for hospital-based services (Article VII, HMM Legislation, Part L).** This proposal would strengthen the ability of providers to give patients services in hospital-based facilities rather than free-standing non-hospital settings if that is deemed appropriate by the medical practitioner, would limit the ability of insurers to challenge the payments after the fact through audit processes, and would require an appeals process for denied payments. NYSNA supports cracking down on abusive insurer practices.
- **Healthcare Transformation Capital Funding in the amount of \$1 billion (Article VII, HMM, Part P).** The Executive Budget creates a new round of capital funding support to address local healthcare needs and ongoing pandemic response. NYSNA supports the new round of capital funding, but would urge the legislature to consider adding restrictions to ensure that the funding is targeted only to safety-net providers and that it also is made available to public hospitals. We would also urge the inclusion of specific allocations within the total funding framework for specific types of providers to ensure that safety-net hospitals and providers receive all or most of the funding and that profitable hospital systems that don’t need the support are not eligible.
- **Reform Disproportionate Share Hospital and Indigent Care Pool funding formulas (Article VII, HMM, Part E, Section 1).** This proposal would build on prior legislation that shifted \$150 million in DSH/ICP funding to enhanced reimbursement rates for qualifying safety-net hospitals by increasing the amount of money shifted from DSH payment to \$235 million. This methodology increases the federal share payments to hospitals and allows a reduction in state share payments. NYSNA supports the proposal, but would urge the legislature to require that the DSH funding be reallocated to other hospitals rather than being appropriated by the state to its general fund. NYSNA would also urge the legislature to consider the inclusion of other funding proposals that would replace DSH funding with supplemental or enhanced rate directed payments for safety-net hospitals with high Medicaid patient volumes (>36% Medicaid) to increase their payments and maximize federal share.

5. Miscellaneous Executive Budget Proposals

NYSNA also notes and supports the following additional Executive Budget proposals related to health care issues:

- **Reject Certificate of Need proposals (Article VII, HMM, Part M).** The Executive budget proposal would amend the CON provisions of the PHL to clarify various ambiguities in current law and expand CON coverage to include hospices, LTCHAs and CHHAs. NYSNA has no objections to those parts of the proposal that would clarify or expand the types of owners or

interest-holders who are subject to character and fitness review, but is concerned that some of the proposals would loosen the rules and limit the ability of the public and patients to monitor changes in ownership and the approval of applications to close or relocate services. We would urge the legislature to reject the proposal to shorten the “look back” period for character and fitness review to 7 years. Finally, NYSNA strongly supports the proposal to include large physician practices, which are currently not subject to CON review. These practices have played a disruptive role by undermining the financial viability of safety-net providers while failing to provide any charity care or community benefit in exchange. Given the complexity of the CON rules, we would urge the legislature to reject this proposal and address changes in the CON process, including the regulation of physician practices and more stringent use of public need criteria to restrict closures or reductions in services, through the regular legislative process.

- **Regulate the business practices and abuses of nurse staffing agencies (Article VII, HMM, Part X).** The temporary nurse staffing industry has often played a very disruptive role in the nursing workforce. Many employers avoid hiring regular staff and prefer to rely on agency staffing to provide temporary staffing. This business model was disastrous during the pandemic and many hospitals and nursing home, which relied on temporary agency nurses found themselves unable to provide staffing when demand surged in other states. In addition, the disparities in pay rates between temporary staff and regular employees seriously impacted nursing staff morale and exacerbated the exodus of nurses from the workforce. The Executive Budget proposes to require temp agencies to register, provide information about pay rates for nurses and rates charged to employers (these agencies all operate on a for-profit basis), and would set minimum standards for temp nurse contracts. The proposal would also require them to allow audits and require the production of invoices and contracts with providers who use their services. Finally, the legislation would require a report on the impact of temp staffing on the healthcare system in New York. NYSNA strongly supports efforts to reign in the business practices of these agencies.
- **Regulate medical debt collection and other threats to healthcare consumers (Article VII, HMM, Part Y).** NYSNA supports efforts to protect the public against medical debt collection abuses, to regulate certain pharmacy services organizations, to require hospitals to use standardized financial assistance/charity care forms, and to create a “health insurance guarantee corporation” to protect consumers against the financial collapse of their health insurance provider. We feel, however, that the proposed legislation does not go far enough and urge the legislation to consider further tightening the proposed consumer protections.
- **Protect abortion and reproductive rights services by barring out-of-state actions seeking information on patients and prohibiting “geo-fencing” of reproductive health services sites that is intended to interfere with women’s access to care (Article VII, HMM, Part U).** NYSNA strongly supports access to reproductive health services, including abortion and support efforts to protect that right from outside interference.