



**JOINT LEGISLATIVE PUBLIC HEARING ON 2013-2014**

**EXECUTIVE BUDGET PROPOSAL**

**HEALTH/MEDICAID**

**February 3, 2014**

**Testimony on behalf of the New York State Nurses Association**

**Introduction**

My name is Leon Bell, and I am here today on behalf of the New York State Nurses Association. NYSNA represents more than 37,000 registered nurses in more than 100 bargaining units throughout New York. As the leading union for registered nurses in New York State, NYSNA has taken an active role in protecting the rights of nurses and advocating for patients. We are strongly committed to preserving and expanding equal access to high quality patient care for all New Yorkers regardless of their ability to pay.

On behalf of NYSNA, I want to thank the members of this panel for offering us the opportunity to share our views on the Health and Medicaid provisions of the Governor's proposed budget and accompanying legislative proposals.

Before entering into a review of the particulars of the health and Medicaid budget, I would like to take a few moments to state our concern for the severe healthcare crisis in New York. Despite ongoing efforts to improve access to care through implementation of the Patient Protection and Affordable Care Act and parallel state efforts to improve the quality of healthcare, our healthcare delivery system remains mired in a systemic crisis.

This state of affairs is most acutely evident in Brooklyn, where two hospitals (Long Island College Hospital and Interfaith Medical Center) are threatened with imminent closure while as many as seven other hospitals are in precarious financial condition and could also be forced to close or to substantially reduce vital community health services. Together, these threatened hospitals provide more than 50% of the total acute care, emergency care and hospital-based outpatient and primary service in the borough.

The threatened hospitals all face ongoing operating losses and high debt loads that are largely the result of providing services to disproportionate levels of uninsured, underinsured and Medicaid populations. In short, they do not generate enough revenue from providing care to their communities to pay for the costs that are incurred.

This crisis in our hospital system is not limited to Brooklyn. Similar conditions threaten the viability of public hospitals in New York City, Westchester, Buffalo and elsewhere, and of urban and rural safety-net hospitals and other providers throughout the state.

The general response to this crisis at the state and federal levels has focused on cutting healthcare expenditures, encouraging increased primary and preventative care, reducing the services offered by hospitals, and reliance upon a market-based system of allocating resources and regulating the availability care.

NYSNA is generally opposed to this approach and favors a reform of the current healthcare system based upon the following principles:

- 1) The distribution and allocation of resources for providing healthcare should be driven primarily by a comprehensive assessment of the needs of local populations;
- 2) Decisions regarding the distribution and allocation of resources (services and funding) should be made by state and local governments and the by people of the communities affected by such decisions;
- 3) The operation of healthcare delivery services should not and cannot be dictated by the corporate boards and owners of the service providers on the basis of personal interests and the pursuit of profits;
- 4) The State DOH must take a more active role in enforcing standards for the provision of care (such as minimum RN to patient staffing ratios in all health care settings), regulating the business practices of all elements of the healthcare system to prevent disruptions in the delivery of needed care, and allocating services and funding for healthcare on the basis of actual community needs;
- 5) Democratic local bodies should be created and given a direct role in assessing local healthcare needs and allocating resources on the basis of the identified needs of their communities;
- 6) The major cause of and driving force behind the current crisis in healthcare is largely attributable to the prevalence in our system of for-profit entities (insurers, healthcare providers, manufacturers of pharmaceuticals and devices/equipment, etc.) that drive up costs, extract unnecessary profits, and distort the allocation of healthcare resources;

- 7) The major goal of healthcare restructuring must be to move away from and limit the prevalence of market-based, competitive, for-profit models of healthcare delivery, and to treat healthcare as a right and not a commodity.

## **Analysis of the Proposed Budget**

Our analysis of the governor's initial budget proposal, based on these basic principles, finds many positive elements that NYSNA generally supports. These positive elements include the proposal to increase funding for the capital needs of hospitals and other health care providers, to increase available funds for healthcare reform efforts and to attempt to impose some degree of regulation of currently unregulated or loosely regulated sectors of the healthcare industry. At the same time, however, we feel that some of these positive proposals do not go far enough to address core problems. There are also numerous areas in which the budget is proposing policies that will worsen the situation or will not attain their goals of improving quality and access to care.

### **1. Capital Restructuring Financing Program (Art. VII, Part A, §8)**

This proposal would create a funding stream of \$1.2 billion over seven years for capital grants to general hospitals, residential health care facilities, diagnostic and treatment centers and licensed clinics administered.

We welcome this proposal, as it will provide a source of capital funding for financially insecure hospitals. We are concerned however that the level of funding is not sufficient to meet the actual needs of hospitals and other providers throughout the state that are in critical need of capital funding, as the annual amount that would be available would be less than \$200 million. The funding is also intended to be available to other providers in addition to hospitals, and this will further dilute the impact of this source of financial support.

We also note that the purpose of the funding would include not only support for improvements to infrastructure, development of primary care capacity and promotion of integrated delivery systems to strengthen access to essential services, but also includes allocations to support closures and downsizing of existing facilities.

We urge the legislature to consider additional funding sources to increase the amount available in this program and to provide a more substantial and systematic level of support for vital hospital services threatened with closure. This proposal is a welcome first step, but it does not go far enough in addressing the systemic crisis in our hospital system.

### **2. Funding to establish Regional Health Improvement Collaboratives**

The budget proposes to provide \$9 million in funding to begin setting up eleven Regional Health Improvement Collaboratives (RHICs) that would create a framework for regional healthcare needs assessments and planning processes.

NYSNA supports the concept of regional planning bodies that will provide democratic input into the determination of local healthcare needs and a planning process for the allocation of healthcare resources.

We believe, however, that the structure being proposed will be largely consultative and that these bodies will not provide meaningful power and authority to local communities. We thus urge the legislature to consider modification of the proposed RHICs to provide a more concrete and enhance level of authority to such bodies and to ensure that they provide real decision-making power to local communities and direct care providers.

### **3. Pilot Private-Equity Investment Program (Art. VII, Part A, §§12-14)**

This proposal would establish a pilot program to allow for-profit private equity investors to directly own and control hospitals in New York. The program would allow up to five such entities to operate in the state, provided that they are not publicly traded.

NYSNA strongly opposes any measures that would open the door to for-profit control and operation of our hospitals. We are particularly opposed to the private-equity investment model which is predicated on a short-term investment horizon and which is often accompanied by destructive practices that would have a devastating impact on our hospital system. This model of investment is often accomplished by means of high levels of debt leveraging, high transaction, management and consulting fees, and the stripping of real estate and other assets, all with a goal of maximizing the short term profits of the equity firms and their investors. This model is in many ways similar to the “flipping” approach employed by real estate speculators.

The opening of our hospital system to manipulation and control by private equity or publicly traded corporate interests is not a viable solution to the problem of hospital access to capital. This approach will only result in the deterioration of the existing quality and availability of care in areas with high need, and will only exacerbate the problems faced by vital access and safety-net providers.

The legislature should reject this proposal in its entirety.

### **4. Limited Service Clinics (Art. VII, Part A, §21)**

This proposal would allow corporate entities to directly operate and control diagnostic and treatment health services in retail settings (drug stores, department stores, malls, etc.).

NYSNA opposes the operation of healthcare clinics in New York State by commercial, corporate and other for-profit business enterprises that are primarily focused on generating revenue from retail sales activities in which quality healthcare is not a priority (i.e., supermarkets and “box retailers”) or in which the primary interest is in generating revenues and profits from the sale of pharmaceutical or other tangible healthcare and non-healthcare goods (i.e., drug store chains).

NYSNA understands the need for healthcare facilities that are able to provide basic minor health services, but believes that such clinical services should be integrated into and coordinated with local healthcare delivery networks and should not be operated on a for-profit basis by non-healthcare corporations. If such clinics are to operate, they should be limited to operation on a non-profit basis and should not be directly operated or indirectly controlled or otherwise affiliated with for-profit corporate or other private entities that are primarily devoted to non-healthcare purposes or are merely distributors of healthcare-related goods.

NYSNA urges the legislature to stop the “Walmartization” of healthcare and to reject this proposal.

#### **5. Urgent Care Centers (Health and Mental Hygiene Article VII, Part A, §22, p. 45-46)**

This proposal would establish the definition of urgent care as the provision of treatment on an unscheduled basis to patients for acute episodic illness or minor traumas that are not life-threatening or potentially disabling or for monitoring or treatment over prolonged periods. Urgent care centers would require accreditation from nationally recognized accrediting agencies and would be subject to regulations regarding the scope of services, and requiring notification to patients of the limited scope of care and of the availability of regular primary care providers.

NYSNA welcomes the efforts to regulate the operations of urgent care centers, which are currently proliferating with little or no regulation.

NYSNA believes, however, that urgent care centers should be subject to full CON review, with a particular focus on the need for such services in local communities and the impact of their expansion on existing safety-net hospitals and other Article 28 providers.

Urgent care centers should be prevented from undermining the financial viability of hospitals and other primary/ambulatory care providers by means of abusive market practices aimed at siphoning off lucrative patient populations. NYSNA further believes that the presence of for-profit operators in this sphere is fundamentally problematic and their ability to disrupt and undermine vital providers should be minimized or eliminated.

We are also concerned that such centers will be allowed to operate on a “cash” basis and will not be required to accept Medicaid or uninsured patients or to provide care to patients who are unable to pay for services.

Accordingly, we would request that the legislature tighten the level of regulation of urgent care operators and subject them to full CON review in order to minimize the disruptive effects of their expanding presence in the healthcare market.

#### **6. Office-based Surgery and Anesthesia (Article VII, Part A, §§23-24)**

This proposal would amend existing regulations to include office-based anesthesia in current rules related to office based surgery. It would increase the requirements for reporting adverse events,

require accreditation and registration with the department, and place limitations on the types of procedures.

Though NYSNA welcomes the imposition of these regulations in what is now a largely unregulated segment of the healthcare market, we feel that the regulations do not go far enough to protect patients and minimize the disruptive effects of the expanding level office based surgery.

NYSNA believes that the proliferation of market driven Ambulatory Surgery Centers and Office-Based Surgery practices are insufficiently regulated and that standards of practice must be more tightly monitored to protect patient safety.

We are particularly concerned that the expansion of the scope of services provided in office based surgery practices and their unregulated proliferation is disrupting the wider healthcare delivery network. These physician practices are effectively operated on a for-profit basis and many are able to compete unfairly with their Article 28 hospital and ambulatory service competitors. They are not subject to the same staffing and facility structure codes and are able to deny services to Medicaid and uninsured patients who are unable to pay their demanded fees.

NYSNA believes that all surgical procedures should be subject to uniform rules and regulations regardless of the setting in which the procedure takes place. All providers of such services should operate under the same standards with respect to quality of care, safety standards and other operational oversight and requirements. The playing field on which hospitals, ambulatory surgical centers and OBS practices compete to provide covered surgical services should be uniform. This uniformity should also be applied to reimbursement rates, HCRA surcharges and other financial aspect to remove the incentives of OBS to engage in unnecessary procedures and/or to generate revenues at the expense of patient safety and quality of care.

All providers of ambulatory surgical services should accordingly be subject to full Article 28 licensure and such surgical centers should all be subject to full CON review. Physicians wishing to provide ambulatory surgical services should follow the same rules as other providers. This will also serve to encourage a focus on provision of primary care services and discourage unnecessary expansion and proliferation of services that are not consistent with community health needs.

We urge the legislature to include these practices within the scope of review currently required of Article 28 providers.

## **7. Certificate of Need Redesign (Article VII, Part A, §§15-19)**

The executive budget proposal contains several changes to existing Certificate of Need regulations that are aimed to reduce the scope of such review in several key areas.

NYSNA is generally opposed to the relaxation or elimination of CON review standards. We believe, in the context of the current structure of the healthcare delivery system, that the CON process plays a

critical role in regulating the allocation of healthcare resources and offers an opportunity for the government and affected local populations to assert control of and have a say in the workings of the healthcare system. In fact, for most decisions, the only point at which the public has any opportunity to assert its interests is in the context of public hearings of CON applications.

NYSNA believes that the CON process also offers the government an opportunity to more actively regulate unnecessary and wasteful healthcare expenses and, more importantly, to impose a more equitable and fair distribution of healthcare resources and improve access to care by restricting the actions of self-interested providers motivated by financial concerns. The CON process gives the state and local populations a possible tool to improve the healthcare delivery system.

We thus oppose the proposals in the budget bill that would eliminate “public need” review in the expansion of primary care and other construction by hospitals, to loosen restrictions on adult home, home care, long term care and other specialty providers, and to reduce the “look back” period for reviewing the character and competence of healthcare operators or their principals.

We urge the legislature to reject these attempts to loosen the applicability of CON review.

## **8. Miscellaneous Issues**

- **Expand exemptions to Nurse Practice Act** (Article VII bill, Part D, NYSNA strongly opposes efforts to allow unlicensed personnel to perform the tasks of registered nurses. This proposal seeks to add an exemption to Section 6908(1)(a)(v) to allow non-RN staff to provide nursing care under RN supervision in programs operated by the Office for People with Developmental Disabilities. Because this proposal is unclear as to the context in which it will apply and fails to define the level of RN supervision to be required or the types of non-RN personnel who will be covered, it should not be approved by the legislature.
- **Nursing Education Funding**  
NYSNA supports adequate levels of funding for nursing education programs, given the ongoing expectation that the nursing shortage will be a continued problem in New York, especially in the context of the aging of the “baby boom” generation. Accordingly, we are disappointed that the budget does not provide for any increases in existing funding for High Needs Nursing programs at private colleges & universities, for the Patricia McGee Faculty Scholarship & Loan Forgiveness Program, for SUNY nursing programs and for CUNY nursing programs, all of which are funded in 2014-15 at the same levels they were funded in the previous year.

## **Conclusion**

We thank you for your time and consideration of our positions on the budget and look forward to working together to address the critical problems confronting our healthcare system. We know that we all share the goal of building a healthcare system that provides high quality care and meets the needs of the people of New York. We will be reaching out to your offices to discuss our shared concerns in more detail over the next few months.

For more information, contact the New York State Nurses Association Political and Community Organizing Department at **518.782.9400, ext. 283** or by email at [legislative@nysna.org](mailto:legislative@nysna.org).