New York State NURSES ASSOCIATION an affiliate of National Nurses United AFL-CIO

Joint Legislative Hearing: FY 2024-2025 Health Budget
January 23, 2024
Testimony of the New York State Nurses Association
Presented by Leon Bell, Director of Public Policy

The New York State Nurses Association (NYSNA) is a leading advocate for universal access to healthcare, safe patient care, healthcare equity, and protection of the practice and working conditions of Registered Nurses. NYSNA represents more than 43,000 members across New York and is an affiliate of National Nurses United, the largest union of RNs in the country.

The FY2025 Executive Budget includes significant proposals to further expand healthcare coverage in the private insurance market and ACA exchanges, Medicaid, the Essential Plan, and other programs. NYSNA fully supports any proposals to increase health coverage, improve the quality of care, and address racial and socioeconomic inequities in the healthcare system.

The FY2025 budget also includes positive proposals to expand support for financially distressed safety-net hospitals and other providers that aim, in conjunction with the recently announced approval of a $7.5 billion federal waiver program, to address the interconnected problems of racial and social disparities in our healthcare system and chronic underfunding of hospitals that care for the largest numbers of Medicaid and underinsured patients.

NYSNA, however, is concerned about proposals included in the budget legislation that are inconsistent our priorities and that will undermine equal access to high quality care for all New Yorkers, worsen the staffing crisis in our hospitals and nursing homes, threaten patient safety, and accelerate the exodus of nurses from the workforce.

We are also concerned that the proposed budget does include sufficient funding for hospitals and other providers to continue to provide needed services. In addition, the budget includes no proposals to stabilize the nursing workforce, improve staffing levels, increase recruitment and retention, or provide better working conditions for nurses and other healthcare workers.

1. The proposed budget does not adequately address the RN staffing crisis

The Executive Budget tacitly recognizes the problem of understaffing hospitals and nursing homes as well as insufficient numbers of specialty care staff available to provide dental, mental health, maternity, and primary care services in underserved communities.

Though we applaud the state's recognition of the problem, NYSNA believes that the proposed measures to address the healthcare workforce staffing crisis do not correctly identify the root causes of the problem and offer solutions that will make the problem worse.

When it comes to the nursing workforce, the major contributor to the lack of staffing is the continuing exodus of licensed nurses from the direct care workforce in the face of poor working conditions, heavy workloads, inadequate pay and benefits, high rates of turnover and burnout, and frustration that nurses do not have the time and resources to provide proper care to their patients.

The state of New York does not have a shortage of RNs licensed to work in the state. According to data from the NYS Education Department, there were 394,000 RNs with active licenses to provide patient care in New York as of July 1, 2023. Between May of 2018 and July of 2023, the number of actively licensed RNs increased by 29%, from 305,000 to 394,000.

Despite the rapid increase in the number of RNs available to work in New York, however, the actual number of RNs who are employed in direct care has remained relatively static according to BLS statistics, increasing only by 4.4%, from 182,500 in 2018 to 190,500 in 2022. The workforce participation rate of RNs based on this data has thus declined from 60% of licensed nurses working in healthcare to 53% during this period.

The RN workforce data clearly shows that New York does not suffer from a shortage of RNs, but rather that RNs are increasingly unwilling to work in stressful patient care settings and are leaving their hospital and nursing home jobs in increasing numbers.

In this context, the core problem that the state should be focused on is finding ways to address recruitment and retention, reduce turnover, encourage the existing workforce to stay in the workforce, and entice those who left to return to work.[1]

The Executive Budget offers almost no solutions to the root causes of the RN staffing crisis, and instead focuses on dubious quick fixes that will only add to the responsibilities and workloads of already overworked nurses, allow non-nurses to provide more nursing care, and outsource patient care by promoting remote nursing care via telehealth across state borders, expanding at home hospital care, and deregulation. These measures, if adopted, will only worsen the instability in the existing nursing workforce and the ongoing staffing crisis.

To address the root causes of the staffing crisis, NYSNA makes the following recommendations:

[1] See: NYSNA Written Testimony, provided at the NYS Assembly Health Care Workforce Hearing on December 19, 2023, which provided more detailed information on the causes of the staffing crisis.

- **Increase funding for DOH oversight and enforcement of the new hospital staffing law (PHL Section 2805-t).** Understaffing in hospitals is one of the main sources of frustration among RNs, and heavy workloads are a main driver of staff turnover. Many hospitals continue to violate or ignore their obligations to comply with their adopted staffing plans, and the DOH does not have sufficient staff and resources to make hospitals comply with the new law. The budget should be amended to substantially increase funding to enforce the law.
- **Expand minimum nurse-to-patient ratios to alleviate RN work stresses and improve patient care by including maternity, pediatric, and other types of units.** New York recently added a minimum nurse-to-patient ratio of 1:2 for Intensive and Critical Care units to state regulations**.** The legislature should consider adding minimum ratios for other types of patient care units to reduce workloads and improve working conditions in furtherance of the Governor's goal of reducing maternal and infant mortality, addressing healthcare equity, and staunching the exodus of nurses from the bedside.
- **Increase funding for the Nurses Across New York (NANY) loan forgiveness program to encourage RNs to take positions and stay at the beside in shortage areas.** The budget includes no added funding for NANY, and the $3 million allocated for the program is not enough to address the staffing shortages faced by rural and safety-net hospitals, nursing homes, and other vital safety-net providers. NYSNA urges the legislature to substantially expand the total funding for NANY and to increase the current DOH caps of $25,000 for RNs and $10,000 for LPNs for a three-year work commitment.
- **Create new RN loan forgiveness and tuition assistance programs that are targeted to practice settings with the most acute staffing shortages.** The NANY program applies broadly to all nursing shortage areas, covers a wide range of provider types, and allocates awards on a first-come, first-served basis. The legislature should consider creating additional loan forgiveness programs that are more narrowly tailored to address RN staffing in a more targeted manner, including programs aimed at nursing homes, safety-net providers, and particular practice areas, such as mental health, maternity care, or other settings with more acute staffing needs. The legislature should also consider loan forgiveness programs that focus on particular counties or regions of the state with the most acute staffing needs.
- **Reduce RN turnover rates and help newly licensed nurses stay in the workforce.** New York currently faces a serious shortage of clinical training slots for student nurses and extremely high turnover rates among newly licensed nurses. To address this problem, the state should provide funding for the creation or expansion of clinical slots and mentoring/ Preceptorship programs to provide support to keep newly hired nurses employed at the bedside. The legislature should also consider measures to require hospitals to make clinical training slots available to nursing students in partnership with state nursing schools.
- **Improve recruitment and retention of nurses in the public sector by fixing the Tier 6 pension system.** Nurses working for state and city hospital systems and local health departments are vital to providing safety-net services and protecting the public from ongoing and emergent disease outbreaks. Public sector nurses are generally underpaid in comparison to nurses working in the private sector. This imbalance has been worsened by the inferior benefits and

higher employee contributions resulting from the imposition of the Tier 6 pension plan for nurses hired after 2012. The legislature should address public sector RN staffing problems by improving Tier 6 benefits, creating early retirement options for nurses who commit to a career in the public sector, and reducing nurses' required contributions to their pensions.

- **Reject the proposal to eliminate paid COVID leave (Article VII, ELF Legislation, Part M).** The Executive Budget proposes to eliminate the provisions of Chapter 25 of the Law of 2020 which required employers to provide paid sick leave time for workers exposed to COVID who are required to quarantine. Though the COVID pandemic has eased, the battle is not over, as evidenced by the current increase in cases and hospitalizations. Nurses and other healthcare workers are more likely to be exposed to COVID and be required to take time off from work. Nurses should not be forced to use their sick leave banks to quarantine. The legislature should consider amendments to the COVID sick leave law to continue to provide extra paid time when RNs are required by their employers to stay away from work because of actual or possible exposure.

2. Protect quality of care and patient safety and stop adding to the burdens on the RN workforce

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 that seek to allow nurses and other healthcare workers to "do more" or expand capacity by diluting nurse practice standards, allowing non-nurses to perform nursing roles, outsourcing health care to out-of-state providers, opening the door to more penetration of the healthcare system by for-profit operators and private equity investors.

As we have made clear, nurses and other healthcare workers are already doing too much. New measures that add to workloads and responsibilities will only exacerbate the staffing crisis by driving even more nurses out of the workforce and undermining the quality of care, patient safety, efforts to address racial and social inequities. The legislature should reject these self-defeating workforce proposals and protect patients.

- **Reject the proposal to join the Interstate Nurse Licensure Compact (Article VII HMH Legislation, Part R**). The proposal to join the Compact is premised on the assumption that doing so will increase the availability of nurses willing to come to New York from other states to alleviate the nurse staffing crisis. This premise is clearly refuted by the data and the experience of New York during the COVID pandemic. New York effectively eliminated all RN licensing requirements for three years from early 2020 to 2023 through Executive Orders that suspended licensure requirement and allowed out-of-state nurses to freely practice in New York. The net result of this real-life experiment: increasing turnover rates and an exodus of RNs from the workforce, an explosion in the use of temporary traveler nurses, and ballooning labor costs for hospitals and other providers.

Given the negative effects of opening the door to the free entry of RNs into New York, it is clear to us that this proposal is unrelated to expanding the RN workforce in New York. We have already noted that New York has plenty of actively licensed nurses, and that the real problem is convincing them to stay in or return to the workforce. [2]

We have also noted that joining the Compact will undermine New York's ability to set its own practice standards and qualifications for licensure, subject New York nurses to disciplinary proceedings and complaints in multiple jurisdictions, and open the door for other states' officials and nursing boards to insert themselves into New York's sovereignty over nursing education standards, minimal qualifications for a nursing license, and control over access to abortion, contraceptives, and gender affirming care.[3]

The real purpose of the industry in pushing New York to join the compact appears to be to allow New York providers to outsource nursing care to for-profit out-of-state providers, many of whom are owned or controlled by private equity investors, who can be hired to provide care to New Yorkers via inter-state telehealth services with lower nursing labor costs.

This model will not only supplant New York nurses' work, but will also threaten the quality of patient care. It is well established that increasing the role of for-profit providers generally, and private equity-controlled providers in particular, results in higher rates of patient harm, poorer quality of care, and a tendency for per unit costs to rise through up-coding or other gaming of reimbursement models in pursuit of higher profits and investor returns.[4]

- **Reject the proposal to create a new "medication aide" title (Article VII, HMH Legislation, Part Q, Sections 8-12).** The Executive Budget proposes to create a new title that would be

[2] Most compact states have higher RN vacancy levels, lower wages, poorer staffing levels and lower educational standards than New York. See: New York Nurse, Lowering Nurse Licensing Standards Won't Solve the Nurse Staffing Crisis – But Could Harm Patient Care (Fall 2023), at p. 3, available at https://www.nysna.org/lowering-nurse-licensing-standards-won%E2%80%99t-solve-nurse-staffing-crisis%E2%80%89%E2%80%94%E2%80%89-could-harm-patient-care.

[3] Of the states that are members of the compact, most have criminalized or restricted access to contraceptives, abortion services and gender affirming care. Under the terms of the Compact, RNs practicing in New York could be subject to criminal, civil, or disciplinary proceedings and suspension of their interstate practice licensure rights by other states based on the foreign states' laws and practice codes. For example, many states categorize abortion as a homicide and allow criminal and civil prosecution of any person who performs, assists in the performance, or aids a termination of pregnancy. Joining the Compact would give those states a foot in the door to challenging or disrupting these types of care in New York.

[4] See for example: Kannan S, Bruch JD, Song Z. Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition. *JAMA.* 2023;330(24):2365–2375. doi:10.1001/jama.2023.23147, available at: https://jamanetwork.com/journals/jama/article-abstract/2813379?guestAccessKey=e0cef9be-d55c-4bcf-8892-412af8f24355&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=122623. The literature on this issue is voluminous and largely undisputed, and applies to hospitals, nursing homes, home care services, and a range of other settings.

permitted to administer medications to residents in long-term residential care facilities. This proposal, which is patterned on the Advanced Home Health Aid model, will undermine patient safety and quality of care. We also believe that it will worsen RN recruitment and retention in long-term care settings by significantly adding to the workloads and responsibilities of RNs. Under the proposed legislation, RNs would be not only be responsible for their own patient care duties, but would now also be required to oversee the training of medication aides, assessing their abilities, and supervising multiple aides in the administration of medications. The RN will also be responsible and legally liable for any errors or practice violations by the medication aides that they are required to supervise.

- **Reject the proposals to expand Hospital-At-Home models and Paramedicine programs (Article VII, HMH Legislation, Part V).** The Executive Budget proposes to modify PHL Section 2805-x (Hospital-home care-physician collaboration program) to greatly expand acute care hospital-at-home programs to include EMS, skilled nursing facilities, hospices, payers (i.e., insurance companies), hospices, and "other interdisciplinary providers, practitioners and service entities" (Section 1) and allow hospitals to provide up to 51% of their acute care services in home settings and extends the authorization for such programs to 2031 (Sections 2 and 3).

  NYSNA opposes this significant expansion of current authorization to create and operate hospital at home programs through the budget process. CMS has allowed hospital at home demonstration programs since 2020, and such authority was extended through the end of 2024. Though CMS has authorized such programs in 299 hospitals in 30 states, including New York, the impact on quality of care and costs remains an open question, and CMS has been directed to conduct a thorough analysis of the demonstration program by September 30, 2024.

  NYSNA is also concerned that acute hospital at home programs will endanger patient safety. For example, the CMS standards for such demonstration programs only require a limited number of in-person visits by nurses and other practitioners, and allow daily check-ins with care givers to be conducted by telehealth methods. We also note that the CMS standards require programs to respond to a crashing patient within 30 minutes, as opposed to the immediate response available in an in-patient hospital setting.

  At this point it is not clear that these programs are safe for patients, that they are not liable to encourage upcoding or other fraudulent practices, or that they will not encourage disinvestment in hospital infrastructure and staffing.[5]

[5] See: National Nurses United, MEDICARE'S HOSPITAL AT HOME PROGRAM IS DANGEROUS FOR PATIENTS (Sept. 2022), available at

For these reasons we urge the legislature to reject the expansion of hospital at home programs through the budget process and to allow a more deliberative approach to this issue through the regular legislative process.

NYSNA also urges the legislature to reject the proposals in Part V that would expand the scope of practice and settings in which EMS operators are allowed to provide healthcare services beyond their existing authority to treat patients at the scene of an emergency, stabilize them, and promptly transfer them to a hospital or other appropriate site of care.

The proposed legislation would authorize EMS operators to provide non-emergent healthcare services, including urgent care services in rural counties, participate in hospital at home programs, as well undefined and broad "non-emergency" and "special need" services. The legislation would allow DOH to approve up to 200 new or expanded paramedicine programs, greatly expanding the number of such programs currently operating under PHL Section 3018 and extending such authority to 2031. See Part V, Sections 4 through 12).

NYSNA opposes this substantial change in existing policy related to paramedicine models. We believe that there should be clearer definitions of EMS scope of practice and prohibitions against engaging in patient care that is within the scope and training of nurses.

We also note that paramedicine programs may distract EMS operators from fulfilling their primary purpose of responding promptly to emergency care needs and offer the opportunity for corporate and for-profit EMS entities to enter the NY healthcare system in pursuit of higher profits.

The legislature should not allow such a substantial change in policy to be implemented through the budget process. We urge you to reject this proposal and address the issue through the regular legislative process, with a full analysis and opportunity to address concerns and potential problems.

3. The proposed budget does not do enough to address health equity and expand health coverage

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 remains 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** (A7897/S7590)**.**

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

- **Reign in the abuses of Managed Care Providers (Article VII, HMH Legislation, Part H)** NYSNA opposes for-profit healthcare operators, and view Managed Care providers as an improper privatization of the Medicaid and Medicare systems. NYSNA supports the proposal to institute a moratorium on authorizing new Managed Care providers, the 1% reduction in their reimbursement rates, and more oversight of their business practices.
- **Expand the coverage and benefits under the Essential Plan (Article VII, HMH Legislation, Part J).** The Executive Budget proposes, subject to Federal approval, to expand premium supports or eliminate cost sharing by shifting low-income New Yorkers from qualified ACA exchange plans to the Essential plan. This will improve access to care, reduce out-of-pocket costs, and maximize federal matching funds.
- **Expand Medicaid or Child Health Plus coverage from age 0 to 6 regardless of family income (Article VII, HMH Legislation, Part M).** This proposal would allow continuous coverage through age 6 regardless of fluctuations in family income, and reducing onerous recertification processes that often disrupt health coverage of young children.
- **Expand the availability of doula services for pregnant, birthing, and post-partum women (Article VII, HMH Legislation, Part N)**. This legislation is aimed at improving maternal and baby health outcomes and addressing racial and class disparities in maternal and child mortality rates. Though NYSNA has no objections to and supports the availability of doula services, we would also urge the legislature to consider expanding the funding for and availability of Nurse-Family Partnership or similar programs that provide additional home visits by RNs, which are shown to significantly improve health outcomes for mothers and their babies, while also having positive long-term impacts on a future employment and incomes, educational attainment, lower incarcerations rates, and other similar metrics.
- **Expand Medical Debt Protections (Article VII, HMH Legislation, Part O)**. NYSNA supports the progress made toward addressing the abuses of charity care obligations and medical debt collection practices. The proposed legislation further advances this critical goal by improving regulations requiring hospitals to provide financial assistance and limiting the power of providers to sue their patients to collect debts. We would urge the legislature to consider enhancing the budget proposal by incorporating other pending legislation to further restrict abusive practices.
- **Increase reimbursement rates from private insurers for OHM and OASAS providers to at least the Medicaid rate (Article VII, HMH Legislation, Part AA)**. Though this proposal is a positive and necessary step to address the mental health crisis and reign in private insurers that fail reimburse mental health services properly, we would urge the legislature to consider expanding this provision to increase the grossly inadequate reimbursement rates for Medicaid mental health services by requiring Medicaid parity with commercial rates and applying this to

all in-patient and out-patient psychiatric care services provided by hospitals and other providers.

NYSNA, however, is concerned that following proposals in the Executive Budget will reduce health coverage, increase costs to recipients, or undermine efforts to address racial and socioeconomic equity in the healthcare system. We urge the legislature to reject these proposals:

- **Reject the extension of the Medicaid Cap (Article VII, HMH Legislation, Part A).** NYSNA believes that the Medicaid program is a vital safety-net program that should be allowed to expand as needed to address the health needs of eligible New Yorkers. Capping Medicaid spending is antithetical to this goal. We also note that this program provides matching federal money and that every $1 cut from Medicaid result in more than $2 in reduced healthcare funding, affecting both New Yorkers in need of healthcare coverage and substantially reducing the economic multiplier effect in the broader economy.
- **Reject the elimination of the wage parity requirement for personal assistants in the CDPAP program (Article VII, HMH Legislation, Part G).** This proposal will disrupt the ability of people needing home care assistance to reside at home. We also note that it applies only to NY City area counties.
- **Reject the elimination of prescriber prevails for Medicaid patients (Article VII, HMH Legislation, Part I).** Medicaid recipients should not be prevented from receiving medications that are deemed medically necessary by their providers. Given the demographics of the Medicaid program, this will allow increased inequality in care based solely on ability to pay.

4. Increase funding to support hospitals and other providers, address health inequity and preserve the safety-net

NYSNA believes that the current state structure for funding hospitals and the broader healthcare system is a major factor in fostering and perpetuating racial and socio-economic disparities in healthcare coverage, the quality of care, and community health outcomes.

Medicaid reimbursement rates generally cover less than 70% of the cost of providing care, and this imbalance is a major contributing factor to racial and socioeconomic disparities in access to and quality of care. The underpayment of Medicaid services reflects an average across various types of Medicaid services, and reimbursement rates for psychiatric services, maternity care and other categories are significantly lower than the 70% average. This creates financial incentives for hospitals and other providers to close services with higher loss rates (psychiatric, pediatric, maternity services in particular) and worsens disparities in care.

NYSNA accordingly urges the legislature to include the following measures in the state budget to support safety-net providers and address disparities in care:

- **Increase Medicaid reimbursement rates for all providers to reduce the gap between payments and the costs of care (Not included in the Executive Budget).** New York will never

fully address racial and socioeconomic disparities in care so long as Medicaid rates are lower than commercial rates. Hospitals and other providers will seek to avoid Medicaid patients in the pursuit of higher revenues from more lucrative types of services. We urge the legislature to implement a phased increase in Medicaid reimbursement rates to the cost of providing the care.

- **Address the financial needs of safety-net providers with high numbers of Medicaid and uninsured patients by enacting A6785/S5810.** This legislation would reimburse safety-net hospitals that meet certain threshold criteria at the average commercial rate for their geographic region. We urge the legislature to immediately implement this measure to support the continued operations of safety-net providers.
- **Implement the Health Car Safety Net Transformation Program (Article VII, HMH Legislation, Part S).** This proposal would allocate up to $500 million to support efforts to make safety-net providers more financially sustainable, with funding limited to public hospitals, rural emergency hospitals, critical access hospitals and sole community hospitals that have high levels of Medicaid and uninsured patients.

  Though NYSNA supports this proposal, we have concerns that the proposal allows funding to be provided for hospitals and "partner organizations" that might allow for-profit entities or for-profit hospitals operating in other states to qualify as "partners" with local safety-net providers. We would accordingly urge the legislature to narrow the definition of "partner organizations" to prevent for-profit participation and limit the discretion of the DOH to approve such organizations.

  We would also urge the legislature to modify the proposed funding from "up to $500 million" to "at least $500 million."
- **Implement the Executive Directive to private hospitals to reopen closed psychiatric in-patient beds (Not included in the Executive Budget).** In 2023, the DOH issued a directive to all hospitals to reopen more than 850 psychiatric in-patient beds that were "temporarily" closed during the height of the COVID pandemic. Many hospital operators have failed to comply with the order or have claimed the need to reconfigure or renovate the closed units and recruit qualified staff will result in extensive delays in restoring the closed bed. Other employers are evading the directive by moving their in-patient psychiatric units to other campuses without considering local health needs or how such relocations will affect patients and their families. NYSNA urges the legislature to consider including legislation to establish firm deadlines for restoring these beds and establishing significant penalties for non-compliance.

For questions or further information, please contact Leon Bell, Director of Public Policy at leon.bell@nysna.org