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TESTIMONY OF
THE NURSE PRACTITIONER ASSOCIATION NEW YORK STATE
TO THE JOINT LEGISLATIVE BUDGET COMMITTEES ON HEALTH
FEBRUARY 8, 2022

The Nurse Practitioner Association New York State ("NPA") is the only statewide professional association of nurse practitioners ("NPs") in New York, more than 25,000 of whom are licensed to practice throughout New York State. NPs have been on the frontlines throughout this public health crisis; frequently the professionals caring for New York's most vulnerable and underserved populations. Our membership regularly staff federally qualified health centers and other clinics found in what may otherwise be healthcare deserts. NPs are committed to providing the broadest access to healthcare and are proud to partner with the State of New York to ensure quality care is available to all residents. The NPA and its members are committed to maintaining the highest professional standards for NPs and ensuring the greatest quality care for health care consumers. The NPA greatly appreciates the legislature's long-standing support of the NP profession, particularly during the ongoing COVID-19 pandemic.

Anticipating the impending workforce crisis, at the beginning of the pandemic, the governor issued a series of executive orders to enable NPs to practice at the top of their license, consistent with their scope, without facing undue administrative hardships or imposing artificial barriers to patient care. NPs were deployed in almost every health care setting, delivering collaborative care to New Yorkers without incident. NPs have shown they are important, competent, independent healthcare professionals and are among the building blocks of meeting the State's workforce challenges.

The chairs of the healthcare committees -- and several other legislators -- have made it clear that they fully understand the NP profession and the NP's role in the health care system and have sponsored A.1535-A (Gottfried)/S.3056-A (Rivera). Governor Hochul, too, has made clear her commitment to NPs, by including sections 6-8 in the proposed Health and Mental Hygiene Article VII, Part C. It is imperative that, either through the Gottfried/Rivera legislation or a modified version of the Governor's proposed language, New York join the 25+ states that truly afford NPs

full practice authority by eliminating any statutory mandate for a written collaborative agreement or relationships.

Background

NPs gained legal scope of practice in New York State in 1988. NPs are licensed, certified, independent practitioners, regulated by the State Education Department ("SED"). NPs possess a license as a registered professional nurse ("RN") first, and then obtain additional certification as a NP, after completing an educational program approved by the State. NPs are highly skilled, trained, and experienced individuals who exercise independent judgment, and collaborate with specialists and healthcare practitioners through team-based care. Although many NPs focus on primary care health issues generally, every New York NP must be certified in one or more specific practice areas: Adult Health, Women's Health, Community Health, Family Health, Gerontology, Holistic Care, Neonatology, Obstetrics/Gynecology, Oncology, Pediatrics, Palliative Care, Perinatology, Psychiatry, School Health, Acute Care, or College Health.

The New York Center for Health Workforce Studies ("CHWS") recently concluded that "NPs play a crucial role in expanding access to health services. As the state's population grows and becomes more diverse, an NP workforce that closely represents the racial and ethnic composition of the state's population not only ensures an adequate supply of health workers, but also supports the delivery of culturally competent health care."[1] It is a homegrown[2], woman dominated[3] profession, that generally reflects the communities they serve.[4] NPs are particularly prevalent in Health Professional Shortage Areas (HPSAs) and rural New York -- over 43% of NPs work in HPSAs and nearly 50% of NPs work in Primary Care HPSAs.[5] Significantly "[h]igher proportions of NPs (47%) . . . practice in [HPSAs] compared to Physicians (36%)."[6]

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[1] Report by CHWS, "A Profile of New York State's Patient Care Nurse Practitioners": https://www.chwsny.org/wp-content/uploads/2021/11/Profile-of-New-York-States-Patient-Care-Nurse-Practitioners-2021.pdf

[2] Nearly 90% of New York's NPs also received their training in New York. *Id.*

[3] 92% of New York NPs are female. *Id*. *See, also,* https://www.chwsny.org/wp-content/uploads/2021/01/NP-Diversity-Brief_2021.pdf

[4] The population of African American/Black, non-Hispanic NPs is representative of the comparable demographic statewide. *Id.*

[5] Presentation shared at United Hospital Fund's Annual Symposium on Health Care Services in New York (10/28/21); available at https://youtu.be/YjftaBZ0CUE. Of those NPs in primary care HPSAs, 48% work in health centers or clinics, 23% hospital inpatient settings, 10% in physician settings. *Id.*

[6] *See* Primary Care Development Corporation December 2021 report, "Characteristics of Primary Care Providers in New York State." "Counties with higher percentages of NPs are in Central New York, the Mohawk Valley, and the Southern Tier. Counties with lower percentages of NPs are more urban." *Id*.

Legislative History

Since the enactment of the NP scope of practice more than three decades ago, NPs have been authorized to diagnose illness and physical conditions; perform therapeutic and corrective measures; order tests; prescribe medications and devices and immunizing agents; all without supervision. NPs possess full prescribing authority and are the primary care provider of choice for many New Yorkers. NPs are autonomous and, unlike other allied professions, NPs are not dependent upon any other professional. As the State Education Department ("SED") has stated, "New York State Education Law *does not require a physician to supervise an NP* or to co-sign any of the NP's orders, records or charts. *New York Law holds NPs independently responsible* for the diagnosis and treatment of their patients."[7] NPs are independent healthcare practitioners who are legally accountable for the care they provide.

Notwithstanding our independent professional status, prior to 2014, ***all*** NPs were required to maintain written collaborative agreements with a physician, as a condition to practice. This requirement proved to be a costly, artificial barrier to accessing healthcare services that had no impact on healthcare outcomes. In fact, the written collaborative agreement did not affect patient care. Rather, it was a process by which NPs and Physicians would negotiate such things the ground rules for communication and how a patient's chart would be selected for a quarterly retrospective review, in exchange for which many Physicians would assess NPs significant fees.[8]

Recognizing that the law was outdated, in 2011, the Medicaid Redesign Team called for the "remov[al of] the requirement that certified Nurse Practitioners enter into a written collaborative practice agreement with a licensed physician." Three years later, a version of the Nurse Practitioner Modernization Act ("NPMA") was advanced by the Executive and enacted in the 2014 budget. The 2014 law eliminated the written practice agreement for NPs who have completed 3,600 hours of practice, but those NPs would need to maintain "collaborative relationships" with qualified physicians or Article 28 facilities that employ those individuals. Again, this was an administrative function, with limited healthcare consumer justification. As SED notes, "A collaborative relationship means that you communicate . . . with the qualified physician for the purposes of exchanging information, as needed, in order to provide comprehensive patient care

[7] SED Memo: "Collaborative Practice with Physicians" available at http://www.op.nysed.gov/prof/nurse/npcollab.htm
[8] http://www.op.nysed.gov/prof/nurse/np-prfnp.htm

and to make referrals as necessary."[9] The NPMA's statutory changes included a June 2021 sunset date (that as part of last year's budget was extended to June 2022), a directive that SED collect data about the profession, and a requirement that SED issue a report in consultation with DOH.

The SED/DOH report issued in November 2018 included a recommendation from SED that the law should be further amended to eliminate the requirement for NPs to file practice protocols. DOH comments highlighted the difficulties created by the collaborative relationship standard, and stressed that the NPMA

- "was enacted to address a barrier to practice that served as an impediment to the expansion of needed primary care services throughout the State,"
- was achieving its intended purpose without any "indication of adverse impact on quality of care," and
- should be made permanent.

Continued Executive Orders

The COVID experience has bolstered the justification for further revising the NPMA. With Executive Orders issued in March 2020, the Executive waived the statutes and regulations that would require NPs to have a written practice agreement or maintain a written practice agreement or collaborative relationship with a physician, so that NPs could "provide medical services appropriate to their education, training and experience." This waiver continued until the final COVID related EO, and then was revived recently by Governor Hochul in EO 4.

2022 Executive Budget Proposal

The NPA is encouraged by the Governor's proposal in Part C, sections 6-8. It is common sense and imperative to eliminate the unnecessary statutory requirement for a written practice agreement mandate, and to do so permanently. However, as those sections are written, it would create a two-tiered, fragmented system within the profession, dividing NPs by the type of care they provide. Thus, to the extent that the Executive's proposal is under consideration by the Legislature, the NPA urges that the Legislature eliminate the distinction between the different healthcare services and instead create a single standard for all NPs who have completed at least 3,600 hours of practice: NPs with 3,600 hours of practice would not be required to maintain a collaborative relationship.

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[9] http://www.op.nysed.gov/prof/nurse/np-npcr.pdf

Alternatively, the Legislature should reject the Executive proposal and replace it with A.1535-A/S.3056-A, which was modeled on the SED/DOH report and the subsequent EO, to:

- make the NPMA permanent, as DOH suggested;
- eliminate the filing of practice protocols, as SED suggested;
- clarify that NPs required to maintain written collaborative agreements may have the agreement with a senior NP or a physician or hospital); and
- eliminate any statutorily mandated collaborative relationship for nurse practitioners with greater than 3600 hours of experience, consistent with the Governor's current EO.

Either path would improve patient access to quality care in a way that is consistent with what is done throughout much of the country. 24 states, DC, and 2 territories have enacted laws to ensure that NP licensure is not contingent on unnecessary contracts or relationships with a physician.

Conclusion

Our state has test driven full practice authority for NPs for nearly two years now, and it has proved to be a highly successful measure that has benefited patients. This approach should be made permanent. Modernizing licensure has high return and is low risk. It is a no-cost, no-delay, safe way to improve health care access and health care services as we continue to deal with, not only the pandemic, but the healthcare workforce shortage pressures that the state continues to face. Accordingly, the NPA respectfully requests that the legislature work with the Executive to allow NPs to practice at the top of their license, without unnecessary statutory mandates.

We very much thank the Senate and the Assembly for the opportunity to share these insights and welcome the opportunity to answer any questions that you may have.

Respectfully submitted,

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Executive Director