



Greater New York Hospital Association

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Kenneth E. Raske, President

TESTIMONY OF
DAVID RICH
EXECUTIVE VICE PRESIDENT
GREATER NEW YORK HOSPITAL ASSOCIATION

AT A HEARING OF
THE NEW YORK STATE ASSEMBLY
COMMITTEE ON WAYS AND MEANS
ON
THE ECONOMIC CRISIS AND THE IMPACT ON NEW YORK STATE'S BUDGET

November 14, 2008

10:00 am

Hearing Room C – Legislative Office Building

Albany, New York

Chairman Farrell and distinguished members of the Committee, my name is David Rich. I am the Executive Vice President for Government Affairs, Communications, and Public Policy at the Greater New York Hospital Association, which represents 300 not-for-profit and public hospitals and continuing care facilities throughout the metropolitan New York region and throughout New York State. I appreciate the opportunity to testify today on the Executive Budget proposals.

We are living in extraordinarily difficult times. There is no question that the challenges facing our State and nation are enormous, and we must all take the time to work together to find thoughtful, balanced solutions to the fiscal problems facing us. Governor Paterson has called this the worst economic crisis since the Great Depression. Whether or not that turns out to be true, the health care community understands the crisis confronting the State government and State legislators. We stand ready to work with you and to help you find acceptable solutions—indeed, we feel strongly that we *must* be part of the solution, and have offered the Governor many health care savings and reform ideas that can bring greater efficiency to the State’s health programs.

Governor Paterson said earlier this week, “The only way we are going to overcome this unprecedented crisis is through shared sacrifice.” We could not agree more. While we stand ready and willing to be “part of the solution,” we believe that we must be only a *part* of the solution. We stand ready to pitch in, but we will not participate in an exercise in which already financially struggling hospitals, nursing homes, home health agencies and the New Yorkers they serve suffer a disproportionate share of the deficit reduction burden while other State budget stakeholders skate by relatively unscathed.

Recent history is not encouraging in this regard. In the budget passed in April, the health care portion included substantial cuts while other areas of spending saw unprecedented increases. Again, in August, health care accounted for over half—\$505 million—of the \$1 billion in cuts enacted. We worked with the Assembly Ways and Means Committee, in particular, to try to help find creative ways of cutting the budget that would not cause immediate dislocation. What was enacted, however, will still substantially reduce the Medicaid payments hospitals, nursing homes, and home health agencies would otherwise have received in 2009, while their costs continue to increase at alarming rates. **For hospitals alone, the August Special Session actions reduced hospital payments by over \$300 million through the next State fiscal year, when loss of Federal funds and Medicaid managed care funds are factored in.** Nevertheless, we made the decision to be “part of the solution” while other State budget sectors stood idly by and watched. Indeed, since 2007, the health care budget has been treated as a virtual piggybank to provide increased funding in other areas of State spending.

This cannot happen again. If the budget deficit truly is 22% of current year General Fund spending, as the Governor contends, everything must be on the table. No sectors can be allowed to give less than their “fair share;” rainy day funds must be tapped; broad based revenues must

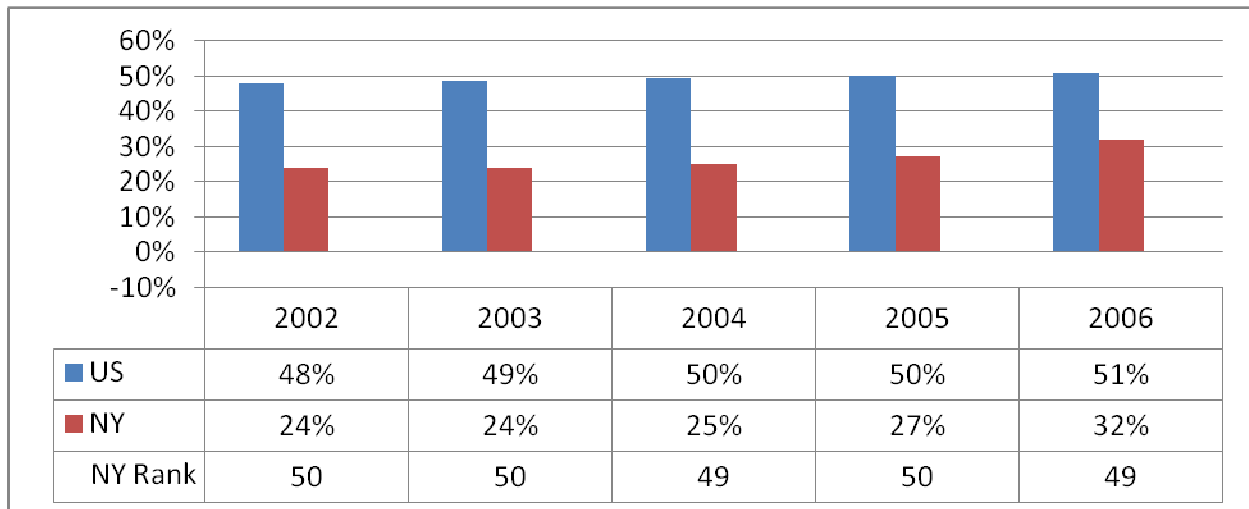
be raised; and reforms must be enacted to reduce the health care sector’s cost of doing business, such as medical malpractice insurance reform, so that the health care community can cope with reduced revenue from the State. Our hospitals, nursing homes, and home health agencies cannot afford to bear any more than their fair share of reductions—and even then, they will not be able to survive without simultaneous reforms to reduce their costs.

Unfortunately, the Governor’s budget proposal for next week’s Special Session doesn’t begin to meet the shared responsibility standard.

This budget will do enormous damage to the health care community. It will unquestionably lead to significant layoffs, closure of needed services, bankruptcies, and, in some cases, complete economic failure and closure. This statement is not meant to be alarmist—it is simply factual. And given the strong, first-hand knowledge you have of the needs of the health care institutions that serve your constituents, you know this to be true. You have seen hospitals in your communities shutter important services, like obstetrics, just to survive.

As has been the case for many years, New York’s hospitals have the worst bottom line margins and equity financing ratios in the country (the data below are derived from CMS databases). Since 2006 the financial condition of our hospitals, already the worst in the country, has deteriorated significantly, due to Medicare and Medicaid cuts both at the Federal and State levels. Now, hospitals are also contending with lower investment income, higher medical malpractice insurance costs, higher pension contributions, and higher borrowing costs. Indeed, due to the economic downturn and the crisis in the financial markets, the ability for our hospitals to borrow has deteriorated alarmingly.

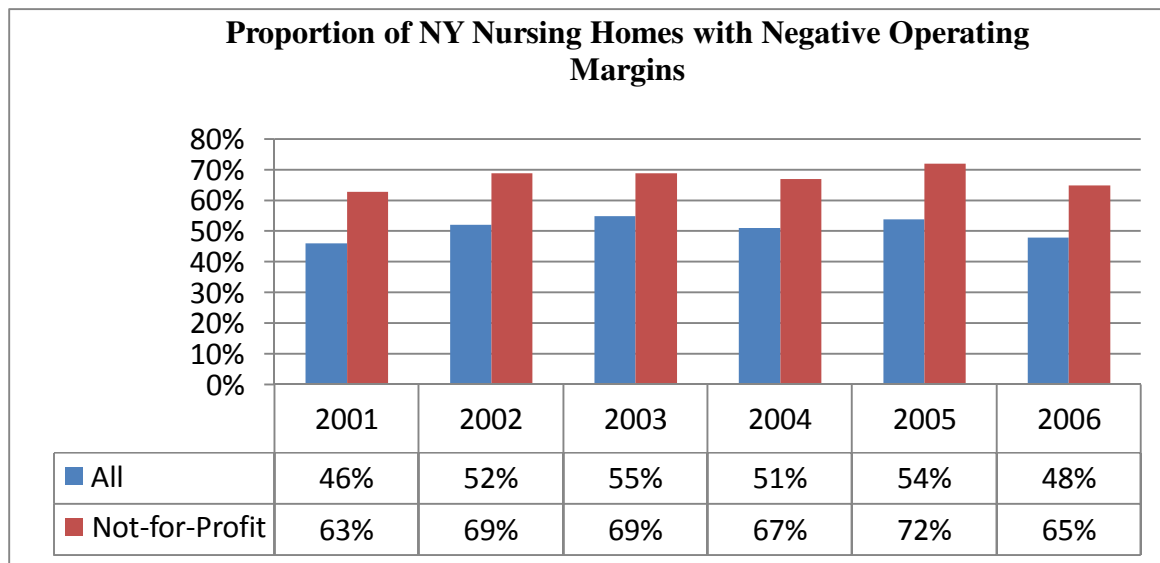
Hospital Equity Financing Ratios



The tax-exempt bond market has completely dried up for all institutions except for those with the very highest of bond ratings—which would include very few, if any, New York hospitals. This

means they cannot finance new construction or renovation of extremely old physical plants, and must defer these actions. Delay greatly increases the ultimate costs of building. According to the New York Building Congress, a year’s delay increases construction costs by 12%. And all of this hospital fiscal distress is true *before* the Governor’s proposed cuts.

Our not-for-profit and public nursing homes are similarly struggling. In 2006, a staggering 65% of not-for-profit nursing homes in the State had negative operating margins. In 2005, the latest year for which we have data, over half of New York’s certified home health agencies lost money. And, like hospitals, Medicaid cuts to nursing home and home health providers since then have led to ever worse financial performance.



Source: NYS Residential Health Care Facility Cost Reports.

Given these financials, State health care cuts will force our members to cut their operations. There is no other choice. This is because the Governor’s proposed cuts to hospitals, nursing homes, and home health agencies are *not*, as some have portrayed them, “reductions in the rate of growth.” To the contrary, they are real cuts from current spending levels. This is because the Executive not only eliminates cost-of-living adjustments, or so called “trend factors,” for the remainder of this year and for all of next year—similar, in concept, at least, to freezing reimbursement rates at last year’s levels—but then, *on top of that*:

- Cuts hospital and nursing home Medicaid reimbursement rates by 8% for the remainder of the fiscal year (and cuts home health agency rates by 1%);
- Cuts hospitals and nursing home Medicaid reimbursement rates by 2% in the next fiscal year (and home health agency rates by 1%);
- Imposes a 0.7% tax on hospital revenues, which will cost hospitals \$316 million through the end of the next fiscal year;

- Eliminates \$46 million in funding for teaching hospitals through the end of the next fiscal year;
- Cuts funding for public hospitals and nursing homes for workforce recruitment and retention; and
- Cuts reimbursements for legitimate administrative costs for home health agencies and long term home health care programs.

The hospital-related actions are projected to cost hospitals well over \$1 billion through the next fiscal year, through a combination of Medicaid fee-for-service cuts, cuts from Medicaid managed care plans (whose rates are usually tied to Medicaid fee-for-service rates), and taxes. For nursing homes, the losses will exceed \$560 million, and for home health agencies the losses will top \$300 million through the next fiscal year.

I have attached to this testimony our estimates of the impact of the Governor's Special Session proposals on hospitals in New York State. As you know from your own knowledge of the needs of the institutions in your district, these cuts could not possibly be sustained without layoffs, significant service reductions, and, in some cases, bankruptcy and closure.

It doesn't need to be this way.

First, we find it extremely unfair that the Executive Budget forgoes the use of "rainy day funds" to close this year's budget gap. There are \$1.2 billion available in the Tax Stabilization Reserve Fund and other rainy day funds, which would cover 80% of the projected current year deficit. Instead, the Executive proposal would inflict mid-year pain on New Yorkers unnecessarily by forcing mid-year budget cuts on health care institutions providing critical services to the most vulnerable New Yorkers.

We understand that the Division of the Budget has taken the position that *any* use of rainy day funds would cause an immediate downgrade in the State's bond rating. Putting aside the fact that rating agencies in the past have expressly stated that the use of rainy day funds in and of itself does *not* automatically trigger rating downgrades¹, we must ask the question: what of the bond ratings of our not-for-profit and public health care providers? As mentioned before, the capital markets for our institutions have already largely closed up. Why should the State's bond rating, which is already much better than the ratings of most of our health care providers, be protected at all costs while unnecessarily deep reimbursement rate cuts and new taxes irreparably harm the bond ratings of our health care providers? Rainy day funds are put aside expressly for times like

¹ Use of reserves is not a credit weakness in and of itself. *These reserves are accumulated in order to be spent* during times of budgetary imbalance and extraordinary economic events. The last month has highlighted the importance and critical nature of these reserves from a credit standpoint. Given this period of economic uncertainty, a balanced approach of adjusting spending and drawing on reserves will reduce out-year structural imbalance." Robin Prunty, Alexander M. Fraser, and Steven J. Murphy, "Commentary: The State of the States," Standard and Poor's, October 18, 2001 (emphasis added).

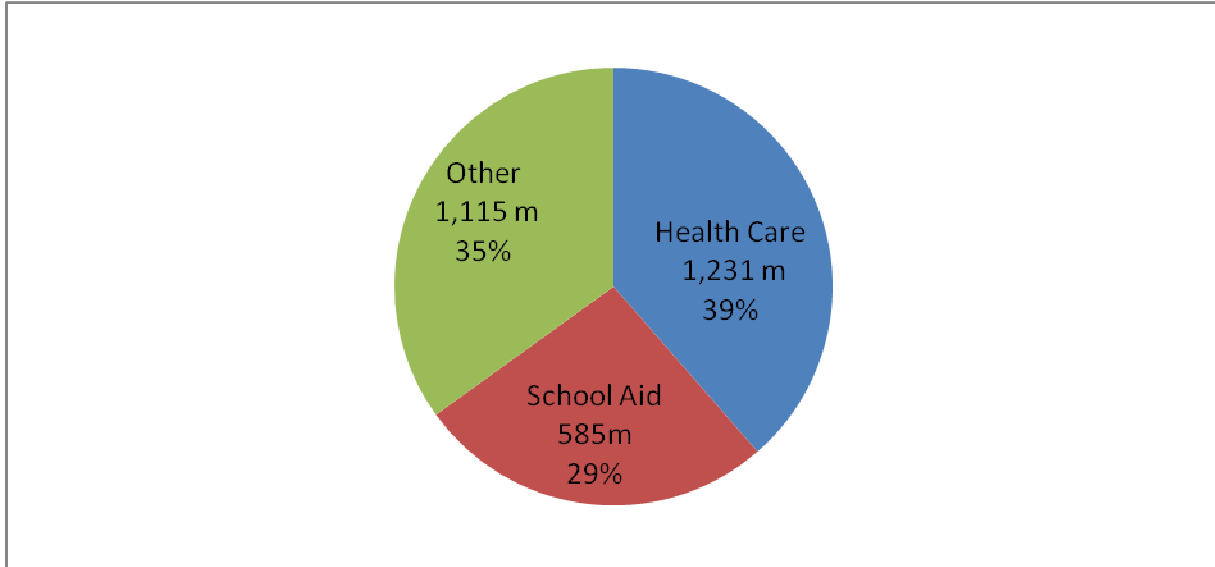
these. They are designed to help states take the time to make rational, reasoned, and thoughtful decisions, rather than rushing to take actions, like major spending cuts, that will further harm the economy of the State. Clearly, Medicaid cuts harm the economy of the State by harming the health care sector, the largest private sector employer, and by forgoing huge amounts of Federal matching fund revenue that stays in Washington, rather than flowing into New York's communities. Besides, if a rainy day fund isn't for a situation like this, what is it for?

Second, Congress is scheduled to meet in a lame duck session next week. Congressional leaders have stated that they plan to pass legislation to provide fiscal relief to states through an increase in the Federal Medicaid matching rate as well as funding for infrastructure projects. The Executive has estimated that some of the Congressional proposals could bring New York State over \$2 billion in added Federal Medicaid revenue over the next year. Before hastily cutting our struggling health care providers, it behooves the State Legislature to pause and evaluate any Congressional action for its impact on projected State deficits.

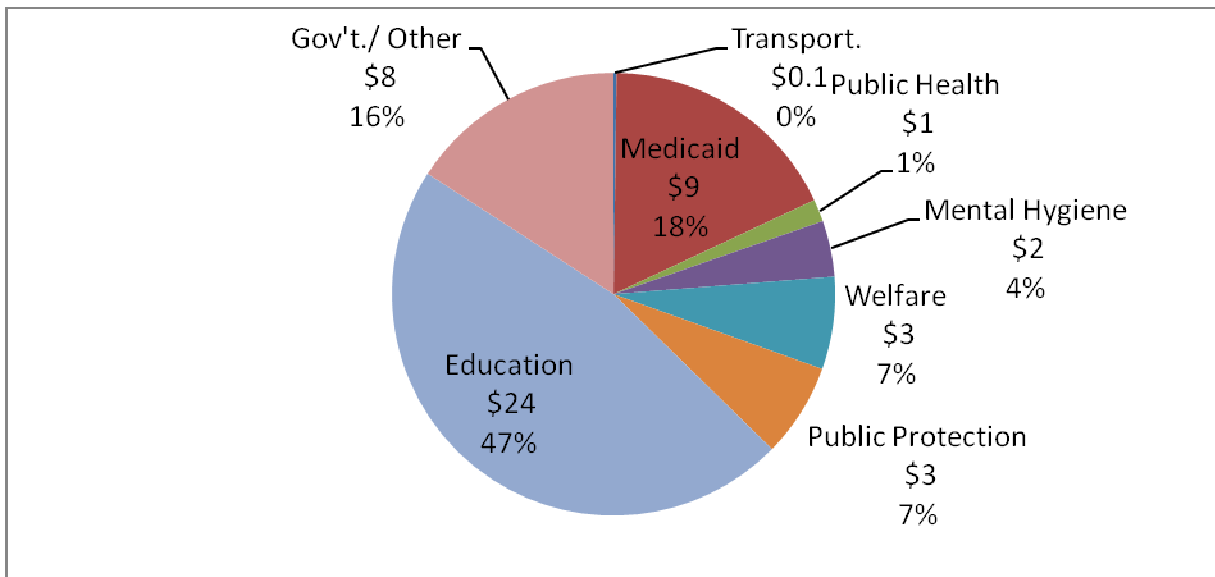
Third, by relying on cuts alone and not even considering new revenues—such as the personal income surcharge approved by the Assembly earlier this year, or other proposals to reform the personal income tax—the Executive budget proposal unnecessarily cuts essential services for low-income New Yorkers, essentially asking low-income New Yorkers to bear a disproportionate share of pain while the better off among us watch from the sidelines.

Fourth, the cuts to health care providers in the Executive's proposal are disproportionate to their portion of the State budget, and, thus, far deeper than we could possibly bear, much less support. For instance, as shown in the chart below, the Governor's proposed Special Session cuts, most of which become annualized in SFY 2009-10, fall most heavily on the health care sector, despite the fact that Medicaid, which bears the bulk of the health care reductions in the Governor's budget, comprises only 18% of current General Fund spending. In addition, as mentioned before, the cuts to hospitals, nursing homes, and home health agencies are *real* cuts, not cuts in the rate of growth, while, due to the enormous increases in spending in other sectors in this year's budget, most notably school aid, the cuts to those sectors do not even constitute freezes, or reductions to last year's levels. This is completely unfair, and, given the poor financial health of our health care institutions and their life-saving missions, outright dangerous. Thus, we are opposed to the Governor's Special Session Budget.

EXECUTIVE'S PROPOSED SFY 2009-10 \$3.2 BILLION IN SPECIAL SESSION SAVINGS



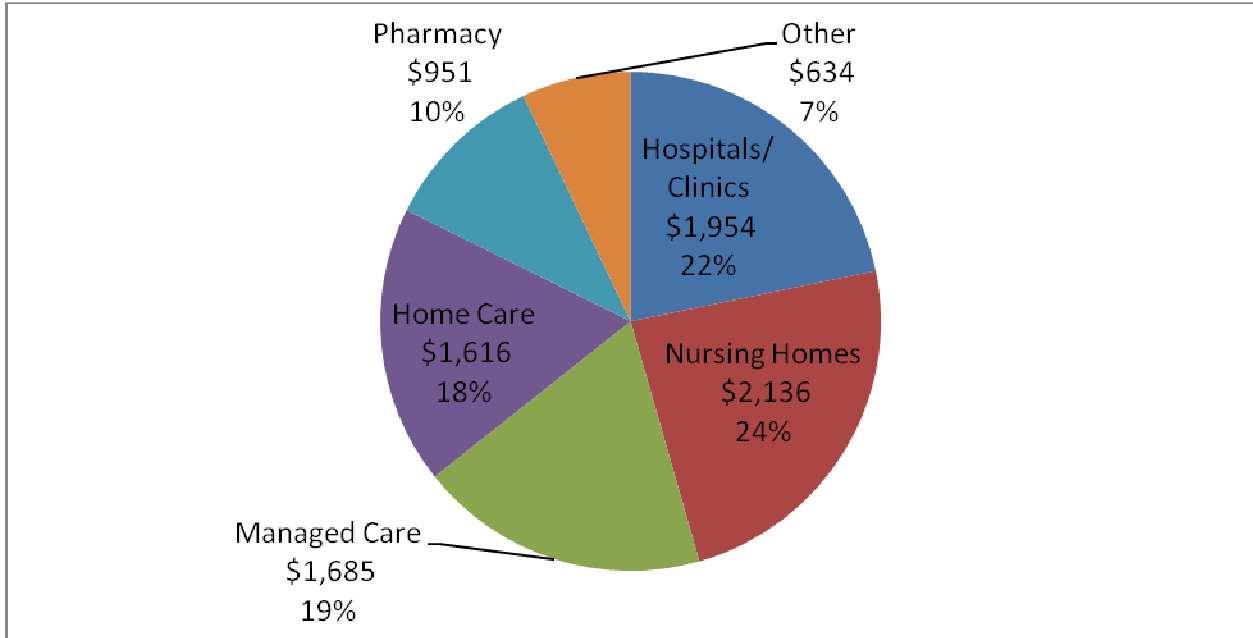
SFY 2008-09 GENERAL FUND SPENDING (\$ in billions)



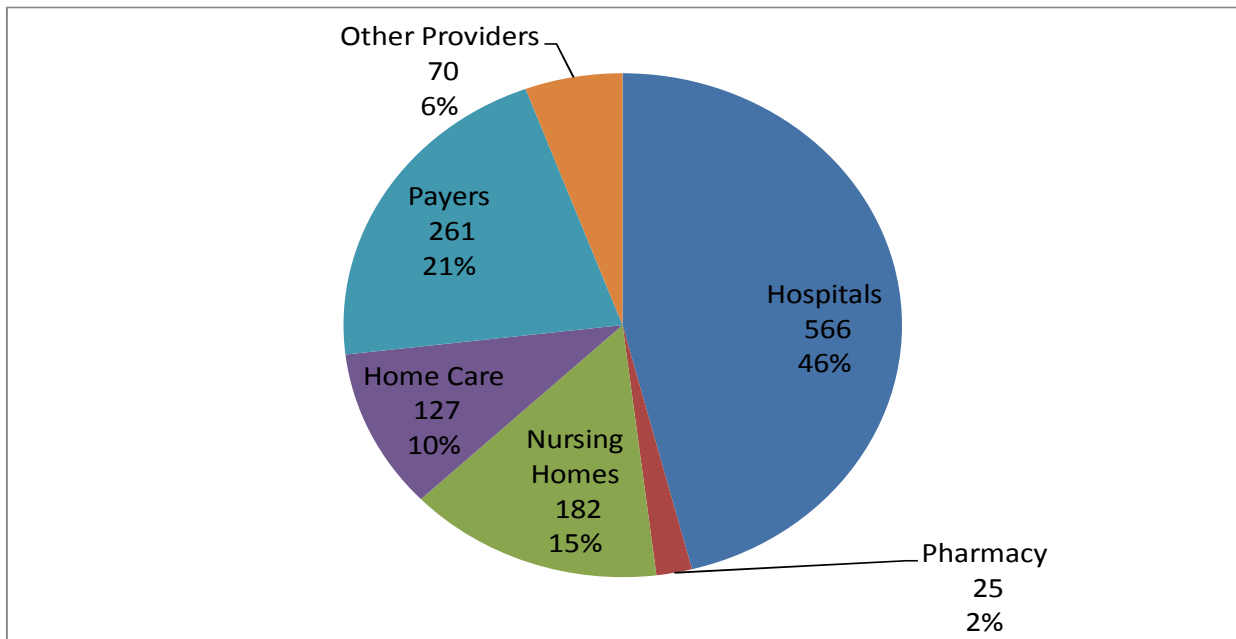
Fifth, the Special Session budget proposal imposes a disproportionate cut on health care providers within the Medicaid budget itself. The chart below shows Medicaid spending by health care sector, according to the latest mid-year report from the State Division of the Budget.

Nursing homes comprise 24% of State Medicaid spending, hospitals comprise 22% of State Medicaid spending, managed care plans constitute 19% of State Medicaid spending, and so forth.

SFY 2008-09 GENERAL FUND MEDICAID SPENDING (\$ in millions)



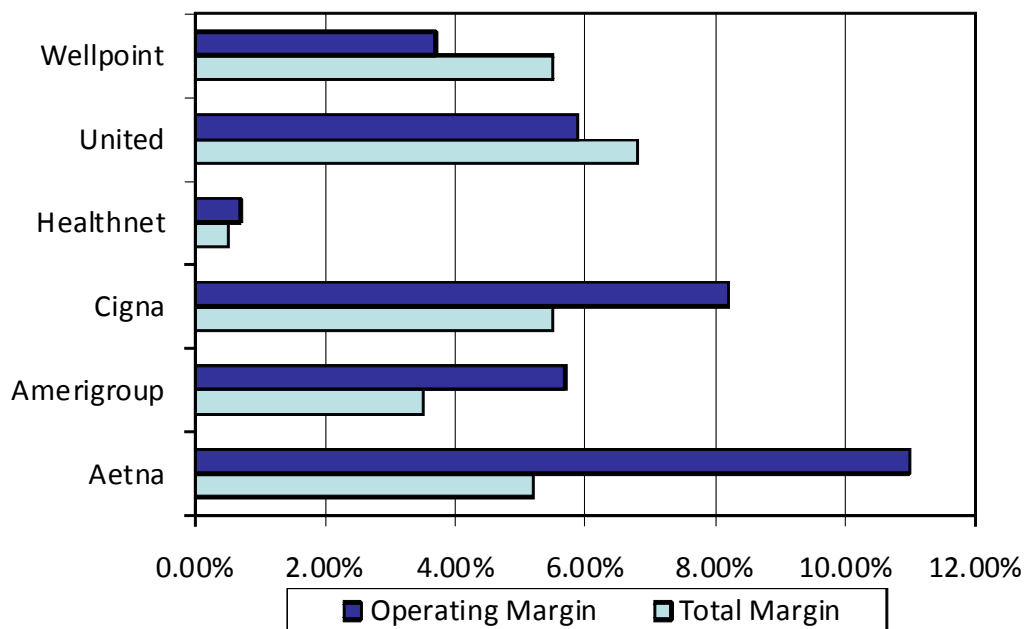
EXECUTIVE'S PROPOSED SFY 2009-10 SPECIAL SESSION HEALTH CARE ACTIONS



Yet, the Executive's proposal relies on hospital actions for over 40% of the savings. This is completely inappropriate. Rather than disproportionately cutting hospitals, or putting more burden on struggling nursing homes or home care providers, the State should be looking to those who can afford to pay more: the for-profit insurance industry.

The chart below shows third quarter 2008 financial performance for New York health plans. New York health plans have generated over \$7 billion in profits over the last five years. And, as you can see, despite the economic downturn, their financial performance remains strong. Yet the Executive budget proposal relies disproportionately on cuts to financially struggling health care providers and not on payers. This is another reason we oppose the Executive's Special Session budget.

THIRD QUARTER 2008 HEALTH PLAN FINANCIAL PERFORMANCE



Sixth, the Special Session budget proposal imposes huge cuts on health care providers while doing nothing to reduce their costs. The only way there can be cuts to health care providers without wholesale closings, bankruptcies, layoffs, and service disruptions is for the State to enact simultaneous reforms that can either reduce provider costs or increase provider revenue from other, non-State sources. For instance, the State should immediately enact medical malpractice insurance reforms. The cost of medical malpractice insurance for hospitals and physicians has grown at such an alarming rate that many providers have made the decision to stop providing services in specialties with high medical malpractice insurance costs. As many of you know,

hospitals in the metropolitan area have closed completely, or closed their obstetrics services as a way to keep from closing, due to the high cost of malpractice insurance.

Medical malpractice reform is extremely important to the State's Medicaid program. This is because nearly half—47%—of all deliveries in New York State are to Medicaid-eligible women. In New York City, 60% of births are to Medicaid-eligible women, and in Brooklyn and the Bronx, over 70% of births are to Medicaid-eligible women. Yet, due to the high cost of medical malpractice insurance, hospitals lose thousands of dollars on every single Medicaid delivery. This problem is a Medicaid access problem, as more and more financially struggling hospitals make the difficult decision to discontinue obstetrics services altogether.

This issue must be addressed. In the spirit of shared responsibility, a way must be found to relieve health care providers of the high cost of medical malpractice insurance. Yet at this time of sacrifice, all we have heard from the guardians of the tort system status quo is that they want increased contingency fees, which would rob injured consumers of large portions of their awards and drive up hospital medical malpractice insurance costs by 15%-25%. Shared responsibility must extend to this portion of our health care system.

The last point I would like to make has to do with reforms. As you may know, the Department of Health has been engaged in a number of reforms to the Medicaid reimbursement system, some of which involve shifts in funding from inpatient hospital reimbursement to outpatient hospital reimbursement. These changes involve major redistributions of funding. GNYHA is working with the Governor and the Department of Health to determine if the timing of these reforms should be re-calibrated to ensure that they do not increase instability at this time of financial upheaval.

In conclusion, I thank you for your interest in our views. As I said, we stand ready to help find solutions to the State's serious budget problems, and look forward to working with you on a truly balanced approach in the coming months.