New York State Assembly

Committee on Health

Hearing Testimony:
"Medicaid Program Efficacy and Sustainability"

November 1, 2021

David C. Rich, Executive Vice President, Government Affairs, Communications, and Public Policy

GREATER NEW YORK HOSPITAL ASSOCIATION

Thank you for accepting the Greater New York Hospital Association's (GNYHA's) written testimony on Medicaid Program Efficacy and Sustainability. GNYHA represents all the hospitals in the downstate region, public and not-for-profit, as well as hospitals across upstate and western New York, New Jersey, Connecticut, and Rhode Island. We also represent not-for-profit and public nursing homes throughout the downstate region. In this testimony we discuss our preliminary proposals for the budget for State Fiscal Year (SFY) 2023, which begins on April 1, 2022.

Our members by far serve the greatest number of Medicaid beneficiaries of any providers across New York State. Our public and voluntary hospitals serve huge numbers of Medicaid patients and provide the same high-quality care to all. In 2019, New York hospitals provided 733,000 inpatient discharges, 12 million outpatient clinic visits, 1 million emergency room visits, and 340,000 ambulatory surgery visits to Medicaid beneficiaries. In addition, most of our members' nursing home residents are Medicaid beneficiaries. Indeed, 73% of all New York State nursing home days are paid by Medicaid.

Unfortunately, New York State has vastly underfunded the Medicaid program over the last decade. The State simply does not pay for the care promised to Medicaid beneficiaries.

For instance, **Medicaid covers on average only 70% of hospitals' cost of caring for Medicaid beneficiaries, resulting in hospital financial losses of more than $5 billion from treating Medicaid patients.** Medicaid rates to hospitals have not been updated for inflation for 13 years. Several years ago, hospital inpatient rates were updated to reflect 2014 costs—but then were cut by 15% to ensure "budget neutrality"—and outpatient rates have not been updated since 2010. In addition, *during the pandemic* the State instituted 1.5% across the board cuts to hospital payments that is still in effect today. To make up the difference and stay afloat, hospitals must, if they can, negotiate higher rates with commercial insurers to cover the losses from public programs. Not all hospitals have enough privately insured patients to achieve this cost-shift, which is the cause of the financial distress we have seen among our safety net hospitals. Indeed, we have 29 hospitals in New York on the State's "watch list" for closure precisely because they serve a high proportion of Medicaid and Medicare patients and have few commercial insurers to "cost shift" to. And many more are in severe financial distress.

These financial trends and pressures were exacerbated by the pandemic as utilization remains below pre-pandemic levels and hospitals continue to experience higher expenses. In a GNYHA July 2021 member utilization survey, hospitals reported that inpatient volume was 95%, emergency room volume was 83% and clinic volume was 90% of pre-pandemic volumes. Hospital performance is still lagging as a result, even considering extraordinary Federal financial aid from the Provider Relief Fund.

Similarly, New York State has woefully underfunded nursing home care. **There is at least a $64 gap per day between nursing home costs and nursing home Medicaid reimbursement.** Given our not-for-profit and public nursing homes' reliance on Medicaid, this underfunding has destabilized the nursing home sector. Before the COVID-19 pandemic, our members suffered an average -3% operating margin in the first six months of 2019. During the same period in 2020, the COVID-19 pandemic exacerbated this problem, with our members experiencing an average -15% operating margin, due to lower occupancy and higher costs for personal protective equipment, testing, airflow improvements, and workforce cost increases. To add to those challenges in 2020, nursing facilities were subjected to, like the hospitals, harmful across-the-board Medicaid cuts. While our members were able to begin recovery in 2021, even with Federal relief factored in, our members experienced an average of -11% operating margins in 2020 and -10% operating margins in 2021 for the first 6 months of those years. Consequently, not-for-profit nursing homes are closing or selling to for-profit providers at an alarming rate.

Clearly, the gross underfunding of Medicaid cannot continue.

For these reasons, GNYHA makes the following recommendations for the SFY 2023 budget:

1) **Reform or repeal the Medicaid Global Cap**: GNYHA embraced the global cap concept in 2011 as a way of incentivizing providers to improve care management and to curb unnecessary utilization, as well as providing for an overall Medicaid budget growth factor tied to medical inflation. At the time, New York had about 4.8 million Medicaid enrollees, a number that grew by one million over the next nine years to six million in February 2020 and now stands at more than seven million (a growth of another one million beneficiaries in just the last 18 months). During this period, the allowable global cap inflation factor has decreased from 4% in SFY 2012 to under 3% in SFY 2022. In addition, continual budget transfers to support non-global cap Medicaid spending—including $1.4 billion in State share support just in SFY 2022—has resulted in less financial resources being available to support adequate provider payments. The global cap should at the very least be reformed and reset so that legitimate enrollment growth and other demographic factors such as the aging of the population are considered. If such changes are not considered, the cap should be repealed altogether.

2) **Update reimbursement rates and provide annual inflation updates for hospitals and nursing homes**: As mentioned, hospital and nursing home rates have not been adjusted for inflation in 13 years, all while the cost of caring has increased substantially. As also mentioned, hospital rates were updated to reflect 2014 costs *but then cut by 15%* to ensure budget neutrality. Outpatient rates have been frozen since 2010. Nursing homes were subjected to a new "pricing" methodology more than a decade ago, and rates have not been adjusted since. Coupled with across-the-board Medicaid cuts that began in 2020, Medicaid has fallen farther from reimbursing anywhere near the cost of caring for its beneficiaries. New York State must provide substantial funding to bring reimbursement rates for hospitals and nursing homes more in line with actual costs and restore the annual inflation, or "trend" factor.

3) **Safety Net Hospitals:**

   A) **Re-authorize and increase the Distressed Provider Assistance Account (DPAA)**: The $250 million DPAA for financially distressed hospitals was first authorized in the State fiscal year 2021 budget. We have strongly advocated for the Hochul Administration to authorize Medicaid rate increases funded through the DPAA for hospitals on the State's watch list for closure and other high Medicaid hospitals. GNYHA supports reauthorizing and increasing the DPAA in the SFY 2023 budget.

   B) Increase subsidy levels for safety net hospitals to address financial sustainability by adding funding to the Directed Payment Template (DPT) program. The DPT program is authorized by the Federal government and allows states to "direct" Medicaid managed care plans to pay specified Medicaid rates to safety net providers. New York State has asked for permission to begin a DPT for safety net hospitals beginning this year. GNYHA strongly supports this request as a foundation to build upon and asks that the funding be increased in the SFY 2023 budget to adequately address the financial sustainability of participating hospitals.

4) **Eliminate the capital reconciliation "penalty" for calendar year 2020:** Due to the pandemic, hospitals had extraordinary and unforeseen capital costs, including for increasing bed capacity by 50%, increasing intensive care unit beds, converting non-patient care areas to accommodate more patients, and other capital costs. Hospitals should not be penalized for higher-than-budgeted capital expenses during the height of the pandemic.

5) **Fully fund the nursing home staffing mandate:** Earlier this year the State Legislature enacted a requirement that nursing homes provide a minimum of 3.5 hours of nursing-related care per resident per day. While GNYHA supported the requirement in the budget that nursing homes spend 70% of their revenues on direct resident care and 40% on staffing, we strongly opposed the 3.5-hour mandate. In addition to our longstanding opposition to one-size-fits all staffing mandates, there are two variables that greatly concern us: the increased costs associated with the mandate and the availability of qualified personnel. While the Legislature included some funding in the current budget to begin to fund the mandate for nursing homes that comply with the 70%/40% spending requirement mentioned above, it is woefully inadequate for SFY 2023 and beyond. While we are pleased that legislative leaders made a commitment to fully funding this mandate in the SFY 2023 budget, we must see such funding become a reality. In addition, due to severe staffing shortages, the New York State Department of Health (DOH) must waive penalties for nursing homes if there is evidence that a facility attempted to secure sufficient staffing to satisfy the mandate, as provided by the law. Our members are struggling every day to retain the staff that they employ and to develop a pipeline for new talent, particularly during the ongoing COVID-19 pandemic. Our members sponsor and support funding for home- and community-based services. Issues of funding and staff availability are critical for nursing homes, a vital piece of continuing care.

In addition to these critical Medicaid funding priorities, which are the subject of this hearing, GNYHA will be advocating in 2022 for additional capital funding through the Health Care Facility Transformation Fund; health care workforce initiatives that will help address both short- and long-term health care workforce shortages; telehealth services reimbursement parity; and legislation to curb inappropriate denials of payment by for-profit insurance companies. We look forward to working with the Assembly Health Committee and all members of the State Legislature on these important priorities.

If you have any questions, please contact David Rich (rich@gnyha.org) or Andrew Title (atitle@gnyha.org).