

HANYS' 2018-2019 State Budget Testimony and Health Policy Recommendations

Joint Legislative Hearing of the
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Good morning Chairwoman Young, Chairwoman Weinstein, Health Committee Chairs Hannon and Gottfried, and Committee members. I am Bea Grause, President of the Healthcare Association of New York State, representing hospitals, health systems, and continuing care providers across the state. Thank you for the time to discuss the Governor's proposed Executive Budget.

As always, thank you for your leadership on critical healthcare issues. We appreciate the Legislature's commitment to protecting healthcare and advancing policies that enable our members' efforts to improve care while reducing health spending growth over time. With threats of further funding reductions from the federal government, our partnership with you is more important than ever.

The Governor has spoken forcefully against the "repeal and replace" effort and other threats to our healthcare system emanating from Washington. I want to thank Governor Cuomo for submitting an Executive Budget that takes important steps to protect vulnerable New Yorkers and healthcare providers. The Administration clearly recognizes that federal efforts to undermine coverage and reduce support for healthcare providers put New York State in extreme peril.

Despite recent federal passage of Children's Health Insurance Program funding for the next six years, New York faces major federal funding threats. We face uncertainty on critical federal funding programs that play a crucial role in providing access to needed services. These include the Medicaid Disproportionate Share Hospital (DSH) program, important rural health programs like the Medicare Dependent Hospital program and Low Volume Hospital payment adjustments, and the 340B prescription drug program. Additional major federal changes to Medicaid, such as per-capita caps and block-granting, could severely harm New York's healthcare system.

Amid this uncertainty, our members continue to focus on improving healthcare quality and patient safety, increasing access to services in communities across the state, educating the next generation of medical and health professionals, and transforming operations to emphasize patient-centric healthcare.

Beyond delivering healthcare, hospitals and health systems generate more than \$150 billion in annual economic activity, accounting for more than 10% of the state's Gross Domestic Product, and are among the largest employers in every community. Our non-profit and public hospitals and health systems are open 24/7/365 and stand prepared to respond to the unexpected, whether it be a natural disaster or disease outbreak.

Defending this extraordinary role is the lens through which we look at this budget proposal and through which I urge your consideration of our recommendations.

We fully recognize the gravity of the projected state deficit, estimated in the billions, and we support the efforts made to ensure the state does everything it can to meet the healthcare needs of New Yorkers. However, as with every state budget, there are proposals we wholeheartedly support, and areas of significant concern.

Our priorities are: first, to ***protect healthcare***, and second, to ***strengthen the healthcare system***.

First, *protect healthcare*

Despite rising expenses, such as pharmaceutical, payroll, and pension costs, hospitals and health systems are struggling under the cumulative impact of past cuts and future uncertainties. We should all be alarmed by the very real federal threats we face. The fiscal condition of many of New York's hospitals and nursing homes is among the worst in the nation. I urge you to reject further cuts and damaging new mandates. Specifically:

Medicaid Reductions: HANYS is very concerned about the dozens of Medicaid reductions included in the budget proposal—several of which are directed toward hospitals, health systems, nursing homes, and managed long-term care (MLTC) plans. These proposed reductions would further diminish already inadequate provider payment levels and lead to a transfer of Medicaid monies to the general fund. Cuts are not policy. These budget actions do not help improve access to care or enhance our ability to initiate and maintain improvement efforts in New York State.

In fact, some of the provisions conflict with investments made in other areas of the budget and the state's Medicaid Redesign Team, Delivery System Reform Incentive Payment (DSRIP), and State Health Innovation Plan strategies. For example, this budget proposal:

- reduces hospital quality pool payments just as the program transitions to base funding on quality performance, resulting in a near 60% cut in this quality incentive program since its inception just four years ago; and
- cuts funding for hospitals, Patient-Centered Medical Homes, and managed care plans that have not yet advanced value-based payment (VBP) goals—setting the precedent of simply leveraging VBP as a means to reduce Medicaid funding levels.

HANYS also opposes these other Medicaid funding reduction proposals:

- **Potentially Preventable ER Visits (PPVs):** PPVs would be evaluated and result in a \$15.7 million cut in Medicaid funding. This misguided policy would hold hospitals responsible for patient and community issues beyond their control and fails to consider the obligation a hospital has to medically screen/stabilize patients coming to the emergency room, even if not an emergency.
- **Hospital payment rates:** Hospitals would be subject to a cut to the capital component of the Medicaid payment rates. Also, outpatient payments would be reduced for services inclusive of the use of saline bags.
- **Nursing home payment cuts:** Medicaid payment levels would be cut to nursing homes based on quality of care and a new measurement of patient acuity. The capital component of the payment rates would also be reduced.
- **MLTCs:** Program funding and commitments for Managed Long-Term Care providers would be ratcheted back in a way that favors fee-for-service over MLTC for the most acute and expensive long-term care patients.

HANYS will continue to review the impact of these misaligned proposals and will work with the Administration and Legislature to advance sound policies.

Second, strengthen the healthcare system

HANYS and our members appreciate your commitment to maintain healthcare for all who need it in New York. Please support proposed and existing initiatives that further transformation and stabilization, including:

Capital: The Executive Budget would establish a new \$425 million Statewide Health Care Facility Transformation program (Statewide III) that supports capital projects, debt retirement, working capital, and other non-capital projects for hospitals and other healthcare providers. The proposal contains allocations for community-based providers and nursing homes, and includes new additional objectives.

HANYS strongly supports this statewide proposal for both bondable and non-bondable projects and appreciates the past support of the Governor and Legislature in recognizing the importance of capital in healthcare transformation. Despite the state's recent and proposed investments, tremendous unmet need remains.

Distressed and Other Supportive Funding Programs: HANYS strongly supports the budget provisions that would maintain funding for distressed hospitals under the Value Based Payment Quality Improvement Program (VBP QIP) and Vital Access Provider Assurance Program (VAP-AP) initiatives. Vital Access Provider (VAP) funding is also retained for rural and Critical Access Hospitals (CAHs), as well as funds dedicated to Sole Community Hospitals (SCHs).

Additionally, the proposed budget would combine \$40 million in funding originally targeted to “enhanced safety net providers” and CAHs into one appropriation for safety net hospitals, CAHs, and SCHs. We urge you to consider growing this pool because of the vital role our urban and rural safety net hospitals play in their communities. To meet the continuing needs of struggling facilities across the state, we also recommend holding harmless those providers that qualified for previous funding, as well as establishing an inclusive definition of safety net hospital. We look forward to working with the Administration and Legislature to ensure the financial viability of our safety net providers.

Healthcare Shortfall Fund: The Governor proposed the creation of a \$1 billion Healthcare Shortfall Fund to be financed from a portion of anticipated funds from any insurer conversion to a for-profit entity. The purpose of the fund, as stated by the Governor, is “to ensure the continued availability and expansion of funding for quality health services . . . and mitigate risks associated with the loss of Federal health care funds.” HANYS strongly supports this fund, as it recognizes the inadequacy of Medicaid payment levels and would serve as a critical safety valve to help maintain and stabilize the healthcare system in the face of uncertainty.

Regulatory Modernization and Workforce Flexibility: HANYS strongly supports the important initiatives in the proposed budget that would expand Medicaid coverage of telehealth services, create a community paramedicine program, and codify the practice of nurse anesthesia. HANYS has worked closely with the Administration’s regulatory modernization initiative in support of these and other items. In the area of telehealth, more needs to be done to streamline and align telehealth between the Department of Health, Office of Mental Health, Office of Alcoholism and Substance Abuse Services, and Office for People With Developmental Disabilities, and to address payment disincentives among both public and private payers that adversely affect the development of telehealth.

Health Republic: Two years ago, the Legislature passed a final budget that established a fund to address the unpaid claims hospitals and physicians incurred from the Health Republic Insurance of New York shutdown. While we are pleased this fund was created, past promises must be kept. We urge the Legislature to ensure that the fund includes the monies necessary to pay unpaid provider claims.

HANYS' Commitment to Healthcare

With the continued uncertainty and persisting threats to our healthcare system from Washington, we appreciate the support of the Legislature and Governor and look forward to continuing the progress we have made together.

HANYS is committed to working with other healthcare stakeholders to improve the overall delivery system, including health plans, physicians, nurses and other allied health professionals, the pharmaceutical industry, the business community, and consumers. We all share a common goal of ensuring the highest quality care is accessible and affordable to all New Yorkers.

Attached is a summary of HANYS' positions on the various initiatives proposed in the 2018-2019 Executive Budget.

Thank you again for affording me this opportunity, and I am happy to answer any questions.

HANYS' Recommendations on the 2018-2019 State Executive Budget

Issue/Topic	Governor's Budget	HANYS' Recommendations/Comments
Capital Funding	Establishes a new \$425 million Statewide Health Care Facility Transformation program (Statewide III) that supports capital projects, debt retirement, working capital, and other non-capital projects for hospitals and other healthcare providers. The proposal includes allocations for community-based providers and nursing homes, and includes new additional objectives.	HANYS strongly supports this statewide proposal for both bondable and non-bondable projects and appreciates the past support of the Governor and Legislature in recognizing the importance of capital in healthcare transformation. Despite the state's recent and proposed investments, tremendous unmet need remains and HANYS recommends additional funding be directed toward bondable and non-bondable projects.
Healthcare Shortfall Fund	Creates a \$1 billion Healthcare Shortfall Fund, financed from a portion of anticipated funds from any insurer conversion to a for-profit entity. The purpose is "to ensure the continued availability and expansion of funding for quality health services . . . and mitigate risks associated with the loss of Federal health care funds," pursuant to a spending plan developed by the Department of Health (DOH).	HANYS strongly supports this provision. The Healthcare Shortfall Fund recognizes the inadequacy of Medicaid payment levels and is a critical safety valve to help maintain and stabilize the healthcare system, especially in light of federal threats.
Revenue	The proposed budget includes a variety of new revenue sources related to healthcare, including: the dedication of insurance conversion proceeds to healthcare, a 14% surcharge on underwriting profits of for-profit insurers, and a surcharge on the sale of any opioid by the establishment that makes the first sale.	The proposed budget is dependent on new revenue sources that will be debated during the budget process. HANYS' primary objectives are to ensure that funding is secure for healthcare and that any funding mechanism does not inadvertently diminish care.
Essential Plan	Maintains coverage for about 700,000 enrollees despite loss of federal Cost Sharing Reduction (CSR) support; uses an assortment of approaches to fund this coverage.	HANYS strongly supports maintenance of coverage but is concerned about the funding mechanisms.

HANYS' Recommendations on the 2018-2019 State Executive Budget

Issue/Topic	Governor's Budget	HANYS' Recommendations/Comments
<p>Distressed and Other Supportive Funding Programs for Hospitals and Health Systems</p>	<p>The proposed budget maintains funding for distressed hospitals under the Value Based Payment Quality Improvement Program (VBP QIP) and Vital Access Provider Assurance Program (VAP-AP) initiatives. Vital Access Provider (VAP) funding is also retained for rural and Critical Access Hospitals (CAHs) as well as funds dedicated to Sole Community Hospitals (SCHs).</p> <p>Consolidates second year funding originally targeted to "enhanced safety net hospitals" and Critical Access Hospitals (CAHs) into one appropriation for safety net hospitals, Sole Community Hospitals (SCHs), and CAHs, subject to criteria determined by DOH. Assuming availability of federal funding, \$40 million in total Medicaid funding would be provided, representing the combined resources of the two appropriations in the state fiscal year (SFY) 2017-2018 budget.</p>	<p>Given the financial stress faced by many hospitals across New York State, HANYS strongly supports the maintenance of the distressed and other supportive funding programs for hospitals and health systems.</p> <p>HANYS strongly supports funding for safety net hospitals. However, the consolidation of last year's enhanced safety net hospital funding with funding dedicated to CAHs raises potential issues and needs modification to ensure that the funds can achieve their purpose. HANYS recommends:</p> <ul style="list-style-type: none"> • an increase in funding to better recognize the unique role of all safety net hospitals; • a hold-harmless provision to ensure that such hospitals receive no less than the funding accessed from these related pools from SFY 2017-2018; and • an inclusive definition that clarifies that SCHs and CAHs are also safety net hospitals.
<p>Indigent Care Pool Methodology Extension</p>	<p>Extends the current Indigent Care Pool (ICP) methodology for the distribution of Medicaid Disproportionate Share Hospital (DSH) funding for one year, through December 31, 2019, along with the 1% withhold under the financial assistance compliance pool.</p> <p>Extends the ICP transition adjustment for one year and increases the maximum percentage loss from 15% to 17.5%. This reflects the maximum percentage loss a hospital can have when comparing current ICP funding to that under the previous methodology.</p>	<p>HANYS strongly supports an extension of the current ICP methodology that can ensure stabilization. HANYS supports convening a stakeholder workgroup if needed, as previously agreed to by the Administration, to determine how to implement the Affordable Care Act's cuts to federal Medicaid DSH funding if implemented during this period.</p>

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Potentially Preventable Emergency Room Visits	<p>Proposes to cut managed care premiums by \$15.7 million, to be passed on to hospitals, based on rates of potentially preventable emergency room (ER) visits.</p> <p>Note: Last year, the Legislature rejected this cut for a two-year period.</p>	<p>HANYS continues to strongly oppose this proposed cut/penalty for potentially avoidable emergency room visits. This penalty holds hospitals responsible for issues beyond their control and fails to consider that hospitals have Emergency Medical Treatment and Labor Act (EMTALA) obligations and must medically screen/stabilize patients coming to the ER, even if not an emergency. While reducing avoidable ER visits is important, this is merely an effort to meet a budget savings target. Hospitals are working hard to address this issue with community partners and through the Delivery System Reform Incentive Payment (DSRIP) program.</p>
Quality Pool	<p>Reduces and redistributes the Hospital Quality Pool. The proposal reduces the size of pool by \$18.4 million (\$57.8 million to \$39.4 million) to fund other priorities, and shifts to pay-for-performance, with performance measures yet to be determined.</p>	<p>HANYS strongly opposes another round of reductions to the hospital quality pool that would result in a near 60% cut in the quality incentive program since its inception just four years ago. These reductions conflict with the pay-for-performance goals of the program.</p>
Capital Reimbursement for Hospitals and Nursing Homes	<p>Establishes a temporary stakeholder workgroup to streamline the Medicaid capital rate methodology for hospitals and nursing homes. The workgroup must recommend a 1% reduction in capital expenditures. However, the budget would allow DOH to reduce capital reimbursement by 1% prior to implementation of the workgroup's recommendations, effective April 1, 2018.</p>	<p>HANYS strongly opposes cuts to the capital component of the Medicaid payment rates for hospitals and nursing homes. This cut would further diminish already inadequate provider payment levels and conflicts with the capital investments advanced by the state over the last several years and in this proposed budget.</p>
Outpatient Payments	<p>Reduces the payment to hospital emergency rooms and outpatient departments for IV infusion and hydration using saline. Currently, Medicaid Ambulatory Patient Groups (APGs) reimburse about \$500 for each saline bag. The proposal lowers the amount to \$250/bag.</p>	<p>HANYS opposes this reduction.</p>

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Nursing Home Payment Cuts	Reduces Medicaid quality pool payments by 2% for nursing homes in the lowest quintile of the New York State Nursing Home Quality Initiative in the most recent year and in either the lowest or second lowest quintile (4 or 5) in the previous year; revisits the Minimum Data Set (MDS) census collection process.	HANYS strongly opposes these reductions. Medicaid payment levels for nursing homes are already inadequate. Further deterioration under the appearance of quality improvement and program integrity is not appropriate.
Nursing Home 1% ATB Payback	Stretches out the repayment of the nursing home 1% across-the-board cut retroactive to SFY 2014-2015 over a four-year period.	HANYS supports the expeditious repayment of this promised funding.
Managed Long-Term Care (MLTC)	Reduces MLTC plan capitated payments for administrative costs; limits MLTC enrollment to those who achieve a score of 9 or above on the Uniform Assessment System and who require community-based long-term care services for a continuous 120 days; excludes individuals permanently placed in a nursing home for six months or more from being enrolled in MLTC; carves out the transportation benefit from the MLTC benefit package, excluding the Program of All-inclusive Care for the Elderly (PACE).	HANYS opposes reductions of payments to MLTC plans that could result in downward compression to payments to providers and in particular if impactful to care coordination or management of the population. In relation to transportation, assurances for timely and safe access to care may be more easily addressed at the provider level where patient needs are simpler to identify and manage.
Hospice Rate Increase	Modifies Medicaid hospice rates to increase hospice residence rates by 10%, set a benchmark rate, and include specialty rates in the weighted average rate calculation.	HANYS supports this provision.
Value-Based Payment	Increases the VBP Roadmap penalties on managed care organizations (MCOs) that fail to achieve required levels of VBP contracting; establishes a fee-for-service/MCO benchmark rate for providers without sufficient levels of VBP contracts; and modifies the current Patient-Centered Medical Home (PCMH) payment rates to enhance the rates for providers engaged in VBP.	HANYS opposes cutting funding to hospitals, PCMHs, and managed care plans that have not yet advanced VBP goals. This proposal would set a bad precedent of simply leveraging VBP as a means to reduce Medicaid funding levels.
Laboratory Services Utilization	Reduces funding to managed care plans for laboratory services through the establishment of clinically-determined efficiency standards.	HANYS is seeking additional information to better assess the impact of this proposal.

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Minimum Wage Funding	Provides \$1.4 billion (total Medicaid) to fund healthcare providers (predominately home health providers) for Medicaid's share of the state-mandated minimum wage increases. This funding is made available outside of the Medicaid global spending cap.	HANYS strongly supports the proposed funding of the direct costs of the minimum wage increase and urges consideration of full funding of the new increase outside of the global cap.
Medicaid Integrity	Includes fines and penalties up to \$5,000 for failure to comply with any statute, rule, regulation, or directive of the program; allows fines up to \$100,000 per determination on Article 43 or 44 MCOs submitting cost reports or encounter data to Medicaid that contain inaccurate or improper data. Indicates that payments made by the Medicaid program to an MCO, and from an MCO to any subcontractor or provider, are public funds and allows the state to recover such funds when overpayments have been made to subcontractors or providers and have been identified by a state audit or investigation. The MCO may be required to recover such payments and impose a 5% collection fee. Requires MCOs to "promptly" report any instances of fraud, waste, and abuse to the Office of Medicaid Inspector General (OMIG).	While fraud and abuse must not be tolerated, HANYS opposes these overly broad provisions. It is important that the state not be overzealous and impose fines and penalties when errors or technical mistakes have been made and without consideration of magnitude, scale, and other considerations. HANYS is also concerned that these proposals would allow MCOs to impose a collection fee (or incentive fee) on hospitals and other providers for certain recoveries.
Global Cap and Commissioner's Superpowers	Extends the Commissioner of Health's "superpowers" for monitoring Medicaid global cap spending for one additional year, through 2019-2020. For 2018-2019, the allowable increase in state-share Medicaid spending is estimated to be 3.2%. Redirects \$425 million of Medicaid dollars to the state's General Fund.	HANYS strongly opposes the redirection of Medicaid dollars for non-global cap purposes. HANYS also recommends a re-assessment of the global cap in relation to its purpose, public policy, and adequacy.
Consolidate Various Public Health Funding Programs	Consolidates 30 "public health" appropriations into four funding pools and cuts funding for each pool by 20%. Included in these pools would be funds for rural health access, rural health network development, and poison control call centers.	HANYS strongly opposes both the consolidation and the funding cut.

HANYS' Recommendations on the 2018-2019 State Executive Budget

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Doctors Across New York	Merges, at existing levels, funding for physician loan repayment and practice support consistent with the new program structure.	HANYS supports this provision.
ECRIP Funding	Eliminates funding for the Empire Clinical Research Investigator Program (ECRIP). This Health Care Reform Act (HCRA)-based program currently funds non-patient care physician training programs in hospitals.	HANYS opposes this cut.
Excess Medical Malpractice	Extends the excess medical malpractice insurance program for an additional year with funding remaining constant.	HANYS strongly supports this provision.
Rate of Interest on Judgments and Accrued Claims	Replaces the 9% interest rate applicable to appeals of liability awards, including medical malpractice cases, with market rates in effect one year at the time the judgment is filed in court.	HANYS strongly supports this more reasonable and commonly-used standard.
Health Republic	Two years ago, the Legislature and Governor agreed to establish a fund to address the unpaid claims hospitals and physicians incurred from the Health Republic Insurance of New York shutdown.	Past promises must be kept. We urge the Legislature and Governor to ensure that the fund includes the monies necessary to pay unpaid provider claims.
Telehealth	Expands the definition of "originating site" to include a patient's home or other temporary location within or outside New York. Expands the definition of "remote patient monitoring" to include telephone or other communication technologies and adds credentialled alcoholism and substance abuse counselors and early intervention providers to the list of providers that can bill Medicaid.	HANYS strongly supports these proposals and further recommends: <ul style="list-style-type: none"> • Streamlining and alignment of telehealth between DOH, Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS), and Office for People With Developmental Disabilities; and • addressing payment disincentives that adversely affect the development of telehealth.

HANYS' Recommendations on the 2018-2019 State Executive Budget		
Issue/Topic	Governor's Budget	HANYS' Recommendations/Comments
Community Paramedicine	Establishes a new community paramedicine collaborative program and authorizes emergency medical personnel to provide services other than initial emergency care and transportation of patients.	HANYS strongly supports this proposal.
CRNAs	Amends the Education Law by providing for certification of certified registered nurse anesthetists (CRNAs), and establishes their educational and practice standards.	HANYS strongly supports this proposal.
Social Worker Billing for Individual Psychotherapy Services	Removes the limitations on social workers billing for mental health counseling in an Article 28 setting, which is currently only available for individual psychotherapy services provided by a licensed clinical social worker or a licensed master social worker in an Article 28 setting when provided to individuals under the age of 21 and to pregnant women up to 60 days postpartum.	HANYS strongly supports this billing change but opposes the use of the hospital quality pool to fund it.
Physical Therapy Visits	Revises the physical therapy visits cap.	HANYS supports this change but opposes the use of the hospital quality pool to fund it.
Retail Practices	Establishes a category of healthcare provider called "retail practice," which can be sponsored by a business corporation, general hospital, nursing home, or diagnostic and treatment center within a retail setting open to the public.	This proposal is different from proposals in previous years. HANYS is reviewing and assessing this new proposal.
Resident Hour Working Audits	Eliminates the HCRA requirements and penalties associated with hospital resident hour working audits. Hospitals would have to attest that they are in compliance and the state retains the right to perform targeted investigations into hospital compliance if needed.	HANYS supports this provision.
Behavioral Health Thresholds	Removes the threshold limitations from statute for providers authorized to provide integrated services in accordance with regulations issued by DOH, OMH, and OASAS.	HANYS strongly supports this change.

HANYS' Recommendations on the 2018-2019 State Executive Budget

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Food Waste	Requires designated high-volume food waste generators, including hospitals and nursing homes, to separate excess edible food for donation to food banks and food scraps to animal feed operations, anaerobic digesters, or other composting and organics recycling facilities if they are located within 40 miles of such a facility.	HANYS strongly opposes the inclusion of hospitals and nursing homes in this proposal. Hospitals and nursing homes are inappropriate for inclusion and must already comply with very stringent federal and state regulations related to medical waste. Limited financial resources should be devoted to meeting the healthcare needs of millions of New Yorkers.
Rape Kit Storage	Requires that sexual offense evidence be kept in a locked/secure area not less than the longer of five years or the date the patient reaches 19 years of age. Within 30 days of the collection of evidence, the alleged sexual offense victim is to be notified of the terms of holding and discarding the evidence. Hospitals must "ensure diligent efforts are made to contact the victim and repeat such notification more than 30 days prior to the evidence being discarded."	HANYS recognizes the importance of this issue. We will work with the Governor and the Legislature to assist in achieving this laudable goal, but believe that this conversation must take place with, and ultimately be the responsibility of, the state's criminal justice system.
Maternal Mortality Review (MMR) Board	Creates in statute an MMR board, established by DOH, to review maternal deaths to gain knowledge to develop strategies to reduce maternal mortality risk and to assess and review maternal morbidity.	HANYS supports this provision.