Testimony of:

NEW YORK STATE HEALTH FACILITIES ASSOCIATION
and
NEW YORK STATE CENTER FOR ASSISTED LIVING
(NYSHFA/NYSCAL)

on the

2013–14 New York State Executive Budget Proposal
Health & Mental Hygiene
Article VII Bill

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Presented by:

Stephen B. Hanse, Esq.
Vice President, Governmental Affairs
518-462-4800 x25
shanse@nyshfa.org

Introduction

Good morning. My name is Stephen Hanse and I serve as the Vice President of Government Affairs for the New York State Health Facilities Association and the New York State Center for Assisted Living. Joining me today is Mark Olsen, Administrator for the Kingsway Arms Nursing Center in Schenectady and Chair of our Legislative Committee.

NYSHFA and NYSCAL members and their 57,000 employees provide essential long term care to over 44,000 elderly, frail, and physically challenged women, men and children at over 270 skilled nursing and assisted living facilities throughout our State. As we sit here today, New York's long term care providers face significant obstacles as a result of Superstorm Sandy, recent State budget constraints, and certain initiatives proposed in the 2013-2014 Executive budget.

Superstorm Sandy

As we are well aware, Superstorm Sandy devastated numerous communities resulting in an unprecedented disruption of service to residents at long term care facilities, assisted living facilities and adult homes. Overall, Sandy forced the displacement of 3,000 patients from nursing homes and another 1,800 from adult homes and assisted living facilities. Fortunately, through the dedicated efforts of providers working in collaboration with the Department of Health, there were no occurrences of serious consequences suffered by these displaced residents.

What has occurred, however, are significant financial hardships jeopardizing the immediate and future operation of many facilities as a result of (1) the disruption of the payment stream for the patients displaced and (2) the capital costs of restoring the facilities to operating condition.

NYSHFA is working with the Department of Health to reconcile these payment issues as we did with Hurricane Irene. We now await the results from the federal government as it relates to Sandy relief funds. For it is a little known fact that FEMA funds are not available to assist recovery efforts for for-profit entities.

Federal assistance is crucial to both help offset the significant capital expenditures that have been incurred and implement measures to bolster facilities to resist future events.

Recent Budgets

The financial implications of Superstorm Sandy only add to the difficult fiscal circumstances faced by New York's long term care providers as a consequence of the State's recent budget constraints.

Over the past five years, funding cuts to New York's long-term health care sector have exceeded $1.2 billion. The Medicaid Redesign Team ("MRT") initiatives have resulted in approximately $400M in additional cuts over the past two fiscal years, and the potential for additional federal Medicare cuts over the next few months would only exacerbate New York's already fragile long term care finances. For example, at $46.39 per patient per day, New York ranks as one of the top two states with the largest per day shortfall between Medicaid payment rates and costs of providing services.

New York's long term care facilities have worked hard to endure these past budget cuts, and this is clearly demonstrated by the fact that nursing home spending is presently below the Medicaid Global Spending Cap enacted under the MRT.

As New York's long term care providers enter into year two of the State's new pricing methodology for reimbursement and transition to a managed care environment, it is critical that the 2013-2014 enacted budget provide long term financial stability to ensure the continued delivery of high quality long term health care services.

2013-2014 Executive Budget

With these past budget constraints and the impacts of Superstorm Sandy serving as a backdrop, I would like to briefly highlight several proposals included in the

2013-2014 Executive Budget which (for better and for worse) would significantly impact New York's long term care and assisted living facilities:

1. <u>2% Across the Board Provider Rate Reduction Extension</u>: The Executive proposes to extend the 2 percent across-the-board reduction in Medicaid payments through March 31, 2015 – resulting in $357 million in cuts. We oppose this proposal on the basis that the most recent data from the Department of Health shows that nursing home spending is <u>below</u> the Medicaid Global Spending Cap by approximately $4 million dollars. We believe that it is inappropriate to automatically apply an extension of the 2% cut for the nursing home sector when target savings have already been achieved and exceeded.

2. <u>Continuation of the Trend Factor Elimination</u>: The Executive proposes the elimination of the ability to set trend factor (inflation) adjustments for nursing homes, assisted living program beds and other Medicaid sectors. We oppose this provision for the reason that it has been 5 years since the State afforded a trend factor, costs have increased above the CPI, and facilities continue to provide salary increases to ensure the retention of well-trained qualified staff.

   Should the State's Medicaid expenditures fall below the Medicaid Global Spending Cap for SFY 2013-2014, the State may have the financial ability to provide a trend factor adjustment. The Executive budget as presented would unnecessarily preclude the ability to do so. In addition, a trend factor adjustment would greatly benefit those facilities directly impacted by Hurricane Sandy.

   - <u>Continued Exclusion of 96-97 Trend Factor</u> – The Executive proposes to permanently continue the exclusion of the 1996-1997 trend factor from nursing home and inpatient rates. We oppose this proposal on the basis that, as with above, should the State's Medicaid expenditures fall below the Medicaid Global Spending Cap for SFY 2013-2014, the

State may have the ability to provide this trend factor in nursing home and inpatient rates.

- Permanent Continuation of 2007 0.25% trend factor reduction: The Executive proposes to permanently continue the 0.25 percent trend factor reduction for hospitals and nursing homes. We oppose this proposal on the basis that, as with above, should the State's Medicaid expenditures fall below the Medicaid Global Spending Cap for SFY 2013-2014, the State may have the ability to provide this trend factor in nursing home and inpatient rates.

3. Standard Rates of Compensation: The Executive proposes that managed care contracts with nursing homes must provide standard rates of compensation "to ensure the retention of a qualified workforce capable of providing high quality care." By requiring a standard wage rate in a health care environment where the State has imposed a strict Medicaid Global Spending Cap (that is increasingly threatened as enrollment increases) and has eliminated any trend factor, this unfunded mandate could negatively impact quality of care by forcing providers to reduce staff to meet the wage mandate to stay below the Global Spending Cap requirements. Moreover, this provision would limit patient access to care given its requirement that a provider that is deemed out of compliance could be prohibited from accepting new admissions.

4. Continuation of Medicaid Global Spending Cap: The Executive proposes to continue the Medicaid Global Spending Cap until March 15, 2015. We oppose this extension on the basis that the most recent data provided by the Department of Health shows that spending by the State's nursing homes is below the Medicaid Global Spending Cap by approximately $4 million dollars.

5. Financially Disadvantaged Facilities: The Executive proposes to sunset $30M in payments for financially disadvantaged nursing homes effective December 31, 2012, and redirect this funding to nursing homes through Vital Access Provider program payments. We strongly advocate that this funding remain committed to the nursing home sector.

6. Extension of the 6% Reimbursable Cash Receipt Assessment: We support the Executive's proposal to extend the 6% reimbursable cash receipt assessment and strongly advocate for its continuation in order to maximize the Federal funds match.

7. 2007-2008 Rebasing: The Executive proposes to eliminate the requirement that certain rate adjustments for 2007 and 2008 for nursing homes be subject to reconciliation. We support this measure in order to maintain stability within the reimbursement system and avoid potential material retroactive redistribution payments.

8. Capital Reimbursement: We support the Executive's proposal to authorize the Department of Health to establish capital reimbursement methodologies for nursing homes through regulations promulgated in consultation with the nursing home industry.

9. Spousal Support: We support the Executive's proposal to require spousal support for the costs of community-based long term care, and apply spousal protections to all managed long-term care enrollees.

10. Assisted Living Program Capital: We support the Executive's proposal for the inclusion of capital construction costs into the assisted living program ("ALP") rate. However, we believe this provision should be expanded for all

ALP providers, regardless of the date of operation, and not limited to those facilities with 100 percent ALP beds. Additionally, this capital assessment should be integrated into the ALP rate for future years and not be time limited and with no cap imposed.

11. 4,500 Additional Assisted Living Program Beds: We support the inclusion of 4,500 additional ALP beds, targeted only for the newly identified 49 "Transitional Adult Home" providers affected by the most recent regulations published by the Department of Health. We further support the process being simplified for providers by streamlining the competitive process to secure those ALP beds. However, the application process for those 4,500 ALP beds must also be completed in an equally expedited manner so as to ensure that these additional ALP beds are in operation as soon as possible.

Conclusion

The impacts of past budget constraints and Superstorm Sandy coupled with several proposals included within the 2013-2014 Executive Budget impose material burdens on New York's long term care providers and ultimately the women, men and children we serve.

The New York State Health Facilities Association and the New York State Center for Assisted Living will continue to work together with the Governor, the Legislature and all affected constituencies to ensure the continued delivery of high quality, cost effective long term health care services throughout New York.

Thank you.