



Testimony of:

**NEW YORK STATE
HEALTH FACILITIES ASSOCIATION**

and the

**NEW YORK STATE
CENTER FOR ASSISTED LIVING**

on the

**FY 2024-25 New York State Executive Budget Proposal
Health & Mental Hygiene
Article VII Bill**

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Introduction

My name is Stephen Hanse and I have the privilege of serving as the President and CEO of the New York State Health Facilities Association (“NYSHFA”) and the New York State Center for Assisted Living (“NYSCAL”). NYSHFA|NYSCAL members and their employees provide essential long-term care services to over 70,000 elderly, frail, and physically challenged women, men, and children at over 450 not-for-profit, proprietary and government sponsored skilled nursing and assisted living facilities throughout New York State.

Where Have We Been - Where Are We Now - Where Are We Going

The theme of my testimony today is Where Have We Been - Where Are We Now - Where Are We Going. For too long, New York was in a long-term care desert, where the prior administration turned its back on the critical social contract of caring for New York’s most vulnerable seniors in nursing homes and adult care facilities.

Where we are now is a state experiencing a long-term care workforce crisis, a Medicaid reimbursement system that only pays for 75% of the cost of care, and an unfunded 3.5 staffing mandate that does nothing to recruit new staff into nursing homes.

The State provided a 7.5% Medicaid rate increase in last year’s budget, but at the same time the Department of Health is enforcing an unrealistic and unworkable law – namely the 3.5-hour staffing mandate. And now, the Executive is proposing Medicaid cuts to nursing homes that undermine last year’s modest increase.

Where we need to go is a place where New York truly values resident care by addressing the long-term care workforce crisis, reaffirming its social contract to seniors and investing in nursing homes and assisted living providers by providing a \$1 billion increase in Medicaid (\$500 million state share). This investment must be combined with the State’s commitment to rebase the long-term care reimbursement system with equitable and sufficient funding to ensure continued access to critical long-term care services throughout New York State.

Where Have We Been - New York’s History of Nursing Home Disinvestment

For over 15 years, the State of New York has disinvested in our most vulnerable population – the seniors who rely on Medicaid for their long-term care needs in the twilight of their lives. Policymakers often pay lip service to safeguarding our elderly and frail population, but when

it comes to supporting them with the necessary financial resources to ensure their care and well-being, New York falls woefully short.

Providers and workers are grateful for last year's 7.5% Medicaid rate increase for nursing homes and 6.5% Medicaid rate increase for assisted living providers. However, despite these increases, New York's statewide average Medicaid rate only covers 75% of the cost of care. The State's previous 16 years of disinvestment, including not just a rate freeze but a Medicaid rate cut during the height of the pandemic, forcing many nursing homes and assisted living providers to close, shutter units or limit admissions to shoulder the burden of rising inflationary costs while struggling to secure a sufficient workforce to care for residents.

Today, the statewide average Medicaid reimbursement rate (to cover operating and capital costs) is \$275¹ resulting in a Medicaid reimbursement rate of \$11.45 per hour for 24-hour skilled nursing care. This rate of reimbursement is well below the State's minimum wage and has only served to exacerbate the inability of providers to compete in the labor market for essential direct care workers.

Where Are We Now – An Underfunded System and Two Unfeasible Mandates

Across New York's post-pandemic long-term landscape, providers from all corners of our State are struggling with the workforce crisis and the repercussions of the State's history disinvesting in nursing homes. Moreover, nursing homes are beset with the ill-advised unrealistic requirements of the 3.5 hour staffing mandate – a law that was put in place by the prior administration that is being enforced by the DOH, notwithstanding its full awareness of the healthcare worker staffing crisis and the inability of nursing homes to recruit staff.

New York has the fourth largest population of older adults in the United States. For more than a decade, New York's senior citizen population has grown eight times faster than the State's total population, while New York continued to cut Medicaid reimbursement to healthcare facilities caring for this growing population.

Invest \$1 Billion (\$500 million State Share) in Nursing Homes Now!

What we need now is a commitment by the State to fully cover the cost of Medicaid residents and implement initiatives to recruit new workers into long-term care. To this end,

¹ https://www.health.ny.gov/facilities/long_term_care/reimbursement/nhr/

NYSHFA|NYSCAL respectfully requests the Legislature support a \$1 billion investment (\$500 million State share) as a bridge to the long overdue rebasing of New York's Medicaid reimbursement system for nursing homes to reflect the current geographical disparities in wages and costs. It has been over 15 years since the last rebasing!

However, the FY 2024-25 Executive Budget reverses last year's progress and cuts Medicaid to nursing homes. Specifically, the Governor's Executive Budget proposes to reduce the capital component of the Medicaid rate for skilled nursing facilities by 10%, effective April 1, 2024, cutting Medicaid reimbursement to nursing homes by hundreds of millions of dollars.

These Executive Budget proposals unravel the Medicaid rate increase approved last year and further reduce the ability of providers to make needed capital investments in their facilities. It is shortsighted policymaking to think that providers can continually operate in an environment that discounts the quality care they provide.

New York State's long-term care system is in crisis because of continued under-investment in the State's nursing homes and an inability to contend with other industries' competitive wages. New York's nursing homes will continue to severely struggle with inadequate Medicaid funding if long-term solutions are not actively sought now. The financial crisis of the State's nursing homes is rippling across the healthcare continuum, contributing to hospital gridlock, and compromising access to care.

As such, it is critical that the State include a \$1 billion (\$500 million State share) investment in the FY 2024-25 State Budget and set in motion efforts to rebase the nursing home Medicaid rate and to truly effectuate the State's commitment to high-quality nursing home care and jobs.

Medicaid Reimbursement Directly Impacts The Long-Term Care Workforce

To meet the State's standards set forth in the 3.5-hour staffing mandate, providers must increase their workforce in the face of stiff competition from industries that can offer greater salaries in significantly less stressful environments.

Medicaid paid for approximately 72% of all resident days in New York State nursing homes in 2020. However, rates are based on 2007 costs (discounted by 9%). Since 2008, operating costs have increased by more than 40%. The dramatic increase in costs driven by the pandemic and inflation has exacerbated this problem and jeopardizes the ability of many providers to continue caring for residents in the future. This model is simply not sustainable.

Short-term stop-gap measures fail to recognize the continued burden that nursing homes have faced - and continue to face. New York must collectively proceed with a thoughtful long-term coordinated approach in service of the State's aging population and the providers and operators who support them.

New York's nursing home sector is committed to working together with the Governor and the Legislature to ensure the provision of both high-quality care and family-sustaining jobs that can retain and attract a workforce for the long-term. New York State must reinvest in its aging population and the facilities that serve it.

Given the foregoing, NYSHFA|NYSCAL strongly urges the Legislature to prioritize high-quality nursing home care for the most vulnerable individuals in our State and commit to sustained long-term funding solutions that include a \$1 billion investment (\$500 million state share) and begin the process of rebasing the State nursing home Medicaid rate.

New York's Unachievable 3.5 Hour Staffing Mandate Law

Section 2895-b of the Public Health Law requires each nursing home to maintain daily staffing of 3.5 hours of care per resident, with no less than 2.2 hours of which must be provided by a nurse's aide, and no less than 1.1 hour of which must be provided by a licensed nurse. To be sure, in a perfect world every provider would welcome the opportunity to staff at this level, but in today's actual world, this is not just unrealistic, it is virtually impossible.

Moreover, the Department of Health, in conjunction with Cornell University, determined that the cost to providers of meeting the 3.5-hour nurse staffing mandate requirement is between \$1.9 to \$2.3 billion per year.² New York has failed to fund this mandate!

In early August 2023, nursing home providers received letters of non-compliance from the Department of Health regarding the 3.5-hour staffing mandate. Ultimately, seventy-five facilities requested a redetermination of such findings and 403 requested penalty mitigation. Given the long-term care staffing crisis, a staggering 478 out of approximately 610 nursing homes statewide (78%), were unable to comply with the State's clearly unrealistic staffing mandates.

² New York State Department of Health. (2020, August). *Study of Nurse Caregiver Minimum Staffing Levels and Other Staffing Enhancement Strategies and Patient Quality Improvement Initiatives.*

Legislative Staffing Proposals

In addition to providing a \$1 billion investment in Medicaid rates, the Legislature should recognize and include language in the final budget that reflects the true number of direct care hours nursing home residents receive by including OTs, PTs and recreational therapists in the 3.5-hour nursing home staffing mandate. This legislation has already been introduced by Assemblymember Andrew Hevesi (A.2800).

The Legislature can – and should – include language in the final budget to require any fines issued because of the State’s unfunded 3.5-hour staffing mandate to be directly reinvested into nursing home staffing recruitment initiatives. NYSHFA has delivered a letter to the Governor and legislative leaders setting forth this request.

The “hands-on” staff our members have managed to retain are now overworked and burned out. As such, providers are in imminent danger of losing them to other industries with whom providers can no longer compete in terms of wages and benefits. When skilled nursing providers must resort to staffing agencies as a desperate last gap measure to ensure adequate staffing, they must pay as much as \$100 per hour for LPNs, and \$70 per hour for CNAs.

New York’s skilled nursing industry is at a crossroads. It faces an existential crisis. Due to the State’s healthcare labor crisis, 75% of nursing homes are unable to comply with the 3.5-hour staffing mandate. Enforcing this unachievable law sets these facilities up for failure. This mandate does not do anything to address New York’s healthcare workforce crisis; it only makes it worse.

Address the Long-Term Care Workforce Crisis

Nursing homes would welcome the ability to hire more RNs and CNAs. However, providers are simply unable to find qualified caregivers in the labor market to fill open positions. They are battling a historic labor crisis, and caregiver shortages are only anticipated to grow worse in the coming years.

The availability of a trained and competent long-term care workforce is critical as it directly impacts access to care and the ability to provide quality healthcare services. New York State entered the pandemic experiencing a long-term care workforce shortage and the situation has only worsened. According to Bureau of Labor Statistics Workforce Data, from February 2020 through March 2023, skilled nursing facilities have experienced an 18.7% decrease in health sector employment, while all other sectors are at or above pre-pandemic staffing

levels. This decrease in New York’s skilled nursing facility workforce has been occurring since 2018 and includes certified nurse aides (CNAs), licensed practical nurses (LPNs), and registered nurses (RNs).

The shortage of CNAs, LPNs and RNs in nursing homes is directly impacting access to care as facilities close units and limit admissions, resulting in significant backups in hospitals and the inability of those in the community to receive necessary care. According to a 2018-2020 SUNY Center for Health Workforce Studies Report, the largest shortage of healthcare workers at 44.9% were nursing assistants followed by nurses at 38.9%.

Moreover, a separate SUNY Center for Health Workforce Studies Report showed that while the home healthcare workforce grew by 33% from 2017 thru 2021 and hospital healthcare staff increased by .06% over the same period, nursing homes experienced an exodus of healthcare staff -- 13.9% from 2017 thru 2021.

These percentages are staggering – and with a decline in the number of working age adults, and an ever-increasing population of older adults requiring skilled nursing care, workforce shortages in long-term care will continue to be a problem unless steps are taken by the Legislature to address both long-term care financing and workforce investment issues as well as scope of practice policies that can promote and enhance healthcare careers. A strong workforce is essential for improving the quality of care in New York’s nursing homes and assisted living facilities.

The following initiatives proposed in the FY 2024-25 Executive Budget will help attract and retain the most dedicated to work in the profession, and now is the time to work together to implement them.

Certified Medication Aides

NYSHFA|NYSCAL supports the Governor’s proposal to authorize certified nurse aides to administer routine and prefilled medications in nursing homes once trained and able to demonstrate competency. Thirty-eight other states currently authorize Certified Medication Aides in nursing homes and New York presently authorizes them in assisted living settings.

Interstate Medical Licensure Compact

NYSHFA|NYSCAL supports the Governor’s proposal to join the Interstate Medical and Nurse Licensure Compact to allow nurses to practice in their profession using their existing license

to practice in New York. Joining the Compact recognizes the expanded mobility of nurses and the need for coordination and cooperation among states to ensure the health and safety of residents and the benefits to public health through the effective use of advanced communication technologies.

New York State's Assisted Living Providers

Assisted Living Reporting Requirements

The FY 2024-25 Executive Budget includes a proposal to require assisted living residences to annually report on specific cost and quality measures based on quality indicators developed by the Department of Health in concert with industry stakeholders. High performing residences would receive an advanced standing classification and reduced surveillance requirements. Adult care facilities, a subgroup of assisted living facilities, would also be able to seek nationally recognized accreditation and be exempt from duplicative State inspection requirements.

NYSHFA|NYSCAL supports a quality scoring system that is developed alongside its assisted living members who recognize what it means to deliver quality care in this setting. We urge the Legislature to extend the enactment date as set forth in the Governor's Executive Budget (currently 120 days) to ensure the development of meaningful consensus-driven quality measures and reporting parameters.

The State must increase the Medicaid reimbursement rate for Assisted Living Program providers (ALPs). The State is required to reimburse ALPs at 50% of the average nursing home Medicaid reimbursement rate. However, the current reimbursement rate for ALPs is just over 30% of the nursing home rate. This is unsustainable and without an increase will limit access to care.

NYSHFA|NYSCAL supports the Governor's proposal to make permanent the State's Special Needs Assisted Living Residence (SNALR) Voucher Program. This program has proven to be highly successful for those individuals in assisted living with Alzheimer's Disease and other forms of dementia, but who do not qualify for Medicaid, allowing them to live in the least restrictive, most integrated setting possible for their needs. Unfortunately, a wait list was instituted back in July 2023 due to high demand with approval of new applications paused. The Governor's Budget proposes to make the Voucher Program permanent and authorize up to 200 vouchers to individuals through an application process and pay for up to 75% of the average private pay rate in the respective region.

Where Are We Going

The long-term care crisis New York is facing now can be understood by looking backwards, but it must be addressed going forward. We must act in the present! It is vitally important that the New York State Legislature protect and enhance access to the crucial long-term care services provided by skilled nursing and assisted living facilities for our State's rapidly aging population. New York must invest in its skilled nursing and assisted living providers to fulfill its commitment to serve the State's growing aging population.

The time is now for the State to carry out its commitment to high-quality nursing home care by infusing \$1 billion (\$500 State share) into the Medicaid system as a bridge to rebasing for nursing homes in the FY 2024-25 State Budget.

As always, NYSHFA|NYSCAL 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 care services throughout New York State.

Thank you.