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January 24, 2023

Ann Marie T. Sullivan, MD  
 Commissioner  
 New York State Office of Mental Health  
 44 Holland Avenue  
 Albany, NY 12229

James V. McDonald MD, MPH  
 Acting Commissioner  
 New York State Department of Health  
 Corning Tower  
 Empire State Plaza  
 Albany, NY 12237

Dear Commissioner Sullivan and Acting Commissioner McDonald:

On behalf of the Healthcare Association of New York State's member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, I write to convey our concerns and recommendations with regard to the state's directive to re-open all non-operational licensed inpatient psychiatric beds by April 1, 2023.

HANYYS is grateful for the ongoing partnership with OMH and DOH to advance patient care and meet the demands of the rapidly changing mental healthcare environment.

We are encouraged by the renewed focus on and proposed investment in mental health services across the care continuum. Increasing capacity for inpatient and outpatient mental health services, creating more housing and expanding insurance coverage are all instrumental to begin addressing longstanding gaps in mental healthcare.

However, HANYYS is concerned about the feasibility and sustainability of expanding inpatient mental health services. New York's hospitals currently struggle with a multitude of serious challenges that present obstacles to expanding inpatient care, including:

- national healthcare worker shortages;
- uncontrollable expense increases;
- fewer places to safely discharge patients;
- concurrent public health crises;
- aging infrastructure; and
- market changes that leave hospitals serving only the sickest and most vulnerable patients.

HANYS offers the following considerations and recommendations.

### **Workforce**

Increasing the state's operational capacity for inpatient psychiatric treatment by 1,000 beds will require thousands of behavioral health professionals. The U.S. Government Accountability Office issued a [report](#) in 2022 calling attention to longstanding shortages of mental health professionals. The pandemic, the recent proliferation of private equity telehealth firms and regulatory obstacles have severely exacerbated these shortages.

Initiatives to rapidly recruit, retain and train staff will be essential to expand inpatient and outpatient mental healthcare capacity. Further, due to workforce shortages, it will be critical to prioritize services, as all care providers are drawing from the same limited pool of behavioral health professionals.

#### **Support recruitment and retention for hospital-based services**

Hospital-based mental health providers are seeing a rise in patients who are younger, sicker and presenting with more challenging behavior and with more complex care needs than ever before. As a result, hospitals are challenged to recruit and retain staff, especially with the increase in non-traditional roles available to behavioral health professionals.

HANYS recommends that OMH and DOH invest in initiatives that focus on recruitment and retention of behavioral health professionals who serve the most acutely ill in hospital settings, e.g., retention payments and increased opportunities to meet credentialing requirements by working in hospital-based settings.

#### **Remove obstacles caused by unnecessary rules and administrative processes**

Addressing workforce obstacles caused by outdated regulations and administrative processes will also help hospitals continue providing inpatient psychiatric services.

For example, the state should remove current provisions that limit Medicaid reimbursement for individual psychotherapy services provided by a social worker in an Article 28 setting based on the age and pregnancy status of the patient (Public Health Law § 2807(2-a)(f)(ii)). The state should permit nurse practitioners and physician assistants to make the determination regarding use of restraint and seclusion (14 NYCRR § 526.4). There are also persistent administrative delays in the credentialing process.

HANYS urges OMH, DOH and the State Education Department to collaborate and support the development of innovative solutions to address regulatory and administrative obstacles to help hospitals cope with the behavioral health workforce shortage.

### **Financial sustainability**

Significant and sustained increases in operating costs have far outpaced recent, modest reimbursement rate increases for public health insurance programs, which still fall well short of the cost of providing care. Four out of five hospitals in New York state are currently [reporting](#) negative or unsustainable operating margins.

#### **Provide reimbursement sufficient to cover increased staffing costs**

National healthcare workforce shortages are forcing hospitals to use contract labor, driving up workforce expenses alongside increases in drug, supply and energy costs. Hospitals across the

state report having to spend two to three times the amount for temporary staff versus the cost to hire permanent staff. They are also now competing with emerging private equity firms that offer salaries 30% to 40% higher than those afforded by nonprofit hospitals. With a limited workforce pool available to all behavioral health service providers, hospitals will continue to face challenges in recruiting qualified staff.

**HANYS recommends reimbursement be sufficient to cover the cost of increasing staffing costs, to enable hospitals to competitively recruit staff and bring inpatient psychiatric beds back online.**

**Correct underpayments**

Hospitals were slated to receive increases in Medicaid reimbursement rates to help address chronically low payments for inpatient psychiatric care. However, the increases are only available through fee-for-service (not Medicaid managed care plans) and the Centers for Medicaid and Medicare Services has not yet approved the FFS rate enhancement.

With a shortage of mental health services in communities and other long-term care options for individuals with mental illness, hospitals are increasingly boarding patients in inpatient psychiatric units for months to years because they have no safe post-discharge care options.

During a recent HANYS data collection pilot, 52 hospitals reported 311 patients with mental illness who were delayed more than four days in the emergency department and/or more than 14 days in an inpatient unit, with a total of 13,500 delay days within a 90-day period.

These discharge delays exacerbate inpatient psychiatric bed shortages and create additional financial hardship. When patients who are ready for discharge do not meet the medical necessity criteria for hospital-level care, hospitals receive partial reimbursement or are not reimbursed at all.

**HANYS recommends that hospitals be reimbursed for the care they provide when patients are boarding in inpatient psychiatric units.**

**Provide capital investments**

Bringing inpatient psychiatric beds back online and sustaining current capacity will require capital investments. The operational demands of inpatient psychiatric units have fundamentally changed:

- Since the beginning of the pandemic, hospitals with inpatient psychiatric units have been confronted with the challenge of cohorting more patients than ever with unique behavioral challenges who are exposed to or have tested positive for infection.
- The surge of children and adolescents in behavioral health crisis has prompted the reorganization of inpatient psychiatric units primarily designed to accommodate adults.
- Hospitals are also reporting a rise in patients with co-occurring conditions, such as intellectual and developmental disabilities, and others who are exhibiting behavior that puts staff and other patients at risk of harm.

As a result, hospitals have been forced to reimagine the design of inpatient psychiatric care spaces and staffing.

**HANYS recommends capital investments to meet new operational demands, build capacity and bring inpatient psychiatric beds back online.**

### **Broader care delivery planning**

As OMH and DOH develop strategies to expand access to care, HANYS implores the agencies to closely examine local and statewide health and mental health needs and demand for care. Incorporating the unique dynamics of local communities, the rapidly evolving mental healthcare delivery environment, innovative care models and the increasing complexity of patient care needs is critical to ensure the success of transformation efforts and focus limited resources where they are needed most.

While there is a recognized need for expanded inpatient mental health services broadly, hospitals are seeing tremendous gaps in mental health services for patients with co-occurring conditions, e.g., intellectual and/or developmental or physical disabilities. HANYS' white paper, [The complex case discharge delay problem](#), demonstrated the devastating consequences of a lack of coordinated care options for these populations.

Mental healthcare access challenges vary in regions across the state. For example, several HANYS members relayed that their biggest gaps were in outpatient services, rather than inpatient care.

Hospitals continue to experience intermittent surges of COVID-19. This year, co-circulating influenza and respiratory syncytial viruses have resulted in higher than anticipated hospitalization rates, and consequently, the ongoing need to use converted beds.

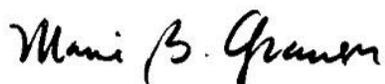
Given persistent workforce shortages and continued demand for expanded medical-surgical capacity, the long-term success of initiatives to increase access to mental healthcare and address the shortage of inpatient psychiatric beds must take into consideration the unique circumstances facing Article-28 hospitals.

**HANYS believes that strategies and data used to assess and determine the need for inpatient psychiatric services should be made publicly available, be developed with insight from the full continuum of behavioral health services and allow for flexibility to meet the needs of local communities.**

We look forward to continued opportunities to engage with your office to make sure that sufficient flexibility, state support and workforce are in place to ensure patients have access to care, including inpatient services. Your offices are also invited to meet with and receive input from hospital behavioral health leaders statewide through HANYS' behavioral health taskforce.

If you have questions, contact Victoria Aufiero, vice president, insurance, managed care and behavioral health, at 518.431.7730 or [vaufiero@hanys.org](mailto:vaufiero@hanys.org), or Sarah DuVall, director, behavioral health, at 518.431.7769 or [sduvall@hanys.org](mailto:sduvall@hanys.org).

Sincerely,



Marie. B. Grause, RN, JD  
President