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April 30, 2020

*Sent electronically*

Dear New York Congressional Delegation:

On behalf of the Healthcare Association of New York State and our statewide membership, thank you for your commitment to supporting hospitals and health systems in our ongoing work to fight the COVID-19 pandemic. HANYS is grateful for the strong actions you have taken thus far to assist patients and hospitals in this time of need.

With nearly 300,000 confirmed cases and more than 17,000 deaths from the virus, our state's hospitals face enormous operational and resource challenges that are testing their limits in unprecedented ways.

Thanks to your leadership, the CARES Act included much-needed funding for hospitals through the Public Health and Social Services Emergency Fund and the Medicare program to help reimburse COVID-19-related expenses and lost revenue resulting from the cancelation of non-emergent procedures. As the virus continues to take its toll on New Yorkers, it is clear more needs to be done if we are to slow the spread, save lives and protect our healthcare workers.

The COVID-19 pandemic has had a devastating economic impact on the state of New York, which now projects that revenue during the current fiscal year will be \$13.3 billion lower than estimated earlier this year. To maintain a balanced budget, New York will need to make drastic cuts, which could mean a 20% to 30% reduction in state Medicaid funding.

Federal aid would provide critical support to mitigate these unprecedented mid-year state reductions, which would most certainly extend to New York's hospitals and health systems at a time when we can least afford it.

New York's hospitals and health systems, including nursing homes and their patients, need the continued and unified support of the entire New York delegation to help us stay in this fight. As you develop the next COVID-19 federal response package, HANYS respectfully requests Congress take the following critical actions to support patient care and sustain our healthcare infrastructure and workforce.

### Support additional funding for hospitals

Hospitals and healthcare systems need direct federal funding to meet the high costs of treating patients with COVID-19. Our hospitals continue to incur major expenses related to increasing bed capacity, purchasing personal protective equipment and hiring needed staff. Hospitals across the state have identified alarmingly huge revenue losses as their number one financial concern during this pandemic.

HANYS urges Congress to explicitly target funding to hospitals and nursing homes in states like New York that are the “hot spots” of the epidemic and have implemented statewide responses to controlling the outbreak.

Existing and subsequent funding models must include considerations for direct services to COVID-19 patients, Medicare Advantage patients, Medicaid patients and low-volume hospitals. Additional funding to assist hospitals as they ramp up COVID-19 testing capacity, including reimbursement for supplies, staff and testing technologies, is critical to managing the spread of the virus.

### **Improve the Medicare Accelerated/Advance Payment Program**

HANYS is grateful for Congress’ authorization and CMS’ swift action to implement the Medicare Accelerated/Advance Payment Program. This program, established in the CARES Act, has moved billions in much-needed Medicare funding advances to hospitals and other providers nationwide. Given the substantial financial disruptions occurring at hospitals responding to the COVID-19 pandemic, hospitals will simply not be able to pay these funding advances back under the current program rules and timelines. Congress must build upon the CARES Act and **establish loan forgiveness under the Medicare Accelerated/Advance Payment Program.**

At a minimum, Congress should make critical improvements to the existing program such as lowering the interest rate to no more than 2% as opposed to the current interest rate, which is above 10%, and delay the payback period for at least one year.

### **Implement additional FMAP increase**

HANYS appreciates that the Families First Coronavirus Response Act, signed into law last month, included a 6.2% temporary boost in the Federal Medical Assistance Percentage. New York state is reporting \$13.3 billion in revenue losses as a result of the COVID-19 pandemic, unemployment claims are skyrocketing and people are losing access to insurance coverage. **Enhanced FMAP funding of at least 12%** is a critical tool to help states like New York and our residents to maintain healthcare services while they manage the surge of COVID-19 during a major economic downturn.

**HANYS urges Congress to provide an additional flat FMAP increase for states facing the highest burden of COVID-19** and, comparable to the American Recovery and Reinvestment Act, provide additional increases that account for increases in unemployment.

Increases in FMAP from the FFCRA and new enhancements must count all Medicaid enrollees and allow maximum flexibility for states, with matching levels of accountability.

### **Protect teaching hospitals**

New York’s teaching hospitals face penalties through the Medicare Graduate Medical Education program as they prepare for surges in COVID-19 patients. Medicare Indirect Medical Education funding includes a calculation of residents to available bed days. As available beds increase, CMS resident funding decreases. **Congress should hold teaching hospitals harmless** due to having to increase bed capacity to respond to the COVID-19 crisis.

### **Preserve 340B eligibility**

For more than a month, in response to the COVID-19 pandemic in New York, all elective procedures have been halted and people are generally more inclined right now to stay home than seek non-urgent healthcare services. As a result, Medicaid patient volume has decreased and compromised

hospital eligibility to participate in the 340B Drug Pricing Program. **Congress should hold 340B hospitals harmless in their recertification until the COVID-19 pandemic subsides and patient volumes return to traditional levels.**

#### **Prohibit violation of debt covenants for nonprofit healthcare providers**

The lack of revenue resulting from the cancelation of non-emergent procedures coupled with COVID-19-related financial losses could put some hospitals and health systems at risk of violating their debt covenants. Debt covenants are agreements between an entity and a creditor usually stating limits or thresholds for certain financial ratios that an entity may not breach. If breached, the creditor may recall the loan or implement interventions that would further weaken cash-strapped healthcare providers. **HANYS urges Congress to prohibit the violation of debt covenants for nonprofit healthcare providers for a period of the national health emergency and two years thereafter.**

#### **Protect Critical Access Hospital status**

In 2015, CMS made regulatory changes to the mileage definition of “primary road” as it relates to mileage requirements for CAH status to include any road in the “National Highway system,” which includes New York state routes. The new definition jeopardizes the status of New York hospitals that received CAH status under the previous guidance. Despite blanket waivers issued by CMS during the COVID-19 crisis allowing flexibility for other CAH regulations, CMS has yet to address the threat posed by the new mileage requirement.

**Congress should protect CAHs by holding them harmless during the COVID-19 crisis**, or at a minimum require CMS to delay burdensome recertifications until the agency can resolve the underlying mileage issue.

#### **Further address reimbursement cuts**

HANYS is grateful that the CARES Act included a delay in the steep Medicaid Disproportionate Share Hospital reductions that were scheduled to go into effect in May. However, the short-term delay provides little opportunity to plan for the future and will hit hospitals across New York at a time when they are hopefully recovering from the devastation of the COVID-19 pandemic.

HANYS urges Congress to **eliminate the Medicaid DSH cuts** set to go into effect Dec. 1, 2020 for at least two and a half years and increase Medicaid DSH funding to hospitals by 2.5% to manage COVID-19 response during the public health crisis, similar to what Congress implemented in the American Recovery and Reinvestment Act.

#### **Support our healthcare workforce**

Healthcare workers across the state have been responding to the call of duty in unprecedented ways. Some are coming out of retirement. Others are traveling to work in hospitals in other parts of the state to assist hospitals that are surging with COVID-19 patients. All hospital employees are rising to the challenge to ensure services continue to be provided to non-COVID patients and that the daily operations of the hospital continue. These frontline and essential employees put themselves at risk of exposure to COVID-19 every day. **Congress should ensure that hospital employees diagnosed with COVID-19 are covered for their healthcare expenses.**

**Suspend the retirement earnings test for retired healthcare workers and first responders** who choose to assist in the COVID-19 response effort to ensure they continue to receive their Social Security benefits as they would have before this crisis. Healthcare workers answering the call to come out of retirement and serve on the front lines of this crisis should not have to risk financial hardship.

#### **Ensure provider protections**

During this unprecedented emergency, hospitals and healthcare professionals are working tirelessly to provide the best possible care to COVID-19 patients under extremely adverse conditions. At the same time, they are working to ensure other patients continue to receive the highest quality care. Yet, hospitals and healthcare professionals are encountering unparalleled challenges in their efforts to provide care, such as critically low shortages of PPE, shortages of testing kits, delayed testing, shortages of inpatient and intensive care unit beds and critically low access to lifesaving devices such as ventilators and respirators.

**Congress should implement a limited waiver of liability for hospitals and healthcare professionals** during the nationally designated COVID-19 emergency that will allow providers to continue delivering the best possible care.

#### **Address regulatory concerns**

**Prevent the implementation of the Medicaid Fiscal Accountability Rule**, which would have a profound impact on a state's ability to finance its Medicaid program and would undermine supplemental payments to hospitals.

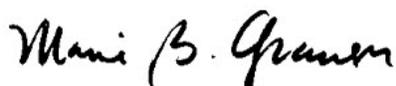
#### **Looking ahead to recovery**

Hospitals and health systems will continue to need your support when we eventually overcome the current COVID-19 challenges and begin to enter the recovery phase.

While we are not there yet, this crisis has brought to light the need for robust federal investment in hospital infrastructure as well as Medicare-funded Graduate Medical Education support for training the next generation of doctors, including through legislation like the Resident Physician Shortage Reduction Act (H.R. 1763/S. 348).

Please know that we appreciate the challenges and concerns you all face as you work to represent and protect your constituents. HANYS shares your concerns and we thank you for your continued commitment and partnership as we work together toward our shared goal of overcoming the COVID-19 pandemic. If you have questions, please contact me at [bgrause@hanys.org](mailto:bgrause@hanys.org) or (518) 431-7765.

Sincerely,



Marie B. Grause, RN, JD  
President