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September 12, 2022

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 New York's hospitals and health systems. As you return to Washington to complete important legislation, we ask that you work with your colleagues to address significant issues facing our statewide membership.

**Specifically, we urge the delegation to support key priorities to help mitigate the alarming fiscal deterioration facing our hospitals and health systems.**

The hospitals serving your communities now have an untenable cost structure and are under intense fiscal strain as a result of severe workforce shortages, skyrocketing expenses and woeful underpayment from Medicare and Medicaid.

The COVID-19 pandemic has accelerated these persistent challenges. Nearly one quarter of hospitals nationwide report critical staffing shortages, while labor costs have increased nearly 20%. Costs for drugs and supplies have risen well beyond 20% over the last two years, with no end in sight.

During the height of the pandemic, New York's nonprofit hospitals collectively recorded the lowest operating margin in 20 years (-1.4%) and a \$3 billion downward margin swing from 2019 to 2020. Without the vital federal support you helped secure through the Provider Relief Fund, hospitals would have suffered an unfathomable statewide average operating margin of *less than negative 10%*. Unfortunately, this support has expired.

Discussions around the eventual wind-down of the Public Health Emergency, including the elimination of the 20% COVID-19 add-on payment, enhanced federal Medicaid matching for states and key policy flexibilities that have been leveraged to preserve and bolster access to care, are creating additional pressures and uncertainty as hospitals continue to treat COVID-19 patients and the potential for a winter surge looms.

We are all eager to welcome a return to normalcy in our communities. However, we must not lose sight of the unprecedented economic impacts that our hospitals and health systems — the backbones of our communities — continue to absorb and will undoubtedly experience for years to come. With those concerns in mind, we urge the delegation to pursue the following priorities.

**Reverse Medicare sequestration cuts and prevent statutory “PAYGO” reductions**

HANYS appreciates that Congress has taken action in recent years to temporarily stave off Medicare sequestration cuts to help hospitals through the COVID-19 pandemic. Sequestration cuts have no policy basis and further lower reimbursement for a payer that already pays just 89 cents for each dollar of care provided in New York.

Regrettably, the 2% sequestration cut in direct Medicare payment cuts resumed in July and will sum to nearly \$3 billion over ten years if fully implemented. In addition, the Congressional Budget Office estimates that a statutory PAYGO policy will be required for federal fiscal year 2023, requiring a new, one-year 4% reduction in Medicare spending.

Combined, the two sequestration cuts would total 6%, equating to more than \$800 million in direct Medicare reimbursement cuts next year.

Medicare cuts to providers of this magnitude are not acceptable any time, let alone while they continue to manage the COVID-19 pandemic, systemic workforce challenges and the alarming new labor, drug and supply expenses they face.

**HANYS urges Congress to eliminate the 2% Medicare sequestration cuts and prevent a statutory PAYGO reduction to ensure that no further Medicare cuts to providers occur in 2023.**

**Make permanent the Medicare Dependent Hospital program and Enhanced Medicare Low-Volume payment adjustment**

Dozens of hospitals in rural areas across New York rely on enhanced payments provided through the Medicare Dependent Hospital program and/or the Medicare Low-Volume payment adjustment to preserve access to care.

The MDH program provides enhanced Medicare reimbursement due to the high number of Medicare patients served by a qualified hospital. Together, the three MDHs in New York state receive more than \$28 million in MDH funding over ten years.

The LV adjustment is a payment adjustment that boosts Medicare payments by up to 25% for hospitals with a relatively small number of patient discharges. These hospitals cannot achieve economies of scale. Together, the 18 New York state hospitals that access the enhanced LV adjustment receive a benefit totaling more than \$115 million over ten years.

Without legislative action by Oct. 1, the MDH program will expire and the enhanced LV adjustment will revert back to the more restrictive criteria that would exclude most if not all New York hospitals.

**HANYS urges Congress to pass legislation to make permanent or extend the MDH program and LV payment adjustment.** HANYS supports the *Rural Hospital Support Act* (S.4009) and the *Assistance for Rural Community Hospitals (ARCH) Act* (H.R.8747).

### **Modify the harmful Medicaid Disproportionate Share Hospital cap policy**

Section 203 of Title II addressing Medicaid extenders in the *Consolidated Appropriations Act of 2021* changed how hospital-specific Medicaid DSH funding caps (the maximum amount of Medicaid DSH funding a hospital can receive) are calculated.

This new policy severely impacts access to essential federal supplemental support for many of New York's public safety-net hospitals that care for the highest share of low-income and uninsured individuals in the state. Effective October 2021, Section 203 disallows Medicaid dual-eligible enrollees (people eligible for both Medicaid and Medicare or other third-party payers) from DSH cap calculations, removing from consideration services that hospitals often provide at a financial loss.

HANYS estimates that this policy change will result in more than \$270 million in losses annually for at least nine public hospitals in New York, with other non-public hospitals at risk of DSH funding losses. As the DSH program is intended to help mitigate hospital losses for treating indigent patients, it is wrong to enact a policy counter to that goal.

**HANYS urges Congress to work on a bipartisan basis to amend Section 203 and allow hospitals the flexibility to include payment shortfalls for services provided to all Medicaid dually-eligible patients in their DSH cap calculations.**

### **Reduce unnecessary burdens on providers and streamline overutilization of prior authorizations in Medicare Advantage**

Although the MA program is designed to cover the same services as traditional Medicare, we are concerned that some MA plans engage in practices, including inappropriate and excessive denials for prior authorization, which result in delays in care and can cause direct patient harm. A [recent report](#) issued by the Department of Health and Human Services' Office of Inspector General found that 13% of prior authorization denials and 18% of payment denials actually met Medicare coverage rules and should have been approved.

**HANYS urges Congress to pass the *Improving Seniors' Timely Access to Care Act* (S. 3018/H.R. 3173), which would streamline MA prior authorization requirements by eliminating complexity and promoting uniformity to reduce the wide variation in prior authorization methods that harm both patients and providers.**

### **Extend PHE-enabled telehealth policies and flexibilities**

With the help of key policies and flexibilities allowed by Congress and the administration during the COVID-19 PHE, hospitals and health systems have successfully leveraged telehealth throughout the pandemic to preserve and bolster access to care.

Earlier this year, Congress acknowledged the benefits of these telehealth advancements by enacting legislation to extend and expand telehealth flexibilities for 151 days after the end of the PHE.

**HANYS urges Congress to enact the *House-passed Advancing Telehealth Beyond COVID-19 Act* (H.R. 4040), which would allow Medicare patient access to innovative telehealth services through 2024.**

**Extend the hospital-at-home program**

In response to the COVID-19 pandemic, the federal government authorized a wide array of waivers to give hospitals and health systems flexibility to manage the increased strain on our healthcare system, address capacity issues and ensure that care could continue to be delivered to all patients safely and effectively.

This included allowing hospitals and health systems to apply for and establish Acute Hospital Care at Home programs for Medicare beneficiaries throughout the COVID-19 PHE.

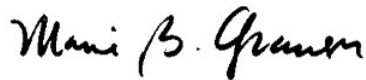
These programs allowed qualified patients to receive care in their homes while maximizing inpatient bed capacity at hospitals, reducing complications, cutting costs and enhancing the patient experience. Unless Congress takes action, the model will expire once the PHE is terminated.

**HANYS urges Congress to extend the hospital-at-home program by passing the *Hospital Inpatient Services Modernization Act* (S. 3792/H.R. 7053).**

As always, HANYS stands ready to serve as a resource for the entire delegation as you represent and protect your constituents.

Thank you for your continued commitment and partnership as we work to overcome COVID-19 and ensure our hospitals and health systems can continue to be relied on by our communities beyond the pandemic. If you have questions, please contact me at [bgrause@hanys.org](mailto:bgrause@hanys.org) or 518.431.7765.

Sincerely,

A handwritten signature in black ink that reads "Marie B. Grause". The signature is written in a cursive, flowing style.

Marie B. Grause, RN, JD  
President