



Public Hearing Testimony

**Recommendations on Proposed Revisions to 709.3
The Residential Health Care Facility Bed Need
Methodology**

Submitted to:

**The Planning Committee of the State Hospital
Review and Planning Council**

Presented by:

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Good afternoon, I am Patrick Cucinelli, Senior Financial Policy Analyst for the New York Association of Homes and Services for the Aging (NYAHSa). Founded in 1961, NYAHSa is the only statewide organization representing the entire continuum of not-for-profit, mission-driven and public long term care including nursing homes, senior housing, adult care facilities, continuing care retirement communities, assisted living, home care, managed long term care and other community services providers.

NYAHSa's nearly 600 members serve an estimated 500,000 New Yorkers of all ages annually. On their behalf, I appreciate the opportunity to appear before the Planning Committee of the State Hospital Review and Planning Council (SHRPC) on the subject of Part 709.3, the nursing home bed need methodology.

Back in 2002, NYAHSa offered our input on the then-proposed changes to the need methodology, the first update to the methodology in several years. Our suggestions were seriously considered by the SHRPC and eventually incorporated into the final product. We are grateful that we had a constructive role to play in the past, and hope to continue to do so.

Nursing homes have for many years faced a growing number of challenges to their fiscal viability, including:

- 1.) Up until recently, a sorely outdated base year and over two decades of inadequate inflationary adjustments, which have compounded over time and created a significant gap between the amount reimbursed under Medicaid and the actual cost of providing care;
- 2.) Increasing dependence on Medicaid, as competition from other forms of long-term care (e.g. assisted living and home care) has grown and the ability to offset the losses from Medicaid has diminished as the private pay population has dwindled; and

3.) The threat of annual Medicaid budget cuts, which this year could prove especially devastating, and could completely eliminate any gains made by the recent base year update, which was over two decades in the making.

At this very difficult and precarious time for our state's not-for-profit, mission-driven and publically sponsored nursing homes, it is especially critical that any decisions SHRPC makes with regard to the need methodology are carefully considered in light of the current situation.

Applying Public Need to Facility Renovation Projects

NYAHSA respectfully recommends against the inclusion of language that would bring the need methodology into play with regards to facility renovations. Along with an aging population, our state is now coping with an aging nursing home physical plant. With the needs of long-term care consumers evolving to include innovations like culture change and alternatives to the traditional model of nursing home, anything that creates a potential impediment to facilities modernizing and adapting their physical plants runs counter to the changing needs and demands of the consumer.

Of significant concern is the potential loss of beds for providers that are seeking to modernize their facilities, while their competitors in the market have their capacities left intact. This policy, along with higher project equity requirements currently in place, could create even more of a disincentive for high quality providers to invest in facility modernization and culture change. As it is, when a provider reduces beds, operating unit costs often go up, capital cost per unit goes up, and yet the per bed construction caps and Medicaid rate formula fail to recognize this.

The 2009-10 Executive Budget also proposes to transition 6,000 nursing home beds to Assisted Living Program (ALP) beds. The voluntary nursing home rightsizing demonstration program has been in existence for over three years, and has taken about 1,600 beds out of the system, suggesting that the plan to take 6,000 nursing home beds

out of the existing capacity will not be completely voluntary. This proposed provision of 709.3 could be used to involuntarily extract these beds out of CON applicants, making this an even bigger concern.

Consideration of Nursing Home Alternatives in Need Estimates

NYAHSa supports the inclusion of managed long term care plans in the consideration of services available to serve seniors in a community, in recognition of the fact these plans are expanding and playing an increasingly important role.

The category of “Persons served in adult care facilities serving the frail elderly” should be expanded to include ALPs and assisted living residences, if they are not already included. As indicated above, the state is proposing to embark on a major expansion of ALP capacity.

We would also recommend the addition of Adult Day Health Care (ADHC) programs since they also serve individuals with nursing home level needs. Furthermore, the latest update to the ADHC need methodology would expand total program capacity by 40 percent or more, which could have a significant bearing on nursing home need.

The Executive Budget proposal also includes the lifting of the current moratorium on the approval on new certified home health agencies (CHHAs), reflecting the administration’s stated goal of significantly expanding home and community based services as an alternative to institutional care. NYAHSa believes that the potential impact of any CHHA expansion also needs to be taken into consideration as part of the 709.3 methodology.

Other Methodology Considerations

In general, we are cautious in our evaluation of the methodology without an analysis of the revised statistics and estimates. In evaluating any changes to the methodology it is

important to determine how the new numbers relate to the previous estimates and the existing bed resource. We suggest these comparisons be made available to all parties prior to final consideration of these recommended changes.

NYAHSA supports the concept of updating the base year to 2006 and setting the next planning target year of 2016. In doing so the Council continues to recognize the critical need to keep the methodology as up to date as possible and relevant to the changing dynamics of the long-term care system.

Lacking a viable alternative, NYAHSA does not object to maintaining the county as the basic planning unit, along with the flexibility to consider migration patterns and unique geographic and institutional relationships. However, efforts should be made to make these criteria clearer to the field.

The 97 percent threshold in the planning unit should be maintained in order to ensure that unneeded beds are not created. The separate need consideration for specialty populations should also be maintained as it currently exists.

We believe that extending the period of evaluation to five years is appropriate. However, given the rapid pace of change in this field, DOH should maintain annual info on occupancy so they are applying current numbers in their CON reviews.

Post-Acute Care

NYAHSA agrees that the current methodology provides for sufficient consideration of post acute (i.e., subacute) care and that separate designations/estimates are not advisable, since there is no universally accepted definition of this care and it can be provided throughout a facility and not just in a discrete unit.

NYAHSA will be communicating in the near future with SHRPC members on our reactions to the recent DOH status report on the transitional care unit (TCU)

demonstration program. We continue to have concerns that TCU services are duplicating services currently being offered by nursing home subacute programs.

Regional Batching of Applications

NYAHSa is concerned about the concept of instituting regional competitive reviews for CON applications, including those involving nursing beds. This would be a major change from the longstanding “first in-first-out” reviews of most CONs for new beds/services, construction/renovation projects and changes in ownership of existing providers. Competitive reviews could place undue emphasis on financial considerations at the expense of quality of care and quality of life, and inappropriately result in the rejection of worthwhile proposals that could enhance quality and access.

Combined with our previously noted concern over the proposal to apply the need methodology to nursing home CONs involving renovation of existing facilities, this creates a great deal of uncertainty over how the proposed methodology changes may be used to leverage applicants into reducing their licensed capacities, while leaving untouched those providers that do not seek to improve their physical plants.

Without clearer guidelines as to how this provision will be applied, NYAHSa must object to this proposed change.

Medicaid Access Regulations

As part of SHRPC’s review of the methodology, NYAHSa recommends that the current Medicaid access requirements be repealed. For years now, the average Medicaid census in nursing homes statewide has exceeded the national average and that of most other states. This, combined with the fact that average occupancy has fallen (which creates a financial penalty for facilities), dispels the notion that Medicaid access is an issue and makes the regulations an anachronism.

Furthermore, at a time when the administration continues to raise concerns regarding what they view as excessive reliance on Medicaid as the payor of first resort, it becomes counterproductive to have in place a regulation which discourages the maximization of alternative payment sources. NYAHSA contends that elimination of the access regulations is long overdue, and DOH should consider instead policies that would encourage the development of alternative payment sources.

Conclusion

In summary, NYAHSA believes that the current version of 709.3 has generally served the needs of our senior and other long term care clients well; however, we are concerned over several of the proposed changes we have detailed. Of primary concern is the major proposal for the inclusion of language that would bring the need methodology into play with regards to facility renovations. At a point in time in which the delivery of institutional long-term care services is undergoing a major evolution in terms of modernizing, rightsizing (and diversification) and culture change, this provision presents an unnecessary obstacle to innovation.

With regard to other proposals, NYAHSA believes there are still significant areas that need to be clarified in terms of policy goals and exactly how the provisions will be applied. Finally, any debate on revising the need methodology must include an analysis of the latest statistics and estimates underlying the proposed changes.

Thank you for this opportunity to present our recommendations here today. We continue to support the Planning Committee and the full SHRPC and the good work you have done with regard to section 709.3. As in the past, NYAHSA stands ready to lend our expertise and resources to SHRPC in support of your efforts and the long-term care consumers of New York whom we are all dedicated to serve.