



Comments on:

**The Residential Health Care Facility
Bed Need Methodology**

Submitted to:

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

Presented by:

Dan Heim

Vice President for Public Policy
New York Association of Homes
and Services for the Aging
(NYAHSA)

Meeting Room #4E03/04
90 Church Street, New York, NY

July 23, 2009

Good afternoon, I am Dan Heim, Vice President for Public Policy for the New York Association of Homes and Services for the Aging (NYAHSAs). NYAHSAs represents nearly 600 not-for-profit and publicly-sponsored nursing homes, senior housing, adult care and assisted living facilities, continuing care retirement communities, home care agencies, managed long term care plans and other community services providers. I appreciate the opportunity to appear before the Planning Committee of the State Hospital Review and Planning Council (SHRPC) on 10 NYCRR Part 709.3, the nursing home bed need methodology.

NYAHSAs testified during the Planning Committee meeting on this subject in January, and we are pleased to see that some of our recommendations are incorporated in the most recent proposal. Unfortunately, some of the concerns we expressed at that time have not yet been resolved. These concerns will be the focus of my remarks today.

Subjecting Facility Renovation Projects to Need Determinations

NYAHSAs strongly opposes proposed language in 709.3(a) that would apply the need methodology to Certificate of Need (CON) projects involving facility renovations. SHRPC members are well aware that many of the nursing home physical plants currently in operation were built in the 1970s or earlier, and are in need of substantial remodeling. At the same time, changing consumer needs and state and federal policies aimed at promoting person-centered care are leading to a fundamental reconsideration of the nursing home service delivery model. Innovative programming such as Green House, Eden Alternative and resident neighborhoods often necessitate upgrading nursing home physical plants.

Any policy that creates a potential impediment to facilities modernizing and adapting their physical plants runs counter to efforts to promote person-centered care. We believe that the proposed revisions to 709.3(a) will be used to leverage CON applicants to give up beds in order to have their building projects recommended for approval.

This creates a major policy concern. Those providers seeking to modernize their facilities and enhance resident quality of life will face the potential loss of beds, while other facilities will have their bed capacities left intact. This policy, along with higher project equity requirements currently in place and capital financing difficulties, 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 final 2009-10 State Budget reflects a plan to transition 6,000 nursing home beds to Assisted Living Program (ALP) beds over five years. The voluntary nursing home rightsizing demonstration program has been underway for over three years, and has taken about 1,600 beds out of the system, suggesting that taking 6,000 nursing home beds (i.e., over 5 percent of total capacity) out of the system will not be completely voluntary. So it is not hard to envision a scenario in which this proposed revision to 709.3(a) will be used to involuntarily extract some number of these beds out of CON applicants.

So, as a matter of policy, does the state want to create a perverse incentive for operators to avoid renovating their facilities, improving quality of life and promoting person-centered care? If the answer is no, then this proposed revision to 709.3(a) should be rejected.

Consideration of Nursing Home Alternatives in Developing Need Estimates

NYAHS is pleased to see that a revision has been made to include managed long term care plan enrollees in the 2006 usage data, since these individuals are eligible for the nursing home level of care.

We continue to recommend that Adult Day Health Care (ADHC) programs be added to the service alternatives in the development of use rates, 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.

Other Methodology Considerations

NYAHSA supports the concept of updating the base year data to 2006. This recognizes the critical need to update the need methodology from a 2000 base to a 2006 base.

However, we are concerned about extending the planning target year out to 2016 while eliminating the requirement for an interim evaluation. The need methodology must be kept as up to date as possible at a time of major change in government policies and utilization patterns. Current state policy initiatives are aimed at “rebalancing” the long term care system through significant further rightsizing of nursing home capacity; major expansions of ALP and ADHC capacity; possible lifting of the CHHA processing moratorium and re-estimating need; revising reimbursement systems; and promoting uniform long term care assessment. Federal health reform could also have a major effect on long term care services. Finally, demographic changes (partly reflected in 2010 U.S. census data), changes in disability rates and further reductions in nursing home lengths of stay could alter nursing home usage.

Therefore, we recommend that the regulations continue to incorporate periodic evaluation of the need methodology. Furthermore, DOH should maintain and publish annual information on occupancy and capacity to ensure that CON need reviews are based on the most currently available information, and that providers and members of the public have access to this information.

Medicaid Access Requirements

NYAHSA continues to recommend repeal of the Medicaid access requirements found in 709.3(m). For years now, the percentage of residents who are Medicaid recipients in New York’s nursing homes has exceeded the corresponding national average and that of

most other states. This reality—combined with the fact that average occupancy has fallen (which can create a financial penalty for facilities)—dispels the notion that Medicaid access is an issue today, and makes the regulations an anachronism.

Furthermore, at a time when state policymakers continue to raise concerns about growing Medicaid expenditures and excessive reliance on Medicaid as the *de facto* payer for long term care, it is counterproductive to have in place a regulation which effectively discourages the maximization of alternative payment sources. NYAHSA contends that elimination of the access regulations is long overdue, and that the state should instead consider policies that would encourage the development of other payment sources.

Conclusion

In summary, NYAHSA is greatly concerned that the proposal to apply a public need test to facility renovation projects will create yet another unnecessary obstacle to innovation and person-centered care.

With regard to the balance of the methodology and regulations, NYAHSA believes that further clarity is needed on the underlying policy goals of the methodology and exactly how the provisions will be applied. For instance, it is unclear how the plan to replace 6,000 nursing home beds with ALP beds will be factored into individual need determinations, since these beds are simply deducted in aggregate from the 2016 total need rather than allocated by county.

Thank you for this opportunity to present our comments here today. NYAHSA remains available to assist the Planning Committee, SHRPC and the Department on efforts to update the nursing home need methodology.