Suburban Hospital Alliance of New York State, LLC

OPPOSITION MEMO

Date: **May 6, 2024**
To: **Members of the Hudson Valley & Long Island Senate Delegations**
From: **Wendy Darwell, President & CEO**
Re: **A.1633-A – Passed Assembly**
S.8843 – Advanced to Third Reading

The Suburban Hospital Alliance of New York State, representing hospitals and health systems on Long Island and in the Hudson Valley, opposes A.1633-A/S.8843, the Local Input in Community Healthcare (LICH) Act.

The legislation calls for hospitals and health systems to submit written notification to the Department of Health (DOH) no later than 270 days prior to the proposed closure of a hospital, hospital unit, or any other hospital service if the proposed closure will result in the reduction of services in the area. This notification would kick off an extensive process, including the submission of a Health Equity Impact Assessment and an application to the Public Health and Health Planning Council (neither of which are currently required for hospital closures), a report from DOH on the impacts it anticipates the closure will have, public posting and notification requirements, a community forum, and a requirement that the hospital address community concerns in its closure plan.

While we appreciate the need for engaging stakeholders about key service changes or in the very rare event of a full facility closure, there are regulatory and statutory mechanisms already in place to achieve this. These include enhanced regulations that have been in effect for less than one year for both facility closures and unit/service line changes. Establishing another lengthy and duplicative approval process will only further distress an institution facing difficult decisions in a financial crisis and will bind the hands of others trying to make service changes that meet identified community needs.

Unit/Program Closures Addressed by Community Needs Assessments and HEIAs
While full hospital closures are extremely rare, unit, service line and program changes are not. These should not be subject to the same regulatory process. Hospitals and health systems are continuously reassessing changes in community needs. This is not just good business; as nonprofit institutions, hospitals are required by the federal and state governments to assess their communities' needs through the Community Health Needs Assessment and Community Service Plan processes, respectively, and adapt their service offerings accordingly. They are also adapting to changes in the competitive landscape, physician contracts, workforce availability, and advances in treatment modalities and technologies that shift care to other settings. Many of these elements are out of the control of the hospital, and demand decision-making on a much shorter timetable than nine months.

For example, the contracted physician group that provides a particular clinical service has the right not to renew its contract. If the hospital cannot, despite its best efforts, procure another physician group to provide the same clinical services, it must cease providing those services. No nine-month regulatory process or amount of community input will change that. Or, if a hospital loses most of the volume for particular service to a new ambulatory surgery center in the same market, it may not make sense from either a patient quality or a financial perspective to keep that low-volume unit operational. Requiring the hospital to go through an extended approval process will waste resources that could be directed toward a service line the community needs more.

In 2021, the Legislature created the Health Equity Impact Assessment process as a mechanism for soliciting community input on significant service changes, ensuring that the needs of medically underserved individuals are assessed, and requiring that hospitals mitigate any negative impacts. The law took effect less than one year ago; it should be given a chance to work before adding a redundant process. The legislation should be rejected for this reason alone.

Hospital Closures Addressed in Updated DOH Guidance

The issue of facility closures has also been recently addressed in a Dear Administrator Letter issued by the DOH in August 2023. In fact. it goes beyond existing regulations, which were limited to full facility closures; it instead establishes requirements for notification of DOH, staff and other officials, submission of closure plans, and the holding of a community forum for the closure of units, or even the temporary closure or limitations of services. Although we have a number of concerns about this approach, it specifically preserves the confidentiality of closure information to avoid the consequences discussed below.

Like the HEIA requirement, this new guidance has only been in effect for a short time and has not been given an opportunity to be tested. The LICH Act is again redundant.

Extended Public Process Creates Challenges

Under previous regulations and reinforced by the August 2023 DOH guidance, information about a proposed facility closure is tightly controlled, for good reason. Once the public becomes aware that a hospital is about to close, the reaction can be swift and severe: staff may leave for jobs at other institutions, non-employed physicians may stop providing emergency coverage or performing surgeries at the facility, vendors may not continue making deliveries, lenders may demand immediate payment. It can become very difficult for the institution to continue operating safely.

Yet that is exactly what the LICH Act would require. If enacted, community members would be made aware of a closure proposal a minimum of seven months in advance due to the community outreach components of the Health Equity Impact Assessment, followed by more prescriptive public notifications and community forums. An institution that's closing because it is in or near bankruptcy cannot weather seven months or longer of crisis that this will generate.

Depleting Provider and State Resources

Hospitals and health systems must have the flexibility to make business decisions in this challenging environment if they are going to remain solvent, or they will be unable to keep their doors open to care for any patients. Being forced to continue operating underutilized or outmoded programs or services for an extended period of time will only further the financial distress and jeopardize the availability and quality of other care that the institution can provide. If entire hospitals must remain open throughout this process, beyond their financial viability, that will place a burden on state finances as well. Almost one-third of New York hospitals currently meet the DOH's criteria for financial distress and distressed hospital spending has increased by more than 400 percent since FY2017.

Hospitals play a critical role in communities, not just as providers of a broad range of health care and social services, but as employers and economic anchors. Like the communities they serve, they are always changing and must have the flexibility to do so. They do not take these responsibilities lightly, especially the very difficult decisions that must be made about facility and program closures.

We have grave concerns about the additional burdens that this legislation will create for distressed hospitals and therefore the impact on patient care and the financial state of New York's healthcare system. The Suburban Hospital Alliance urges you to reject this legislation.