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Testimony of  
**The New York State Health Facilities Association  
(NYSHFA)**

Before  
**The Planning Committee**  
Of the  
**State Hospital Review and Planning Council**

**Presented by:**

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## INTRODUCTION

Good Morning. My name is Richard Herrick. As President and CEO of the New York State Health Facilities Association, I appreciate the opportunity to present the following thoughts, ideas and proposals to the Planning Committee of the State Hospital Review and Planning Council.

NYSHFA has approximately 275 members and represents both skilled nursing facilities as well as assisted living residences. Although our members are primarily proprietary, we also have voluntary as well as county facilities in our membership. As a Statewide association, we are also the New York State affiliate of the American Health Care Association which represents more than 10,000 nursing homes nationally.

I have included for your review copies of my comments with an attachment. My comments today focus on the CON process and related programs for skilled nursing facilities realizing that they can impact and influence the entire health care delivery system. For that reason, we feel it is important to continue our open dialogue with the Healthcare Association of New York State (HANYC), New York Association of Homes and Services for the Aging (NYAHS) as well as regional associations across New York State. Additionally, being an affiliate of the American Health Care Association provides an opportunity to access information from other states across the entire nation as it might relate to the subjects we are discussing today.

Before addressing the specific proposals, I think it is important that a review of the goals and objectives of the CON process be revisited so that it is clear to all parties at all levels of the CON process as to: 1) what should be the expected outcome; 2) what should be the expected timetable to achieve that outcome; and 3) do both of those areas meet today and tomorrow's needs in a rapidly changing environment.

## PROPOSED REFORMS TO THE CERTIFICATE OF NEED PROCESS

If we all agree that we are in a rapidly changing health care delivery environment, one would think that the value and timeliness which are achieved by the CON process must

be significant benchmarks to measure the performance of any system that is accountable to those that use it as well as those that are impacted by it.

We are all faced with a significant challenge, and that challenge revolves around the fact that in a rapidly changing environment which is a highly regulated environment, these two factors are at opposite poles and are working against each other. In order to effectively deal with these conflicting demands we have the following suggestions:

- Establish and clearly disseminate the rules and expectations of the process prior to applicant submission. Current applications need to be grandfathered when changes are called for.
- Establish a list of timetables perhaps by category of application which will hold all parties accountable for achieving the desired outcome in a timely fashion (i.e., change of ownership – 90 days).
- Delegate some of the processes to professionals for self-certification (i.e., architects, CPAs, attorneys, etc.).
- Establish competitiveness among proposals so that innovation, cost effectiveness and ultimately value can be achieved and acknowledged.
- Eliminate “policies of the day” hurdles which are both unexpected and inequitable that result in unintended consequences (i.e., giving up beds after contract has been signed).

While revisiting some of these issues it is important that New York look outside of its box to see what programs and tools are being utilized in other states, in other parts of the country, that would help it achieve its intended goal and desired outcomes. A national consulting firm, Larsen Allen which has worked in other states to create new demand models (known in New York as bed need) which we feel considers many other important influencers to determine today and tomorrow’s needs, should be reviewed. In addition to looking at demographics (which is the traditional approach), it also considers the wealth of the community, the workforce availability, the financial commitment (or

lack there of) to alternative long term care services, and also the pattern of practices of the major referral sources to nursing homes.

We are aware that this model is being examined in Western New York and we would suggest that that experience may well be beneficial to the entire State.

While we applaud the update to the capital reimbursement limits for replacement of new facilities, we also think it is very important, and of great value, to encourage modernization of existing facilities and revisit those policies which up to this time have discouraged a cost effective approach to meeting today and tomorrow's needs. A discussion must continue in areas of character and competence, management agreements and other areas around governance of operations so that the best and the brightest are encouraged to participate in the leadership of these organizations in the future.

In conclusion, I would like to bring to your attention an attachment from the Kaiser Foundation which shows the nationwide occupancy by state of nursing homes which may lead you to the conclusion that in New York the CON process up to this point has worked quite well and while we might concur it might beg the question, Why was it necessary to have Berger, right-sizing, and the apparent on-going discussion about "voluntarily" giving up beds. Regardless of our opinion of the past, the question we are addressing today is: Will the system serve us well in the future and bring value to those we all serve? Thank you again for giving me this opportunity to share these views with you.