Summary of Proposed Settlement Agreement

The Connecticut Hospital Association et al. v. Connecticut Department of Social Services et al.

December 13, 2019

Melissa McCaw, Secretary
Office of Policy and Management

Background

- November 30, 2015 - Connecticut Hospital Association (CHA) and various hospitals filed petitions for declaratory ruling challenging the first hospital user fee (i.e., user fee in effect from SFY 2012 through SFY 2017)
- Certain hospitals submitted claims for refund to the Department of Revenue Services (DRS), totaling over $1.7 billion
- Certain hospitals appealed many Medicaid rates paid by the Department of Social Services (DSS); hospitals sought retroactive increases for multiple rate periods
- Substantial unbudgeted liability for the state of roughly $4 billion if hospitals were to fully prevail on all legal claims

Background (Continued)

- Proposed agreement:
  - Settles hospital claims
    - avoids risk, uncertainty and expense of ongoing litigation
    - provides predictable, stable revenue and expenditures over term of agreement
  - Advances state/hospital shared goals to:
    - ensure access to health care services for Connecticut residents
    - improve overall health outcomes and patient experience
    - reduce unnecessary costs
  - Requires legislative approval (pursuant to CGS § 3-125a) and implementing legislation

Background – User Fee

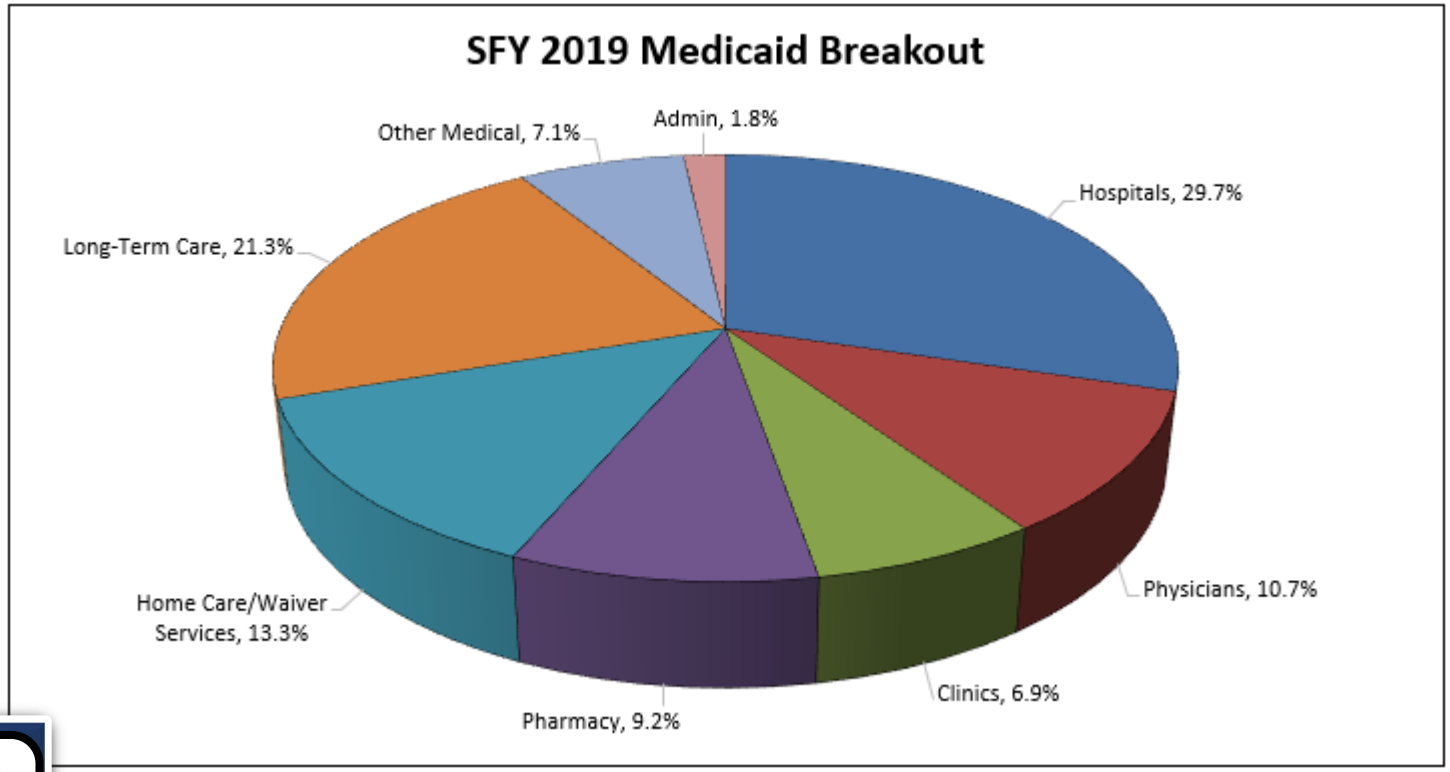
- First hospital user fee (effective July 1, 2011 to June 30, 2017) assessed annually at:
  - $349.1 million for SFYs 2012 - 2015
  - $556.1 million for SFYs 2016 - 2017
- Second hospital user fee (effective July 1, 2017) assessed annually at:
  - $900 million for SFYs 2018 – 2019
  - $384 million for SFY 2020 (per PA 17-4, June Special Session) but revised to $900 million for SFY 2020 and thereafter per PA 19-117
- Specialty, children's, and public hospitals (i.e., UConn Health Center/John Dempsey Hospital) exempt from the hospital user fees

Background – Medicaid Payments

- Medicaid expenditures totaled $6.4 billion in SFY 2019
  - $2.6 billion state share
  - $3.8 billion federal share
- Medicaid payments to all hospitals totaled $2.4 billion in SFY 2019, including federal share of approximately 67%
  - Inpatient: $1,021 million
  - Outpatient: $881.2 million
  - Supplemental Payments: $493.3 million
- SFYs 2018 and 2019 - increase in hospital Medicaid rates and supplemental payments budgeted at $550.9 million
  - Inpatient base rate increased 31.65%
  - Outpatient conversion factor increased 6.5%
  - Supplemental payments increased

Background – Medicaid Payments (Continued)

- Hospital payments represent 29.7% of Medicaid account (excluding hospital supplemental payments) - largest of any provider type



Fiscal Impact Mitigated – PA 17-4, June Special Session

- Prior to the 2019 legislative session, the state would have faced a $400 million budget impact in SFY 2020

Net Impact of Hospital Financing Based on Current Statute

	FY 2019	FY 2020	Difference	
Revenue				
Hospital User Fee	$900.0	$384.0	($516.0)	General Fund Revenue - Health Provider Tax
Revenue from Supplemental Payments	330.9	111.0	(219.9)	Federal Grants Revenue
Revenue on Rate Payments	116.7	116.7	-	Medicaid - Federal Share
	$1,347.6	$611.7	($735.9)	
Appropriation				
Supplemental Payments	$496.3	$166.5	($329.8)	Total - State and Federal Share
Inpatient/Outpatient Rate Increases	175.1	175.1	-	Medicaid - State Share
	$671.4	$341.6	($329.8)	
Net State Impact			**($406.1)**	

Settlement Overview

- Seven-year term - SFYs 2020 through 2026
- Hospitals release all legal claims related to user fees and Medicaid payments
- User fee levels, Medicaid rates and supplemental payments set through term of agreement

Financial Terms

- Second hospital user fee phased down to $820 million by SFY 2026
- Medicaid rate increases effective January 1st each year (from 2020 to 2026)
  - 2.0% on inpatient rates
  - 2.2% on most outpatient rates
- Supplemental Payments
  - $548.3 million SFYs 2020 and 2021
  - $568.3 million for SFYs 2022 through 2026
- One-Time Refunds and Payments
  - $70 million in one-time user fee refunds
  - $9.3 million in one-time Medicaid payments
- Other Payment Changes
  - Medicare wage index values for inpatient/outpatient rate setting modified and held constant through SFY 2026, with other adjustments designed to ensure budget neutrality

Settlement Funding for Biennium

- State and hospital impact each SFY is shown below, including new state costs above SFY 2019 baseline and SFY 2020 enacted budget
  - Requires $180.7 million in resources over the biennium
    - $160 million transferred from SFY 2019 and an additional $20.7 million from unappropriated General Fund resources in SFY 2020 pursuant to PA 19-117, section 50

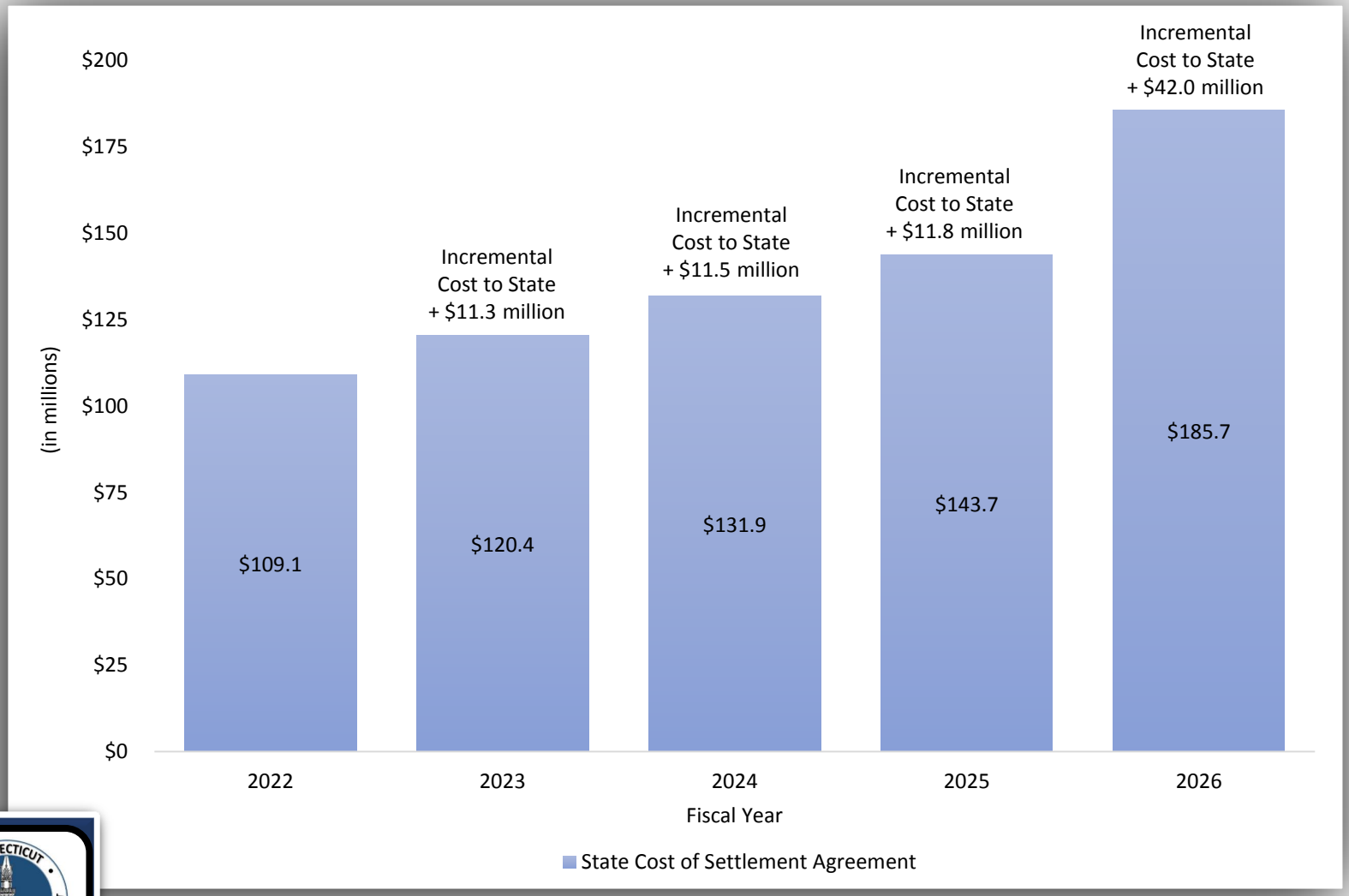
SETTLEMENT AGREEMENT - FINANCIAL SUMMARY *(in millions)*

		Enacted	Settlement Agreement						
	SFY 2019	SFY 2020	SFY 2020	SFY 2021	SFY 2022	SFY 2023	SFY 2024	SFY 2025	SFY 2026
Hospital User Fee	$900.0	$900.0	$890.0	$882.0	$850.0	$850.0	$850.0	$850.0	$820.0
Supplemental Payments	493.3	453.3	548.3	548.3	568.3	568.3	568.3	568.3	568.3
Projection of Hospital Rate Increase	175.1	175.1	180.7	202.7	235.9	269.7	304.3	339.5	375.4
One-Time Payments to Certain Hospitals			9.3	-	-	-	-	-	-
User Fee Refunds			70.0	-	-	-	-	-	-
Net Hospital Position	($231.6)	($271.6)	($81.7)	($131.0)	($45.8)	($12.0)	$22.6	$57.8	$123.7

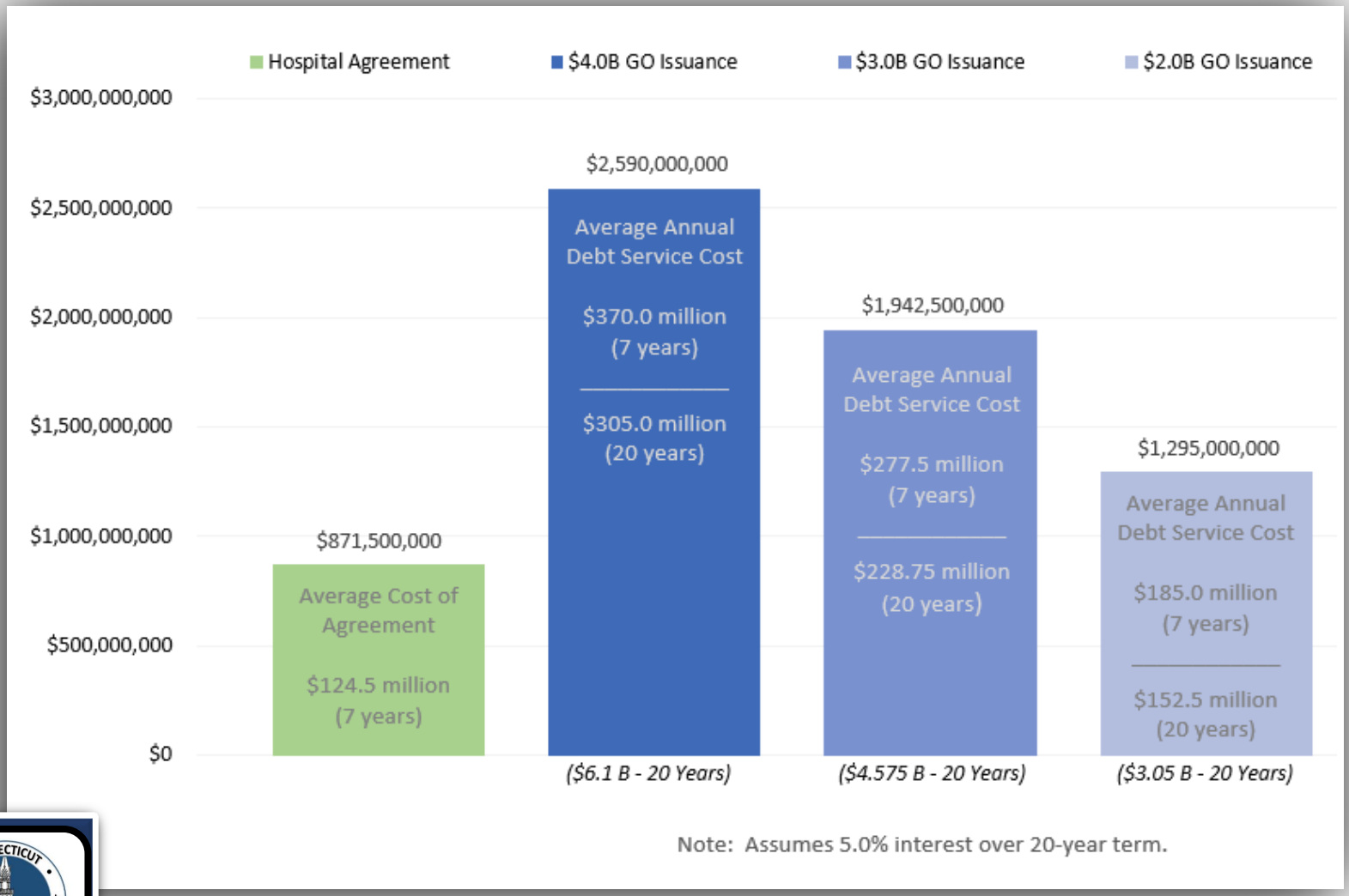
								Cumulative Total
State Impact (from SFY 2019)	($107.9)	($46.0)	($95.7)	($107.0)	($118.5)	($130.3)	($172.3)	($777.7)
Hospital Impact (from SFY 2019)	149.9	$100.6	185.8	219.6	254.2	289.4	355.3	1,554.8
State Impact (from SFY 2020 enacted budget)	($121.3)	($59.4)	($109.1)	($120.4)	($131.9)	($143.7)	($185.7)	($871.5)
Hospital Impact (from SFY 2020 enacted budget)	189.9	$140.6	225.8	259.6	294.2	329.4	395.3	1,834.8

- Medicaid payments to all hospitals totaled $2.396 billion in SFY 2019.
- Funding to cover state costs of $180.7 million in current biennium available pursuant to PA 19-117.
- Estimates above assume 66.6% federal reimbursement on hospital payments.
- Estimates above assume no enrollment/utilization increases after SFY 2021.

Incremental Costs of the Agreement to the State After the Current Biennium



Seven-Year Cost – Hospital Agreement Compared to Debt Issuance



Limitation on Taxation of Hospitals

- Through term of agreement:
  - Any new tax the state imposes may not generate more than 15% of revenue from hospitals
  - Any amendment to a tax may not generate more than 15% of revenue from hospitals
  - No changes to hospitals' current tax exemptions including:
    - Municipal property taxes
    - Corporation business tax
    - Sales and use taxes
    - Motor vehicle fuels tax

Limitation on Changes to Hospital Medicaid Payments

- Through term of agreement, Medicaid hospital payment methodology cannot be reduced or restructured, except as specifically authorized by the agreement
  - Restriction applies to all Medicaid hospital payments
    - Inpatient and outpatient rates
    - Supplemental payment amounts and distribution

Mitigating Unanticipated State Costs Due to Federal Actions

- Contingency to protect state's financial interests if there are unanticipated state costs due to federal actions that occur during the term of the agreement
- Federal actions that could result in increased costs:
  - Federal upper payment limit (prohibits federal reimbursement if Medicaid payments are above what Medicare would have paid)
  - Repeal, modification, or invalidation of Affordable Care Act
  - Changes in federal law regarding provider payments, reimbursement rates, provider taxes, etc.

Steps to Mitigate Unanticipated State Costs Due to Federal Actions

- State can negotiate with hospitals for mutually agreed adjustments at any level and at any time
  - If hospitals do not agree to adjustments, state costs could increase up to $50 million per year beyond costs assumed in the agreement
- State can ask court to modify agreement only for increases in state costs of between $50 million and $100 million in any SFY
- State can terminate agreement if increase in state costs exceeds $100 million in any SFY
  - If state terminates, hospitals can reinstate their legal claims, reduced by a calculated percentage depending on when the termination occurs

Value-Based Payments

- DSS prohibited from implementing mandatory downside risk in Medicaid hospital payments for term of agreement
  - Expansive definition of downside risk
  - No quality withholds or penalties
  - No penalties for expenditures above aggregate cost or utilization targets
- DSS may implement upside-only Medicaid hospital value-based payment initiatives beginning in SFY 2023
- Hospitals may voluntarily choose to participate in DSS payment reform initiatives

Required Legislative Changes

- Consistent with the agreement, proposed legislation:
  - Revises second hospital user fee amounts and base year
  - Limits taxation on hospitals
  - Waives state's sovereign immunity and establishes court's jurisdiction to enforce settlement agreement
  - Provides contingencies for user fee, supplemental payments and rate increases if federal approvals are not received
  - Incorporates annual hospital rate increases
  - Updates hospital supplemental payment amounts
  - Updates appropriations and revenue schedules

Timing

- "First Effective Date" occurs after:
  - All parties have signed agreement;
  - Agreement is approved or deemed approved by the General Assembly; and
  - Implementing legislation is enacted by the General Assembly and signed by the Governor
- After First Effective Date, DSS submits revised/new Medicaid state plan amendments and tax waiver necessary to implement agreement
- If CMS approvals are denied/otherwise not received by June 30, 2020 (or later if agreed to by the Parties), state and hospitals will discuss next steps
- If parties are unable to reach agreement, then agreement automatically terminates on July 30, 2020 (or other applicable date) unless parties extend timeframe by mutual agreement

Timing (Continued)

- "Second Effective Date" occurs after:
  - All necessary federal approvals are received; and
  - Superior Court has entered the agreement as an order of the Court
- After Second Effective Date:
  - DRS issues first hospital user fee refunds
  - DSS makes one-time payments
  - Hospitals and CHA release all legal claims against first and second hospital user fees and Medicaid hospital payments

Enforcement

- Court retains jurisdiction to enforce agreement
- Either the state or the hospitals can seek a court order to enforce agreement

Conclusion

- Proposed settlement:
  - Resolves hospital litigation and administrative claims in which the hospitals were seeking payments from the state totaling approximately $4 billion
  - Protects our rainy day fund
  - Mitigates up to $370 million in average annual debt service
  - Mitigates the $400 million net revenue loss under PA 17-4, June Special Session
  - Maintains revenue stability for seven-year term of agreement
  - Resets the working relationship between the state and the hospitals

Hospital Settlement Agreement

Questions …