

Summary of Legislative Budget Bills

The Assembly and Senate released their one-house budget proposals over the weekend. The results are a mixed bag for aging services providers. LeadingAge NY staff and our Counsel, Hinman Struab have reviewed the bills and have highlighted below the legislative majorities' budget modifications that are of most concern to long term and post-acute care providers, beginning with an update on the major initiatives on which our members have been advocating.

The Legislature will begin passing their budget resolutions and bills today and then move immediately into joint budget conference committees. There is a lot of work to be done in the weeks ahead to ensure that the final enacted budget does not place undue harm on long term and post-acute care providers and the consumers for whom they provide care. Keep an eye out for upcoming advocacy alerts and continue to advocate to your lawmakers with the use of our [on-line advocacy tools](#).

Minimum Wage: The Assembly modifies the Executive's minimum wage proposal by requiring the Commissioner of Labor to increase the current minimum wage rate by the rate of inflation each year after it has reached \$15. The Assembly also includes \$200 million for a minimum wage reserve fund to assist health and services providers in covering the increased wage costs. The Senate rejects the minimum wage increase in its entirety.

SSI Increase: The Assembly proposal does not include an increase in SSI Congregate Care Level 3 for adult care facility (ACF) residents. The Senate proposal includes an increase of the state portion of the SSI benefit, which amounts to approximately \$7.50 per day. The increase would be phased in incrementally over three years. If enacted, the first increase would occur on April 1, 2016.

Electronic Prescriptions: The Senate budget proposes to modify existing requirements for electronic prescriptions by: (1) allowing non-electronic prescriptions to be made through the long-established mechanism of oral prescriptions being submitted by nursing homes for their residents (a proposal advanced by LeadingAge NY); and (2) establish an exemption process for a prescriber that certifies to DOH that they prescribe 25 or less prescriptions annually. The Assembly does not include such a provision.

Transportation Carve-Out: Both houses rejected the Governor's proposal to carve transportation out of the managed long term care (MLTC) benefit package as well as the adult day health care (ADHC) and nursing home rates. The Senate further requires the DOH to perform an annual review and report to legislature of state contracted transportation managers' activities. LeadingAge NY is very pleased that the Legislature has rejected the governor's proposal, but we will need to advocate for slight modifications to the language to ensure they fully protect nursing home transportation.

Senior Housing Investment: The Assembly proposes \$150 million over five years, \$30 million per year, for a senior affordable housing program, modeled after the NYS Housing Trust Fund. LeadingAge NY had advocated for a portion of housing funds to be specifically dedicated to seniors. The Senate does not contain such a provision.

Capital Investment

- **Health Care Facility Transformation Program:** Both houses reinstate the Oneida County program.
 - **The Assembly:** Adds \$200 million in new funding for Executive's Health Care Transformation Program; Adds \$25 million to essential community health care provider fund, limits eligibility to diagnostic and treatment centers (D&TCs), Article 31 and Article 32 clinics, primary care providers, and home care providers;
 - **The Senate:** Adds new "statewide health facility transformation program" to support debt retirement, capital projects or non-capital projects that facilitate health care transformation, with 25% of funds going to community based providers; and reappropriates \$300 million from 2015-16 budget allocated for Oneida County to support health care facility transformation; eligible applicants include general hospitals, residential health care facilities, D&TCs, Article 31 and Article 32 clinics, primary care providers, and home care providers. Funds may be used for capital projects or non-capital projects that facilitate health care transformation.
- **Health Care Facility Private Equity Demonstration Program:** The Senate directs DOH and DASNY to study the efficacy of establishing public-private partnerships for a health care facility infrastructure development demonstration program designed to effectuate capital projects that facilitate health care transformation.
- **Essential Community Health Care Provider Fund:** The Assembly includes \$25 million to the essential community health care provider fund, eligibility is limited to D&TCs, Article 31 and Article 32 clinics, primary care providers, and home care providers.
- **Business Corporation Capital Investment:** The Senate proposes to allow the public health council (PHHPC) to approve the establishment of up to 10 business corporations as the operator of a hospital or home care agency in affiliation with at least one academic medical institution. The proposal specifically provides that publicly traded entities would not be eligible to participate in the pilot program.
- **Nonprofit Infrastructure Capital Investment Program:** The Assembly proposes to establish the program in statute and creates a board that serves to approve applications received from non-profit human services organizations for grants under the program. The Assembly further includes a reappropriation of \$50 million in funding for the program from 2015-16 and allocates an additional \$50 million in new funding for the program.

General Medicare Provisions

- Both houses reject the Executive's proposed limits on the amount Medicaid would pay for Medicare Part C co-insurance to the amount Medicaid would have paid if it was the primary payer minus the amount Medicare Part C already paid for the service.

- The Senate budget includes a Medicaid Redesign accountability process that would require DOH to establish a process to review and report on each phase of the Medicaid Redesign Team (MRT), review of each MRT initiative would occur at least every five years, and require an annual review and report of the MRT phase to the Legislature.

Elder Abuse Prevention Provisions

- **Elder Abuse and Maltreatment Screening:** The Senate proposes the establishment of and elder abuse and maltreatment screening process, requiring the Commissioner of health to develop a screening tool to identify elder abuse. The tool would provide physicians, physician assistants and nurse practitioners with questions, interventions and resources to address potential abuse and maltreatment among their patients.
- **Elder Abuse Reporting:** The Senate proposes that the Commissioner of health establish a program for the development of a multidisciplinary investigative team or teams to investigate reports of suspected elder abuse or maltreatment.
- **Banking Protections:** The Senate proposes language authorizing a banking institution to refuse to disburse funds if the bank, social service official or law enforcement agency reasonably believes that an adult is a victim of financial exploitation.

Adult Care Facility/Assisted Living Provisions

- **EQUAL:** Both the Senate and Assembly proposals include language that would enable ACFs to expend EQUAL funds within the fiscal year for which the funds are appropriated. The language would allow some flexibility to financially support initiatives that the ACF may have initiated prior to the EQUAL funds being distributed; if consistent with the goals of the EQUAL program and the desires of the Resident Council. LeadingAge NY worked to get this provision passed in legislation last year, but the Governor ultimately vetoed the bill.

MLTC/PACE Provisions

- **Encounter Data Penalties:** The Senate and Assembly both accepted the encounter data penalties proposed by the Governor, but both incorporated exemptions from penalties for good faith efforts or defects beyond the control of the plan, as requested by LeadingAge NY.
- **Rate Relief:** The Assembly included provisions requiring appropriate rate adjustments for increases in costs due to wage requirements, compliance with state and federal requirements, quality programs, and other changes in policies; but did not include our specific request for \$90M in rate relief for MLTC/PACE plans.
- **NHLOC Limitation:** The Senate rejected the Governor's proposal to restrict MLTC enrollment to beneficiaries who require a nursing home level of care. The Assembly bill includes a provision that appears to require continuation of MLTC coverage for community level of care beneficiaries who could not obtain similar services outside of MLTC.
- **TBI/NHTD Transition to Managed Care:** The Senate bill would exempt beneficiaries in the Traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs from managed care enrollment. The Assembly bill would require plans

to provide a level of services for the TBI and NHTD Waiver populations substantially comparable to that offered under the waivers.

HCBS Provisions

- **Fiscal Intermediaries:** The Assembly proposes to require all entities performing "fiscal intermediary services" to become licensed by DOH, and prohibits Article 44 managed care plans from becoming licensed as fiscal intermediaries.
- **TBI/NHTD Transition:** The Senate bill would exempt beneficiaries in the TBI and NHTD waiver programs from managed care enrollment. The Assembly bill would require plans to provide a level of services for the TBI and NHTD Waiver populations substantially comparable to that offered under the waivers.
- **NORC/NNORC Program:** The Senate and Assembly both modify the Naturally Occurring Retirement Community (NORC) and Neighborhood NORC (NNORC) programs. The Assembly proposal follows the Cymbrowitz bill that would significantly modernize the NORC/NNORC programs by changing the criteria to be a NORC/NNORC; including decreasing the percentage of units with an older person to 40 percent in a NORC, and to 30 percent in the NNORC. The Assembly also includes an additional \$2 million to expand the program. The Senate provides that programs established and providing services as of March 1, 2016 are not subject to provisions requiring that at least fifty percent of the units have an occupant who is an older adult or at least 2500 of the residents who are older adults, until June 30, 2017. The Senate further requires a report on the effectiveness of the program before Jan. 1, 2017
- **Home Care Wage Parity:** The Assembly proposes that cash wages paid pursuant to increases in the minimum wage cannot be used to satisfy the benefit portion of the minimum rate of home care aid total compensation. In addition, the proposal requires that the cash portion of the minimum rate of home care aid compensation be \$10 or the minimum wage rate, whichever is higher, and the benefit portion shall be \$4.09 for NYC and \$3.22 for other areas subject to wage parity.
- **CHHA-EPS:** The Assembly proposal includes a requirement that the CHHA base year episodic payments be based on Medicaid claims for services in a base year prior to 2009 and that rates must reflect additional costs, including: compensation necessary for recruitment and retention of direct care and support staff in compliance with minimum wage and overtime benefits; compliance with federal Conditions of Participation; quality assurance and improvement programs of providers and MLTCs; and other costs incurred for participating in the Delivery System Reform Incentive Payment (DSRIP) program, the Fully Integrated Duals Advantage (FIDA) program, value based payment models and other state Medicaid reform initiatives.

Nursing Home Provisions

- **Pediatric Ventilator Payment Rates:** The Senate proposes DOH adjust the rate for physical medical rehabilitation services for the purpose of reimbursing pediatric ventilator services.
- **Restorative Care Unit Demo:** The Senate proposes that DOH implement a program to reduce hospital admissions and readmissions from nursing homes through the

establishment of restorative care units, which would provide higher-intensity treatment services for residents. A nursing home seeking to establish a unit must contract with an eligible entity that has experience in implementing a similar type of program.

- **Complex Needs Patient Study:** The Assembly proposes that DOH study and report to the legislature by December 31, 2017 on the need for and feasibility of repatriation of complex-needs patients placed in out-of-state facilities.

Miscellaneous

- **Paid Family Leave:** The Senate accepts and the Assembly only slightly modifies the Governor's Paid Family Leave proposal. The Assembly adds "family care" and provides an employer/employee opt-in provision.
- **LTC Insurance:** The Senate proposes a tax credit for long term care insurance premiums: 20% of the premium paid unless the premium increased during the taxable year and then the credit will be 25% of the premium paid during that taxable year.

You can read the Assembly's summary of their budget here:

<http://www.assembly.state.ny.us/Reports/WAM/20160314/>

You can read the Senate's summary of their budget here:

<http://wallaby.telicon.com/NY/library/2016/20160314ZQ.PDF>