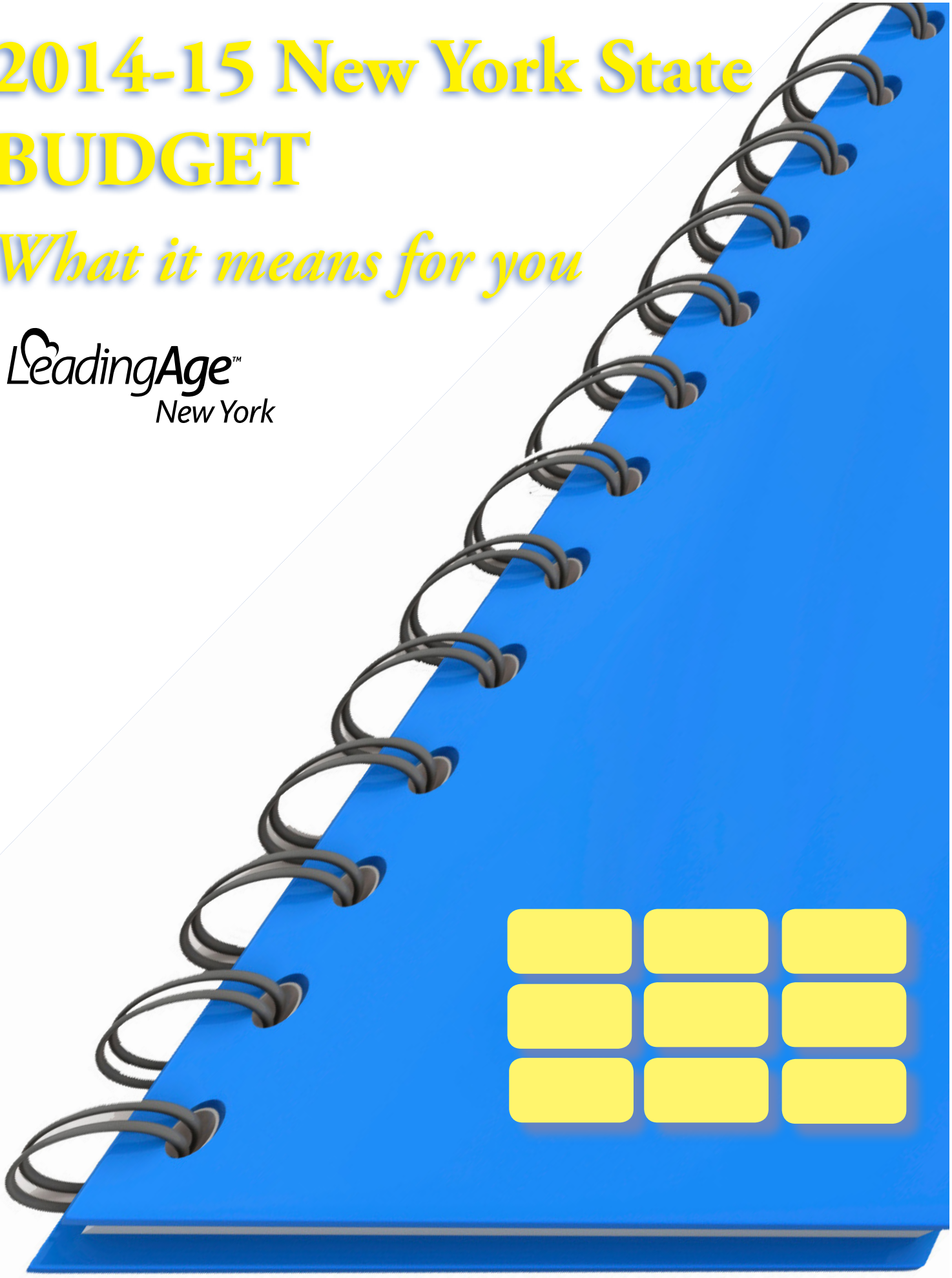
# 2014-15 New York State BUDGET

## *What it means for you*

LeadingAge™ New York



# Overview

## *Final Budget for State Fiscal Year 2014-15*

The final budget for State Fiscal Year (SFY) 2014-15, which is effective for the period April 1, 2014 through March 31, 2015, was enacted into law on March 31, 2014. The $138 billion plan increases overall spending by 1.3 percent, the fourth consecutive year of 2 percent or less growth.

LeadingAge New York worked on several issues during the budget and was able to advance key objectives, secure revisions to some budget proposals and successfully oppose other proposals that would have adversely affected members, the people they serve and the services they provide.

The balance of this overview section summarizes areas of the budget that affect multiple long term care, post-acute and senior service lines.

## *Medicaid Global Spending*

The final budget extends through March 31, 2016 authorization for both the Medicaid global spending cap and the "super-powers" granted to the Commissioner of Health to reduce spending if expenditures exceed projections. The global cap limits growth in Department of Health (DOH) State Funds Medicaid spending to the 10-year rolling average of the medical component of the Consumer Price Index, currently estimated at 3.8 percent for SFY 2014-15 and 3.6 percent for SFY 2015-16. As a result, the global spending cap is increased from $16.4 billion in SFY 2013-14 to $17.1 billion in SFY 2014-15, and $17.9 billion in SFY 2015-16.

Under the global cap, DOH and the Division of the Budget (DOB) continue to monitor monthly State Medicaid spending. If spending is projected to exceed the global cap, DOH is authorized to take unilateral action to reduce spending to remain within the cap. This authority is now extended through SFY 2015-16.

The final 2014-15 budget adds several State agency reporting requirements on the global cap. At the time the Executive Budget is presented, DOH/DOB must provide a detailed accounting of global cap spending and savings in the prior year; a re-estimate of the current year spending; and the two-year spending estimate. On an ongoing basis beginning July 2014, DOH is required to publicly provide more detailed information on rates and utilization, including projected enrollment changes, and a description of the impact of Medicaid Redesign Team (MRT) initiatives on various spending categories.

The budget legislation also establishes a program to share savings from the global cap with providers and managed care plans. Under this program, DOH and DOB will review Medicaid spending prior to the start of each calendar year (beginning Jan. 1, 2015) to determine whether actual spending is below the global cap projection. If there are savings available for distribution, 50 percent or more would be distributed proportionally in the first quarter of the calendar year based on the claims and encounters submitted to Medicaid by each provider and plan during the previous three-year period. The remaining savings, up to 50 percent, would be used to assist financially distressed and critically needed providers as determined by DOH.

The proposed budget reflects the second year of a 3-year phase-out of growth in local share Medicaid expenditures enacted last year. Annual growth in the local share of Medicaid will be capped at 1 percent in SFY 2014-15 and zero in SFY 2015-16. Savings to the counties from the State's takeover of local share growth are estimated at $187 million in SFY 2014-15.

## *Medicaid Trend Factor and Two Percent Across-the-Board Cut*

Under existing law enacted last year, trend (i.e., inflation) factor adjustments to Medicaid reimbursements have been eliminated through March 31, 2015. This trend factor freeze affects hospitals, nursing homes (except for pediatric facilities), Adult Day Health Care (ADHC) programs, Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), personal care providers, Assisted Living Programs (ALPs), hospices and clinics.

Effective March 31, 2014, the final budget eliminates the 2 percent across-the-board cut to all Medicaid service sectors that has been in effect since April 1, 2011. However, various provider sectors including nursing homes, ADHC programs, LTHHCPs and ALPs agreed in prior years to alternative savings mechanisms (i.e., increased provider taxes for nursing homes/ADHC/LTHHCPs and reductions in State-only QUIP funding for ALPs) to the 2 percent Medicaid cut. The final budget authorizes these alternative mechanisms to be continued on or after April 1, 2014. DOH has raised the possibility of instituting an add-on to the Medicaid rates for these providers or some other method to make them whole in the event one or more of the alternative mechanisms are continued. More information is expected in the near future.

## *Vital Access Provider (VAP) Program*

The budget includes legislation authorizing the VAP program in statute for all previously eligible providers (i.e., hospitals, nursing homes, CHHAs and Diagnostic and Treatment Centers (DTCs)). Eligibility for the program is expanded to also include Licensed Home Care Services Agencies (LHCSAs) and consumer directed personal assistance program fiscal intermediaries. A total of $313.4 million was appropriated for the program in SFY 2014-15, which includes re-appropriated funds from SFY 2013-14.

## *Delivery System Reform Incentive Payment (DSRIP) Program*

Although an "agreement in principle" with the Centers for Medicare and Medicaid Services (CMS) concerning the State's long pending Medicaid 1115 waiver application was announced in February, the terms and conditions of the waiver agreement remain under discussion. By all accounts, the **DSRIP program** is expected to be the principal mechanism for reinvestment of $8 billion in Federal Medicaid savings in New York's health care delivery system, under the pending waiver.

The final budget appropriates $4 billion for purposes of making payments authorized by the waiver, contingent on CMS waiver approval. It also includes extensive provisions intended to promote public oversight and transparency of the application process for DSRIP funds and associated MRT initiatives.

Specifically, the budget requires the Commissioner of Health to ensure that the DSRIP program is implemented statewide "to the maximum extent practicable." The budget also creates a DSRIP advisory panel to review and make recommendations on DSRIP applications, as well as applications under the Capital Restructuring Financing Program and other MRT initiatives. The panel is to be comprised of an unspecified number of health care experts, including one member each to be appointed by the Senate majority leader and the Assembly speaker. The budget legislation directs the Commissioner to make quarterly reports to the Legislature concerning DSRIP progress, impact, regulatory waivers, and public input, among other issues. It also authorizes DOH and the Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS) and Office of People with Developmental Disabilities (OPWDD) to waive regulations to permit the efficient implementation of DSRIP projects. Regulations related to patient safety may not be waived and waivers may not extend beyond the life of the project.

## *Capital Restructuring Financing Program*

The final budget includes a modified version of the multi-year $1.2 billion health care capital program proposed by the Governor to support improvements in the financial stability, quality and efficiency of health care providers. The program will be jointly administered by DOH and the Dormitory Authority of the State of New York (DASNY).

LeadingAge NY was able to secure an expansion in the scope of the original proposal to make capital grants available to ALPs and home care agencies, as well as hospitals, nursing homes and clinics. Projects eligible for grants include, but are not limited to: closures, mergers, restructuring, improvements to infrastructure, development of primary care service capacity, development of telehealth infrastructure and the promotion of integrated delivery systems that strengthen access to essential health care services. LeadingAge NY's advocacy led to the language explicitly authorizing grants for the development of telehealth infrastructure, in addition to other infrastructure improvements.

Applications for funding will be reviewed by DOH and the DSRIP advisory panel (see DSRIP discussion above). Under the final budget, grants will be available to providers that receive DSRIP awards, as well as those that do not. In addition, the criteria for awarding grants include statewide distribution of funds.

## *Other Capital Programs*

Other capital programs of possible interest to members include the following:

- **Health Care Facility Restructuring Program:** This existing program is expanded to permit loans to not-for-profit nursing homes, not-for-profit diagnostic and treatment centers and any other not-for-profit facility licensed under Article 28 of the Public Health Law. The program is currently limited to providing loans to acute care hospitals.
- **Private Equity Demonstration Program:** The final budget **rejects** the Executive Budget proposal to authorize a "pilot program" under which up to five business corporations with private equity ownership would be established as health care facility operators. LeadingAge NY had expressed concerns about this proposal.
- **Elimination of fees for DASNY borrowings:** The final budget eliminates the bond fee imposed when a health care project is financed or refinanced through the issuance of DASNY bonds.

## *Health Information Technology Infrastructure*

The final budget accepts and modifies the Executive Budget's health Information Technology (IT) proposals, appropriating a total of $75 million as follows:

- $55 million to support the State Health Information Network of New York (SHIN-NY) – an electronic health information super-highway to permit the sharing of health information among health care providers across the State;
- $10 million for the All Payer Claims Database (APD), which will serve as a repository for health care utilization and spending data that can be used to evaluate the performance of the health care delivery system; and
- $10 million for DOH IT needs.

The budget legislation establishes a work group charged with evaluating and issuing a report on the State's health information technology infrastructure, including the APD, the SPARCS, regional health information organizations (RHIOs), the SHIN-NY and medical assistance eligibility systems.

The SHIN-NY and the APD will be funded through covered lives assessment revenue collected from health insurers. While the collection target for the assessment will remain $1.045 billion, reconciliation of collections will be suspended, so that up to $65 million expected to be generated through growth in health plan enrollment can be allocated to these health IT programs.

## *Pay for Success Program*

The final budget increases funding for the Pay for Success initiative (also known as "Social Impact Bonds") from $30 million in the SFY 2013-14 budget to $53 million in the SFY 2014-15 budget. The Governor proposed a $125 million appropriation. Under this program, a service provider partners with an intermediary to raise operating funds to support an evidence-based, cost-effective program. The government will repay third-party investors that provide the operating funds for the program, only if agreed-upon outcomes are achieved and verified by an independent evaluator. The policy domains targeted by the program to date include early childhood development and child welfare, health care, public safety and homelessness. This program may offer an innovative approach for funding services for seniors.

## *Certificate of Need and Health Planning*

The budget agreement **rejects** the Governor's proposed changes to Certificate of Need (CON) requirements and new funding to establish regional health improvement collaboratives to support health planning activities.

Specifically, the final budget does not include the elimination of public need review for certain hospital and primary care construction projects, the reduction of the character and competence look-back period and broader discretion for the Public Health and Health Planning Council to approve proposed health care facility operators that have experienced repeated deficiencies that are not attributable to any action or inaction of the applicant. In addition, the budget excludes the proposal to align the transfer of ownership processes for limited liability companies and business corporations under Article 28 and a technical clarification of the home care transfer of ownership requirements.

The final budget eliminates the proposed funding for regional health improvement collaboratives and instead invests $9 million in population health improvement (Note: we are told that a $9 million appropriation for regional health improvement collaboratives appearing in the appropriations bill is an error that will be corrected). The budget does, however, provide $2.5 million for the Finger Lakes Health Systems Agency to engage in regional planning and statewide coordination and demonstration of best practices for regional health planning.

## *Medicaid Eligibility*

The final budget addresses several provisions related to Medicaid eligibility and associated processes:

- **Spousal support:** The Governor's proposal to eliminate "spousal refusal" was **rejected**. Spousal refusal refers to the ability to qualify for Medicaid based on the refusal of a cohabiting spouse to support the applicant for Medicaid.
- **MAGI spend-down:** Applicants with excess income are authorized to spend-down to the Modified Adjusted Gross Income (MAGI) equivalent of the applicable income standard.
- **Presumptive eligibility:** Presumptive eligibility for Medicaid is expanded through determinations of eligibility for MAGI populations by qualified hospitals consistent with the Affordable Care Act.
- **Integrated eligibility system:** The State is permitted to enter into a non-competitive contract for the purpose of implementing an integrated eligibility system covering Medicaid and human services programs, subject to the availability of enhanced Federal financial participation.
- **Eligibility integrity:** DOH is authorized to enter into a non-competitive contract to review the accuracy of determinations of eligibility and eliminate duplicative benefits.
- **Medicaid liens and estate recoveries:** The final budget includes two Medicaid recovery provisions that were not in the Executive Budget. The first is in response to recent Federal guidance on implementing MAGI eligibility. It limits recoveries from the estates of MAGI-eligible beneficiaries, age 55 or older at the time they receive Medicaid, to amounts expended for nursing home services, home and community-based services, hospital services and prescription drugs. The second provision modifies the authority to impose liens on the property of certain individuals permanently placed in nursing homes and intermediate care facilities.

## *Basic Health Program*

The final budget authorizes the implementation of the Basic Health Program (BHP) option created under the Affordable Care Act, if it is "in the financial interest of the state." This option would make available more affordable health coverage to certain low-income adults, while enabling the state to draw down additional Federal funds. Further details follow:

- **Eligibility:** The BHP would be available to adults under age 65 with income between 133 percent and 200 percent of the federal poverty level (FPL) who are not eligible for Medicaid or Child Health Plus. In addition, certain lawfully-present immigrants with income below 200 percent of the FPL would be eligible for the BHP.
- **Non-citizens:** Certain lawfully-present immigrants, who are not qualified for Federally-funded Medicaid due to their immigration status and/or period of residency in the United States, would no longer be eligible for

traditional Medicaid and would be covered through the BHP. However, as described below, non-federally-qualified immigrants with income at or below the Medicaid threshold would receive the full range of Medicaid benefits.

- **Scope of benefits:** The scope of benefits under the BHP is unclear at this time. It appears that immigrants who are income-eligible for Medicaid would be eligible for the full range of traditional Medicaid benefits and retroactive coverage. However, individuals with higher incomes would be ineligible for retroactive coverage and might receive a more limited benefit package. LeadingAge NY is exploring this issue further.
- **Cost-sharing:** Coverage would be free for enrollees with income at or below 150 percent of the FPL; those with income above 150 percent of the FPL would be required to pay $20 per month. Co-payments for services would be established by DOH.

## *Prescription Drugs*

The final budget **rejects** the Executive Budget proposals to modify the "prescriber prevails" provision governing Medicaid prescription drug coverage. It also **rejects** the Governor's proposal to require prior authorization of drugs prescribed for an off-label use.

The enacted budget contains the following prescription drug provisions of interest to LeadingAge NY members:

- **Medicaid managed care prescription drug co-payments:** The final budget modifies Medicaid co-payment amounts to permit Medicaid managed care plans to charge a lower ($1) co-payment for preferred brand name drugs on the plans' formularies.
- **Early refills:** The final budget modifies the Governor's proposal by requiring prior authorization of refills sought when more than a 10-day supply should be remaining of the amount previously dispensed.
- **Elderly Pharmaceutical Insurance Program:** The budget expands eligibility for EPIC catastrophic coverage to seniors with income up to $75,000 (singles) and $100,000 (married couples).
- **Outsourcing facilities:** The final budget provides for registration, inspection and regulation of drug compounding outsourcing facilities, consistent with federal law.

## *Miscellaneous Provisions*

The final SFY 2014-15 budget includes the following additional provisions which may impact multiple service lines:

- **NY Connects:** Any health care provider making a recommendation or referral for long-term care must provide the patient with contact information for NY Connects in the appropriate county.
- **Disability clinician advisory group:** The Commissioner of Health is authorized to establish a disability advisory group of experienced clinicians and clinic administrators, who have an understanding of the comprehensive needs of people with disabilities, to advise on the effects of policies on the delivery of supports and services for such individuals.
- **Nurse practitioners:** Nurse practitioners with more than 3,600 hours of experience are permitted to practice without a collaborative agreement with a physician. Instead, the nurse practitioner must have a "collaborative relationship" with a physician who is board certified in the same specialty.
- **Rural dentistry program:** A mobile dentistry pilot program is created in Cattaraugus, Chautauqua and Allegany Counties.
- **Health Care Reform Act (HCRA):** HCRA provisions are extended by three years to December 31, 2017. These provisions include workforce recruitment and retention funding programs and assessment taxes on various services.

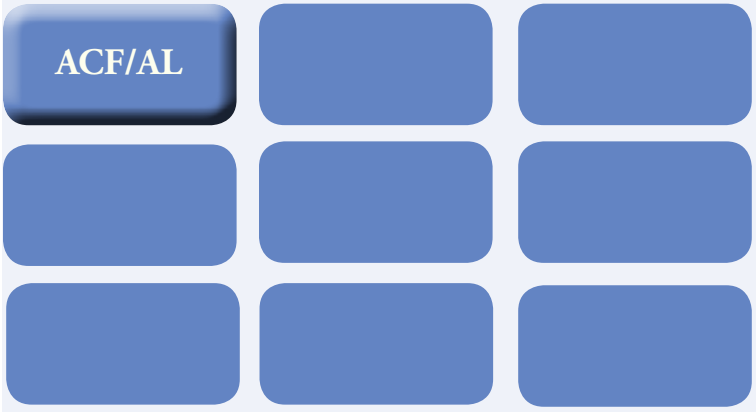
## *Organization of this Report*

The remainder of this LeadingAge NY report on the final SFY 2014-15 State budget includes an analysis of the budget outcomes for each major service line, followed by a summary table comparing the Executive Budget to the final budget by major functional area.

# Provider-Specific Summaries of Budget Provisions

Click on the links below for a complete analysis of these areas of the budget.

| | | |
|---|---|---|
| ACF/AL | Adult Day Health Care | Community-Based Services |
| Home Care | Managed Long Term Care/ Managed Care | Nursing Homes |
| Senior Housing | Summary | Contact LeadingAge New York |






SFY 2014-15 Final State Budget

## Adult Care Facilities and Assisted Living

LeadingAge NY Adult Care Facilities (ACFs) and assisted living members will see a variety of policy reforms that will expedite processes, provide more flexibility and improve quality care. Most funding is kept at the same level as last year, and we were successful in ensuring that prior year's funds were reappropriated. We also succeeded in getting assisted living programs access to potential capital funding opportunities.

### *Adult Care Facility Issues*

- **Quality funding:** The Enhancing the Quality of Adult Living (EQUAL) quality program for ACFs is funded at $6.5 million, the same level as last year. EQUAL funding is available to adult homes and enriched housing programs that serve recipients of Supplemental Security Income (SSI) or Safety Net Assistance benefits, including Assisted Living Programs (ALPs) and Assisted Living Residences (ALRs). It has been distributed based on a formula developed by DOH, based on the number of people in receipt of the aforementioned benefits, as well as the size of the facility.
- **SSI enriched housing subsidy:** The SSI Enriched Housing Subsidy is also funded at approximately the same level as last year, at $475,000. The program pays $115 per month per SSI recipient to certified operators of not-for-profit certified enriched housing programs.
- **Past year's re-appropriations:** LeadingAge NY has been persistent in advocating to ensure that ACFs receive past money that is owed to them through prior budget negotiations. We were successful in getting all of the past re-appropriations in the Executive proposal in the final budget agreement, *and the Legislature added additional re-appropriations* which were outstanding. We will work to ensure that these past funds are distributed in this calendar year. Below is a summary:
  - ◊ EQUAL funding from the 2012-13 budget was reappropriated in full at $6.5 million, as well as $6.5 million for 2010-11 and $52,000 from 2011-12.
  - ◊ Enhancing Abilities and Life Experience Program (EnAbLE) funding for air conditioners from 2009-10 was reappropriated at $1.347 million, reduced from $1.353 million. The Legislature also added an additional $7 million in additional past EnAbLE funds, including funding for the purchase of generators.
  - ◊ Quality Incentive Payment program (QUIP) funding from 2009-10 was reappropriated at $164,000, reduced from $2,068,000.
  - ◊ The Enriched Housing Subsidy funding from the laws of 2009 reappropriated $474,900, as well as some smaller amounts ($3,000 and $27,000) from 2011.

- **Criminal history record check:** The budget language requires that ACFs conduct criminal history record checks (CHRCs) for prospective employees, and be reimbursed for conducting these checks, in the same manner as home care and nursing homes. $2 million is appropriated for CHRC, with an additional $1.3 million for expenses related to the ACF program. Unfortunately, the language puts this requirement into effect **immediately**. We are exploring whether the implementation of the program can be pushed back, and/or how we can work with DOH to get necessary information to ACFs as soon as possible.

## *Streamlining Application and Related Processes for ACFs, ALRs and ALPs*

In 2013, DOH convened a work group to streamline the application process for ACFs, ALRs and ALPs. LeadingAge NY is an active participant in the process, which generated several recommendations to help eliminate unnecessary aspects and otherwise expedite processes. The group's recommendations include a consolidated application, which should be available shortly. The following are those recommendations that required legislative action:

- **Respite and day programs in ACFs:** The final budget language includes the Governor's proposal to allow ACFs to provide respite through a simpler process of notification to DOH, as opposed to an application. The allowable respite stay in an ACF is extended from six weeks to 120 days within a twelve month period. In addition, language extends the legislation authorizing both respite and day programs in ACFs for another three years, as that authority was due to expire this year.
- **Expedited review:** The final budget includes the Executive proposal to enable enhanced or special needs ALRs the opportunity to access an expedited review process when expanding their program by nine beds or less; however it adds Assembly language requiring that the facility must be in good standing under section 4653 of the public health law to avail themselves of the opportunity. Currently, DOH allows such a process for up to five beds. It should be noted that this is likely to be available only under certain circumstances. The opportunity would not apply, for example, if the expansion required significant construction.
- **Expediting processes:** The final budget includes the Executive Budget proposal for an expedited approval process to be available for transfers of ownership of less than 10 percent and for conversions of business organizations for ACFs and ALRs. While this does not relate directly to our members, such transfers required a full application for establishment to DOH. We have been supportive of processes that facilitate the movement of applications under review by DOH.
- **Character and competence:** The final budget language **excludes** the Executive Budget proposal to reduce the character and competence look back period for established applicants from 10 years to seven years.

## *Assisted Living Program Issues*

- **Two percent cut:** The final budget restores the 2 percent across-the-board cut to Medicaid rates effective April 1, 2014, while maintaining the authority to continue alternative cost containment arrangements that were made in lieu of the 2 percent cut. As you may recall, LeadingAge NY worked with DOH and other stakeholders to take the needed State savings from ALP EQUAL payments, as this halved the negative financial impact on providers. We will work with DOH to ensure this cut is restored to the ALPs in the most beneficial way possible.
- **Medicaid trend factor freeze:** Last year's budget enacted a trend factor freeze for Medicaid providers until March 31, 2015. This provision remains intact, meaning that ALPs will not receive an inflationary adjustment to their rates this year.
- **ALP 6,000 bed initiative:** Nearly five years ago, budget language was enacted to expand the ALP, giving the Commissioner of Health until March 2014 to award the beds. The final budget includes the Executive Budget proposal to extend this deadline two years, to 2016. The language also adds the requirement that DOH provide an annual written report to the Chair of the Senate Committee on Health and the Chair of the Assembly Health Committee. The report will include information such as the number of ALP beds made available pursuant through this initiative by county, the number of ALP beds per county, and the number of vacant ALP beds per county.
- **Capital Restructuring Bond Financing Program:** The final budget includes, with modifications, the Executive proposal to establish a $1.2 billion program to provide bond financing of capital projects that enhance the "quality, financial viability and efficiency of the health care delivery system." Two of the critical amendments to the Executive proposals were the addition of ALPs to the eligible applicants, and allowing the funding to go to both DSRIP and non-DSRIP projects. LeadingAge NY advocated for both of these changes.

## *Transitional Adult Homes and Related Issues*

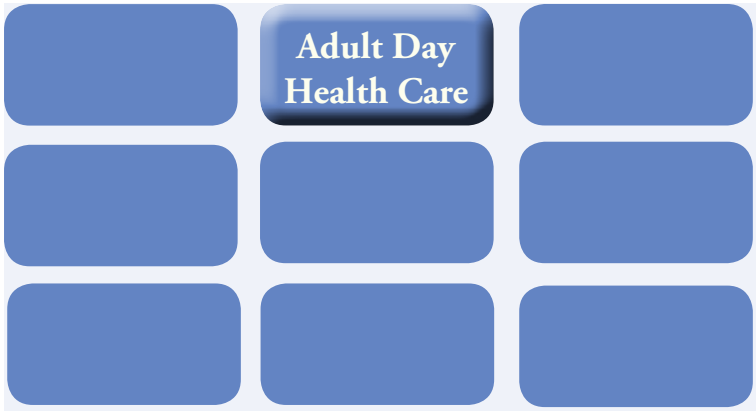
The final budget includes a variety of investments in the development of supported housing to facilitate transitioning people with serious mental illness out of ACFs and nursing homes. The specific appropriations are too numerous to list, but provide indication of the direction the State is moving in, relating to a settlement that New York State reached with the Federal government. It should be noted that the Senate proposal to limit the transitional adult home regulations was not included in the final budget agreement. Below are two related programs; both funded at the same levels as last year.

- **Transitioning people out of transitional adult homes:** The final budget includes the Executive proposal to appropriate $30 million to support the transition of people with serious mental illness out of adult homes and into the community. The funds will be used for activities such as education, assessments, training, in-reach, care coordination and supported housing.
- **Mental health transitions:** The final budget includes the Executive proposal for up to $7 million to be appropriated to the Research Foundation for Mental Hygiene, in contract with the Office of Mental Health, for two demonstration programs. One program would be for a behavioral health care management program for people with serious mental illness. The other would be for a mental health and health care coordination demonstration program for persons with mental illness who are discharged from impacted (transitional) adult homes in NYC. In addition, up to $15 million would be made available for grants to counties and NYC to provide medication and other services necessary to prescribe and administer medication.

## *Related Issues of Interest to ACFs*

- **Adult home advocacy program:** The adult home advocacy program is level funded at $170,000. The Justice Center now administers this program. Through contracted agencies, the program provides legal and non-legal advocacy services and training in residents' rights and self-advocacy to mentally disabled individuals residing in adult homes in NYC and Long Island.
- **Adult home resident council support:** The adult home resident council support project, historically operated by the Family Services League on Long Island, is level funded at $60,000.

*For more information, contact Diane Darbyshire at ddarbyshire@leadingageny.org or 518-867-8828.*




# Adult Day Health Care

## SFY 2014-15 Final State Budget

### Adult Day Health Care

The final budget for SFY 2014-15 restores the 2 percent across-the-board cut to Medicaid rates effective April 1, 2014, including Adult Day Health Care (ADHC) rates. As with nursing homes and other providers, this restoration will be affected by whether the State maintains its alternative cost-containment measure which, in the case of ADHC, is a 0.8 percent unreimbursed cash receipts assessment tax.

### *Home and Community-based Services (HCBS) Work Group*

The HCBS Work group that was established in last year's budget has been extended through March 31, 3015. The Adult Day Health Care Council (ADHCC) will continue to have a seat on the work group. Among the work group's recommendations adopted at the end of February was the expedited adoption of the proposed regulations for the Unbundled Services/Payment Option for ADHC, formerly called the "Hybrid Option." As this group moves forward, they will be looking at clean claims submission issues and other areas of concern for HCBS providers.

### *Social Adult Day Care (SADC)*

SADC services were provided funding in the final budget in the following areas:

- **State grants:** Level-funding of $1,072,000 is allocated to provide grants to support these programs through the New York State Office for the Aging (NYSOFA).
- **Technical/training assistance:** A grant of $122,500 is provided to the New York State Adult Day Services Association, Inc. (NYSADSA) to provide training and technical assistance to social adult day services programs in New York State.

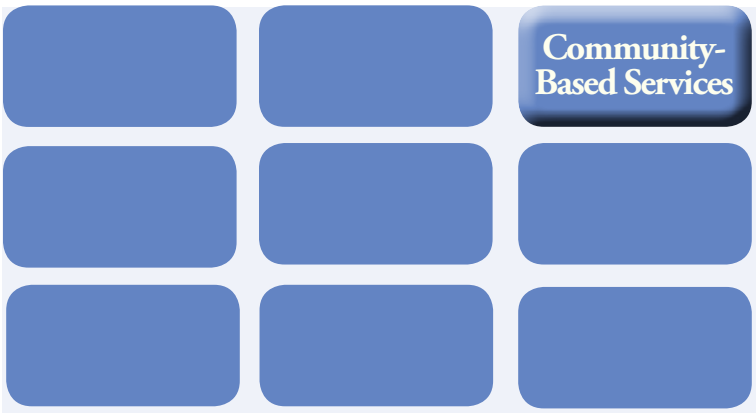
### *Enriched Social Adult Day Demonstration*

The Assembly had this as a priority in its one-house budget priority bill in March, but **this proposal did NOT make it into the final enacted SFY 2014-15 budget and, therefore, the demonstration will not go forward.** The proposal would have allowed a social adult day program to provide certain skilled medical services through a demonstration that provides grants to 20 social adult day programs. The maximum grant would have been $200,000 per applicant.

## *Unbundled Services/Payment Option*

After publication of the proposed Hybrid Option regulations (Part 425 of Title 10 NYCRR) in Aug. 2013 and at the behest of DOH, the ADHCC met with NYSADSA and NYSOFA. The purpose of these meetings was to address NYSADSA and NYSOFA's concerns regarding the proposed Part 425 regulations. We addressed all of their concerns without materially modifying the proposed regulations and returned modified Part 425 regulations to DOH in Dec. 2013. The last remaining issues revolved around the assessment process and could only be resolved by DOH. We have been advised by DOH that the revised regulations, as well as any further changes to them DOH may have made, are currently with DOH counsel's office. This is the last step before they can be republished in the State Register. Once published, we anticipate no further objection to the regulations being adopted and implemented. We will continue to press for the implementation of these regulations.

*For more information, contact Christine Fitzpatrick at cfitzpatrick@leadingageny.org or 518-867-8831.*




# Community-Based Services

## SFY 2014-15 Final State Budget

### Community-based Services

LeadingAge NY is pleased to report that the final budget maintains most of the community-based services at the same level or a slight increase of funding from last year. This year, the final budget adds a new investment within the New York State Office of Aging (NYSOFA) of $250,000 for education and professional development training for Area Agencies on Aging (AAA) staff to improve the delivery of services to help them adapt to significant recent changes in health and long term care policy. The budget also includes an additional $5 million for Community Services for the Elderly, as well as a significant expansion in eligibility and adjustment to the funding for the Elderly Pharmaceutical Insurance Coverage (EPIC) program.

The following programs pertain to other aging services administered by NYSOFA, most of which are designed to help seniors remain in their communities

#### *EPIC Program*

The Executive Budget proposed to fund the EPIC program at $114.4 million. The final budget includes an additional $4.1 million for a total allocation of $118.5 million, and also modified the program to increase EPIC income eligibility from $35,000 to $75,000 for individuals and from $50,000 to $100,000 for married couples.

#### *NORCS and Neighborhood NORCs*

The final budget level funds the Naturally Occurring Retirement Community (NORC) and Neighborhood NORC programs at $2,027,500 each.

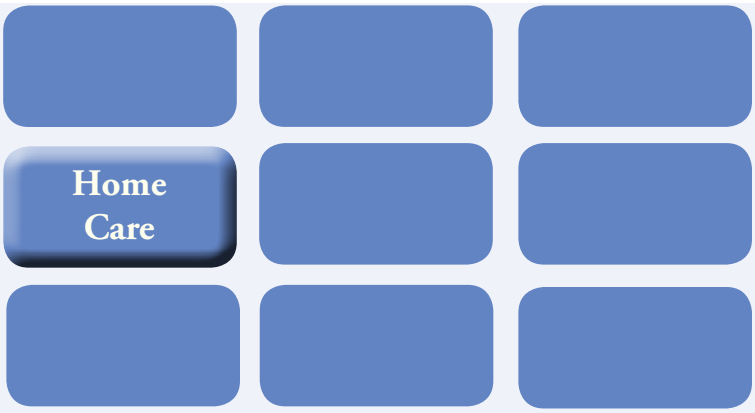
#### *Cost of Living Adjustment (COLA) for Human Services*

The final budget deferred the COLAs and they will not be included in establishing rates of payments, contracts or any other form of reimbursement for health and aging human service providers through March 31, 2016. However, the final budget provides funding to support a 2 percent increase in annual salary and salary-related fringe benefits for direct care staff and direct support professionals, beginning Jan. 1, 2015 and another 2 percent beginning April 1, 2015 for direct care staff and direct support professionals, and clinical staff. Providers will be required to develop a plan of implementation to ensure that the increases are directed to support the salary and fringe for the appropriate staff.

## *Other Aging Services Programs*

- **Wellness in Nutrition (WIN):** Formerly known as Supplemental Nutrition Assistance Program (SNAP), the final budget allocates $27.3 million to the program. Up to $200,000 of this appropriation may be made available to the Council of Senior Centers & Services of NYC, Inc. to provide outreach within the older adult WIN initiative. WIN funding is used to provide home-delivered meals, some congregate meal funding and other nutrition-related services to eligible frail elderly, including residents of senior housing facilities.
- **Expanded In-home Services for the Elderly Program (EISEP):** EISEP is a community-based long term care program that provides case management, non-medical in-home, non-institutional respite and ancillary services needed by New Yorkers aged 60 and over. Last year's final budget funded EISEP program services at $46 million; this year's final budget increased the allocation to $50 million.
- **Discretionary funding increases:** $20.3 million has been allocated to provide discretionary increases in lieu of automatic COLAs for Community Services for the Elderly and EISEP. CSE also received an additional $5 million for additional services and expenses.
- **Social day programs:** Social day programs are level funded at $1,072,000 through NYSOFA, with preference given to existing contracts.
- **Congregate Services Initiative:** The final budget level funds the program at $403,000. This program provides information and assistance, referral, transportation, nutrition, socialization, education, counseling and caregiver support to persons in senior centers and other congregate settings.
- **Livable NY initiative:** With the same level of funding as last year at $122,500, this program is aimed at creating neighborhoods that consider the evolving needs and preferences of all their residents.
- **Title XX funding:** In the final budget, Title XX funding is being continued at $150 million; a portion of the funding will support senior centers and senior services in New York City, as well as Nassau, Steuben and Erie counties.
- **Transportation:** The budget allocates $2 million for the purpose of providing increased access to Medicaid non-emergency transportation in rural communities.

*For more information, contact Cheryl Udell at cudell@leadingageny.org or 518-867-8871.*






SFY 2014-15 Final State Budget

## Home Care

The final budget continues the implementation of MRT recommendations begun in SFY 2011-12. These reforms have continued to change how home care services are provided in New York State, especially MRT #90 which mandates MLTC enrollment of dually eligible Medicaid recipients who need more that 120 days of community-based long term care services.

Long Term Home Health Care Programs (LTHHCPs), Certified Home Health Agencies (CHHAs), Licensed Home Care Services Agencies (LHCSAs) and hospices continue to experience the impact of the MRT recommendations and they continue to struggle with how to operate more efficiently within this transition to managed care.

### *Home Care Worker Wage Parity*

The final budget includes a provision effective March 1, 2014 to adjust Medicaid rates for CHHAs, LTHHCPs and managed care plans to fund the 2014 wage parity requirements. The rate adjustment will be based on a comparison of the hourly compensation levels for home health aides and personal care aides in the existing Medicaid rates to the hourly compensation levels incurred as a result of complying with the wage parity law. The law affects aide services provided in New York City and Nassau, Suffolk and Westchester Counties. As this publication goes to press, it is being reported there will be $350 million set aside for rate adjustments to CHHAs, LTHHCPs and managed long term care plans, plus up to $70 million of additional assistance to LHCSAs. Further details are expected in the near future.

### *Recruitment, Training and Retention Funds*

The final budget **rejected** the Executive Budget proposal to repeal the section of law requiring adjustments of Medicaid rates of CHHAs, LTHHCPs, AIDS home care programs, hospice programs and MLTC plans by up to $100 million per year for the purpose of improving the recruitment, training, and retention of home health aides. If adopted, the Executive budget proposal would have resulted in providers receiving these amounts through their base rate and not as a separate add-on. The final budget continues the rate adjustments and authorizes up to $100 million for these adjustments to continue being made separately during each State fiscal year through March 31, 2017.

The final budget also continues the personal care worker Recruitment and Retention (R&R) funding of up to $272 million for New York City and up to $22.4 million for other areas of the State for Medicaid adjustments supporting R&R of personal care services or any worker with direct patient care responsibility. This is extended for each fiscal year from March 31, 2014 through April 1, 2017.

## *Home Care Contracts with Managed Care*

DOH issued a *Dear Administrator Letter* and has said on several occasions that CMS requires all skilled home care services provided through a contract with a managed care plan be provided by a home care entity that meets the Medicare Conditions of Participation (i.e., a CHHA or a LTHHCP). In the Executive Budget, the Administration indicated that $17 million would be allocated in SFY 2014-15 and $18 million in SFY 2015-16 to address the impact this would have on home care agencies and managed care plans. Although this allocation is not specifically identified in the appropriation bill, we are told that it is included in the larger Medicaid appropriation and will be distributed administratively.

## *Capital Restructuring Financing Program*

See "Overview" section of this report for further information.

## *Two Percent Across-the-Board Cut*

The final budget discontinues the 2 percent across-the-board cut effective March 31, 2014, and includes the option of extending alternative methods of cost containment on and after April 1, 2014. The 0.7 percent cash receipts assessment on LTHHCPs is one example of these alternative methods. Further discussions will occur with the State on whether this will be extended and, if so, how providers will be made whole financially.

## *Other Home Care-Related Funding Allocations*

The final budget includes the following funding allocations:

- **Nursing Home Transition and Diversion (NHTD) housing subsidy:** Level-funding of $2.3 million is provided for housing subsidies for certain participants in the NHTD waiver program.
- **Traumatic Brain Injury (TBI) program:** Services and expenses related to TBI are level-funded at $12.4 million.

## *VAP for LHCSAs and Fiscal Intermediaries*

The final budget adds LHCSAs and fiscal intermediaries for the Consumer Directed Personal Assistance Program (CDPAP) to the provider types eligible for assistance under the Vital Access Provider (VAP) program. VAP payments are intended to assist providers that are principally engaged in providing services to Medicaid recipients and are undergoing closure; impacted by a closure of another health care provider; subject to mergers, acquisitions, consolidations or restructuring; or are otherwise seeking to preserve access to care. DOH administers the VAP program through an application process. Further information on VAP is included in the "Overview" section of this report.

## *CHHA Bad Debt and Charity Care*

The final budget extends authorizations for bad debt and charity care allowances for CHHAs through Dec. 31, 2014, totaling up to $1.7 million.

## *Expansion of Pre-Claim Review*

The final budget expands the scope of pre-claim review to include claims submitted by CHHAs, LTHHCPs and personal care providers to Medicaid managed care plans, as well as fee-for-service claims. In addition, revenue received from Medicaid managed care plans will count in determining whether the $15 million revenue threshold that triggers pre-claim review has been crossed. The Office of the Medicaid Inspector General and DOH are to jointly develop requirements for pre-claim reviews.

## *Changes to the LTHHCP*

The final budget includes the proposal to repeal the requirement that DOH stipulate the number of participants (i.e., slots) a LTHHCP provider can serve. LeadingAge NY has been advocating for several changes to the LTHHCP so it can operate more efficiently within the managed care environment; eliminating the slots limitation is one example.

## *Home and Community-based Care Work Group*

As advocated by LeadingAge NY, the final budget continues the work of the 11-member work group through SFY 2014-15, and requires the group to also make recommendations on clean claims submission and related dispute resolution. The work group is to submit periodic reports by Sept. 1, 2014 and Feb. 28, 2015.

## *Advanced Home Health Aides*

The Governor's Budget proposed in 30-day amendments to develop a training curriculum and certification process for certain home health aides to permit them to distribute medication and/or perform other health-related tasks. The final budget **rejects** this proposal.

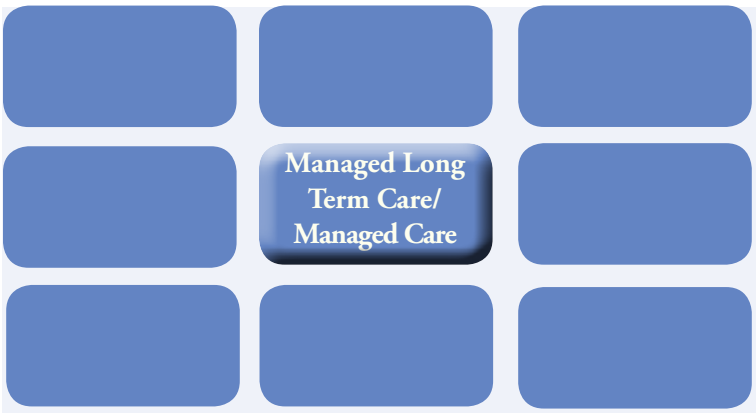
## *Community First Choice*

New York State submitted a State Plan Amendment to adopt the Community First Choice Option (CFCO) which would provide the State with a six percent increase in the Federal Medicaid match rate for Medicaid funded home and community-based services. The final budget includes the Governor's proposed statutory authority to allow the State to move forward with this initiative. Under the final budget language, the provisions of the CDPAP would apply to the CFCO. In addition, the final budget includes a technical amendment to the Nurse Practice Act to permit aides under the CDPAP to perform certain nursing tasks for self-directing consumers, even if they are not paid through the CDPAP.

## *Spousal Refusal*

The final budget **rejects** the proposal to eliminate "spousal refusal" as a mechanism for qualifying for Medicaid.

*For more information, contact Cheryl Udell at cudell@leadingageny.org or 518-867-8871.*




# Managed Long Term Care/ Managed Care

SFY 2014-15 Final State Budget

## Managed Long Term Care/Managed Care

The Medicaid Managed Care (MMC) and Managed Long Term Care (MLTC) budget initiatives centered on supporting the expansion of mandatory managed care to vulnerable populations, including dual eligibles and children in foster care, and the integration of behavioral health services into Medicaid managed care.

LeadingAge NY's advocacy was successful in eliminating or mitigating aspects of the original Executive Budget that would have proven harmful to both plans and providers. In particular, a proposal to mandate standard wages in nursing homes was rejected by the Legislature. Given the funding challenges associated with the analogous wage parity requirement for home care workers, this proposal had raised concerns.

Several of the budget provisions relevant to managed care plans were discussed in detail in previous sections of this analysis, including: recruitment and retention funding for personal care and home health aides; wage parity funding; skilled home care contract funding; funding for Section 1915i-like services for managed care enrollees with behavioral health needs; the expansion of home care pre-claim review to include managed care claims, and prescription drug co-payment flexibility.

The final budget includes the following proposals specific to managed care and the integration of behavioral health services:

### *Wage Parity*

See "Home Care Services" section of this memo for further information.

### *Home Care "Conditions Of Participation" Contracting*

See "Home Care Services" section of this report for further information.

### *Home Care Recruitment and Retention Funds*

See "Home Care Services" section of this report for further information.

### *Expanded Pre-Claim Review Process*

See "Home Care Services" section of this report for further information.

### *Fee-for-Service Default Rate for Nursing Homes*

See "Nursing Homes" section of this report for further information.

## *Expansion of Medicaid Managed Care Advisory Review Panel*

The final budget increases this panel from 12 to 16 members, with six being appointed by the Governor (including the chair), four by each of the Legislature's majority leaders and one by each of the minority leaders. The legislation specifies that the panel's membership must include representatives of Medicare/Medicaid dual eligibles and individuals with behavioral health needs, and entities that provide or arrange for services to dual eligibles and individuals with behavioral health needs. Expanded duties of the panel include: the evaluation and adequacy of program materials; the examination of trends in service denials; and the assessment of access to care for people with disabilities.

## *Fair Hearing Rights*

This provision allows managed care enrollees who are entitled to a fair hearing and "aid continuing" to continue to receive the contested services while the fair hearing process is pending, regardless of whether the fair hearing process extends beyond a current authorization period.

## *Fully Integrated Duals Advantage (FIDA) Appeals*

The final budget authorizes the Commissioner of the Office of Temporary and Disability Assistance to use contract staff to conduct FIDA appeals, in addition to State employees.

## *Medicaid Prescription Drug Co-payments*

The budget modifies Medicaid co-payment amounts to permit Medicaid managed care plans to charge a lower ($1) co-payment for preferred brand name drugs on the plans' formularies.

## *Enrollment Broker*

The final budget **rejects** the Governor's proposal to authorize DOH to require counties that have implemented mandatory managed care programs to use the Department's enrollment broker for MMC and MLTC, including in those regions now served by local social services districts. This marks the second year in a row in which this provision has been rejected by the Legislature.

## *Investment in Transition of Foster Children to Managed Care*

The final budget accepts the Executive Budget's proposal to invest $5 million in infrastructure and expertise in voluntary foster care agencies necessary to support the transition of foster children to managed care plans.

## *Community-Based Behavioral Health Services Reinvestment Program*

The final budget directs DOH to reinvest general fund savings derived from the transition of behavioral health services and Medicaid beneficiaries with behavioral health needs to managed care for the purposes of increasing funding for community based behavioral health services. The methodology for calculating the savings is to be developed jointly by DOB, DOH, OMH and OASAS. Under any methodology, should projected savings fall short of appropriated reinvestment amounts, then the following year's budget may be adjusted to compensate for the shortfall. DOH is ultimately required to submit a detailed description of the methodology used to calculate savings and how those dollars are to be reinvested.

## *Investment in Behavioral Health Managed Care Transition*

The final budget accepts the Governor's proposal to provide $20 million to local governmental units, managed care plans, health homes, behavioral health providers and other entities to support the training, health information technology and transition costs associated with moving behavioral health services into managed care.

## *Managed Care Fees for Ambulatory Behavioral Health Providers*

The final budget expands existing authority for DOH to increase payments to managed care plans for the purpose of providing fee-for-service APG reimbursement to ambulatory behavioral health providers. This provision expands this authority to include providers licensed by OMH, in addition to those licensed by OASAS. These reimbursement increases will be effective through 2016 for beneficiaries in NYC and through 2017 for beneficiaries outside of NYC and for beneficiaries under age 21. Managed care plans are permitted to negotiate alternative payment arrangements, subject to the approval of DOH. The budget also requires DOH to report to the Legislature on an annual basis regarding the status of the behavioral health transition.

## *Collaborative Care Delivery Model*

To enhance screening and services for individuals suffering from clinical depression and related issues, the final budget includes a new integrated clinic model designed to improve the detection of depression and other mental or substance abuse disorders and provide evidence-based treatment, care management and tracking of patient progress in primary care settings.

## *Integration of Physical and Behavioral Health Services*

Last year's budget included extensive references to the integration of services licensed by DOH, OMH, OPWDD and/or OASAS in a single site. This year's budget seeks to enhance the Administration's ability to facilitate this integration through the authority to promulgate any necessary emergency regulations prior to Oct. 1, 2015.

## *DSRIP Program Regulatory Waivers*

The budget would authorize the Commissioners of DOH, OMH, OASAS and OPWDD to waive regulatory requirements to facilitate the integrated delivery of services through joint projects conducted under the DSRIP program that is expected to be approved as part of the 1115 waiver. Regulations related to patient safety may not be waived, and waivers may not exceed the life of the project

## *Coordination Between Health Homes and Criminal Justice System*

The final budget **rejects** the Governor's proposal to invest $5 million to support coordination between health homes and State and local correctional facilities.

## *Managed Care/Insurance Out-Of-Network Coverage and Disclosure Requirements*

The final budget includes new consumer protections related to out-of-network coverage, disclosure requirements for hospitals and professionals concerning health plan network memberships and out-of-network charges, disclosures concerning out-of-network reimbursement by plans, and payment of usual and customary rates. It also includes processes for appeals of out-of-network referral denials and dispute resolution for surprise bills.

We understand that the health plan requirements are intended to apply to insurers licensed under the Insurance Law and HMOs certified under the Public Health Law, and not to Medicaid managed care or MLTC plans. However, this is not stated explicitly in the legislation.

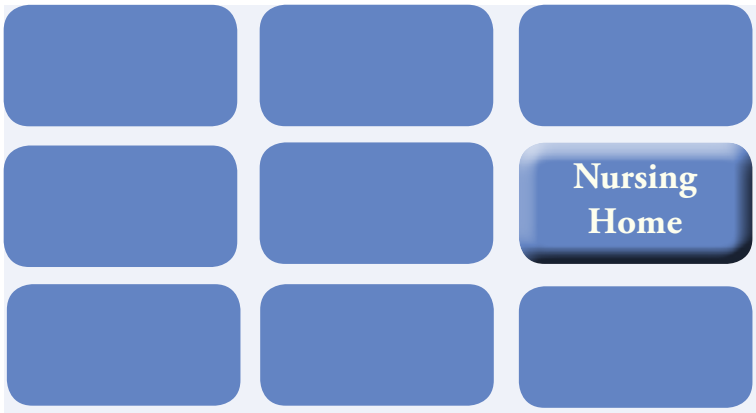
In addition, final budget modifies the Executive budget by applying the "hospital" requirements only to "general hospitals" thereby exempting nursing homes.

The requirements imposed on professionals may apply to physicians and nurse practitioners practicing in nursing homes and other long-term care settings. These requirements include:

- disclosure of the health plans with which the professional participates and the hospitals with which the professional is affiliated, prior to the provision of services, in writing or via the internet and "verbally at the time an appointment is scheduled;" and
- if the professional does not participate in the patient's health plan, disclosure of the estimated amount the patient will be billed, prior to the provision of non-emergency services.

LeadingAge NY will be working with DOH and the Insurance Department on the implementation of these provisions to mitigate any impact on MLTC plans and professionals working in nursing homes and other long-term care settings.

***For more information, contact Patrick Cucinelli at pcucinelli@leadingageny.org or 518-867-8827.***






SFY 2014-15 Final State Budget

## Nursing Homes

For the second year in a row, the Executive Budget included a proposal that would have resulted in State agencies setting minimum compensation levels for all nursing homes. As it did last year, the Legislature rejected the proposal. Also rejected was a proposal to cap case-mix growth that threatened to reduce nursing home reimbursement by $42.9 million.

The final budget agreement requires homes and other providers to establish safe patient handling committees by Jan. 1, 2016 and programs by Jan. 1, 2017, provisions that were not part of the Executive Budget proposal. The requirements center largely on developing policies and procedures and adopting best practices based on DOH-provided materials.

The Legislature did accept the Governor's proposal to eliminate the 2 percent across-the-board cut and to increase options for nursing homes to access capital funding. These, along with other provisions affecting multiple provider types (e.g., global cap, VAP) are covered in the "Overview" section of this report. As a result of the State's new practice of using a two-year planning window for some Medicaid funding issues, the Medicaid trend factor for SFY 2014-15 was already eliminated in last year's budget.

Proposals impacting nursing homes are detailed below.

### *Two Percent Across-the-Board Cut, Trend and Assessment*

The final budget agreement restores the 2 percent across-the-board cut enacted in 2012 while maintaining the authority to continue alternate cost savings measures that were used in lieu of the two percent cut, such as the 0.8 percent assessment on nursing home cash receipts (see "Overview" section). Nursing homes suffered an annual funding reduction of approximately $70 million which the State intends to restore effective April 1, 2014. The 2014 trend factor was eliminated as part of last year's enacted State budget meaning providers will again see no inflation adjustments this year. Last year's budget also extended the 6 percent reimbursable cash receipts assessment.

### *Standard Wage*

The final budget legislation **excludes** the Executive Budget proposal that would have mandated that managed care plans, including MLTC plans, include a provision in all nursing home contracts requiring nursing homes to pay standard rates of compensation to employees providing inpatient services. These would have included nurses, aides, orderlies, attendants, therapists and any others that the Commissioner would have deemed covered by

the provision. The compensation rates would have included a benefit component, would have been calculated annually by DOH and the State Department of Labor, distributed to all nursing homes, and deemed to be part of any contract with a managed care plan. Failure to comply would have subjected the home to Labor Law penalties, as well as potential denial of new admissions.

## *Case-Mix Index Constraint*

The Executive had sought to cap statewide Case-Mix Index (CMI) growth to 2 percent during any six month period to address what the Administration refers to as "up-coding of rehabilitation services." This proposal was **rejected**. Under the proposal, if statewide CMI growth had exceeded 2 percent in any six-month period, DOH would have proportionately reduced the CMI of all homes whose growth exceeded 2 percent until the statewide average growth figure reached 2 percent. DOH had estimated that the cap would have reduced Medicaid payments to homes in SFY 2014-15 by $42.9 million. Note that this does not affect the regulatory provision that currently caps facility-specific CMI change at 5 percent pending audit.

## *Safe Patient Handling*

The final budget adds a new section of Public Health Law that requires each health care facility, including nursing homes, to establish a safe patient handling committee on or before Jan. 1, 2016 and a safe patient handling program in consultation with the committee by Jan. 1, 2017. The legislation specifies committee composition, the elements to be included in the safe patient handling program and requires DOH to create a work group on the issue. It also requires the Department of Financial Services to publish requirements for health care facilities to receive reduced worker's compensation insurance rates for implementing safe patient handling provisions.

The DOH work group would be established no later than Jan. 1, 2015 to:

- review existing safe patient handling programs and policies;
- consult with experts in the field;
- identify or develop training materials for health care facilities to consider;
- report to the Commissioner on safe patient program best practices, providing examples of sample policies and identifying useful tools and resources; and
- disseminate best practices, examples, tools and resources to health care facilities by Jan. 1, 2016.

As part of their safe patient handling program, by Jan. 1, 2017 each facility would be required to:

- implement a safe patient handling program taking into consideration materials provided by DOH;
- conduct a patient hazard assessment;
- develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and mental condition;
- provide initial and on-going staff training and education;
- set up and use a process for incident investigation;
- conduct an annual performance evaluation of the program;
- consider feasibility of incorporating patient handling equipment when building or remodeling; and
- develop a process by which employees may refuse to perform or be involved in patient handling or movement that the employee reasonably believes in good faith will expose a patient or health care facility employee to an unacceptable risk of injury.

## *Quality Pool Eligibility*

The final budget adds a provision that allows homes to receive quality pool funding if they are disqualified solely on the basis of a specific case of an employee's misconduct. This provision addresses LeadingAge NY's concerns regarding homes that experienced staff misconduct beyond their control and were then excluded from funding despite doing everything necessary to prevent it and self-reporting the incident once it occurred. To be eligible in such cases the home must have properly reported the incident, have not received a survey citation establishing the facility's culpability and be otherwise eligible for quality pool funding. The language also specifies that "regulations pertaining to the facilitation of quality improvement may be made effective for periods on and after January 1, 2013." However, this new section of law inexplicably takes effect on Oct. 1, 2014. LeadingAge NY is seeking clarity on the timing.

## *Managed Care Rate Requirement*

The final budget accepts the Governor's proposal that requires Medicaid Managed Care and MLTC plans to reimburse a nursing home with which they do not have a negotiated rate agreement based on the home's Medicaid fee-for-service rate, inclusive of cash receipts assessment reimbursement, in effect at the time the service was provided. This requirement applies to permanently placed residents and does not cover residents receiving time-limited rehabilitation services who are expected to be discharged following such services.

## *Inter-governmental Transfer*

The final budget extends Inter-governmental Transfer (IGT) funding for public homes for an additional three years through March 31, 2017 and increases the annual statewide IGT payment cap from $300 to $500 million. Because the IGT amount available is based on the upper payment limit calculation, raising the cap may or may not increase the amount of available IGT funding.

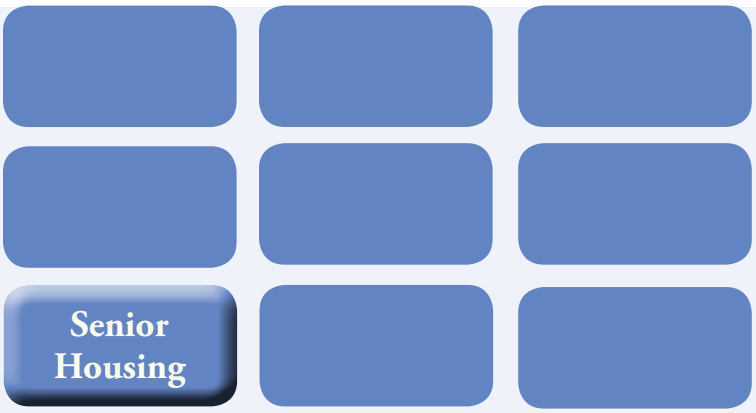
## *Private Equity Demonstration*

The final budget **rejects** the proposal to authorize a demonstration to allow up to five business corporations to operate health care facilities that could have included nursing homes. Operators of facilities under this pilot would have been exempt from the prohibition on corporate ownership of stock, but would have been limited to no more than 35 stockholders. The corporations' stock could not have been traded on a public or over-the-counter exchange. The operators would have been required to affiliate with an academic medical center or teaching hospital and would have been eligible for debt financing offered by DASNY, local development corporations and economic development corporations.

## *Capital Funding*

The final budget expands the Health Care Facility Restructuring Program to allow loans to be made to not-for-profit nursing homes. The "Overview" section of this report contains a review of this and other capital provisions included in the budget.

***For more information, contact Darius Kirstein at dkirstein@leadingageny.org 518-867-8841.***






SFY 2014-15 Final State Budget

# Senior Housing

## *House NY Program*

The final budget provides approximately $90 million in capital support for the House NY program initiated in SFY 2013-14, which is intended to invest $1 billion of additional resources over five years to preserve and create 14,300 affordable housing units statewide. This five-year initiative is to include the revitalization of 45 Mitchell Lama affordable housing projects that suffer from significant physical deterioration; the creation and preservation of over 5,000 affordable housing units through various housing and community development programs and other initiatives. The new capital funding which is in addition to the Division of Housing and Community Renewal's (HCR's) base funding will focus on the upgrade of 8,628 Mitchell-Lama units and the creation of 5,643 affordable housing units.

## *State Low-income Housing Tax Credits*

HCR is allocated $8 million for the program in the SFY 2014-15 budget.

## *New York State Low Income Housing Trust Fund*

The fund is allocated $44.2 million in SFY 2014-15, which is an increase of $12 million from the SFY 2013-14 level.

## *Mitchell-Lama Rehabilitation Program*

The budget includes a $32 million allocation for Mitchell-Lama rehabilitation from Mortgage Insurance Fund proceeds.

## *Supportive Housing*

The final budget decreases funding for MRT supportive housing initiatives from $260 million in the Executive Budget proposal over a two-year period, to $222 million. The final budget language states that spending shall consider the geographic location of the grants, presumably to ensure greater distribution statewide. The **MRT Affordable Housing allocation plan** is predicated on $100 million being available in SFY 2014-15. We do not know whether the reduction in funding will be attributed to this budget year or SFY 2015-16; or both. Included is funding generated from Medicaid savings ($6.6 million State share) associated with the closure of three nursing homes and four hospitals, and the decertification of nursing home and hospital beds effective April 1, 2014. Funding will be used for MRT supportive housing initiatives including $2 million for the Senior Supportive Housing Services Program in SFY 2014-15 and $4 million for SFY 2015-16.

## *Access to Home*

The final budget includes a $1 million appropriation for this program, which provides building modifications for seniors and people with disabilities to remain independent. In the past, this program has been funded through Housing Trust Fund Corporation transaction fees at approximately $4 million. It is anticipated that the program will continue to receive these funds.

## *Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs*

The final budget provides $2,027,000 in funding to NORCs and another $2,027,000 in funding to Neighborhood NORCs, the same appropriations that were made in SFY 2013-14.

## *Preservation and Rural Assistance*

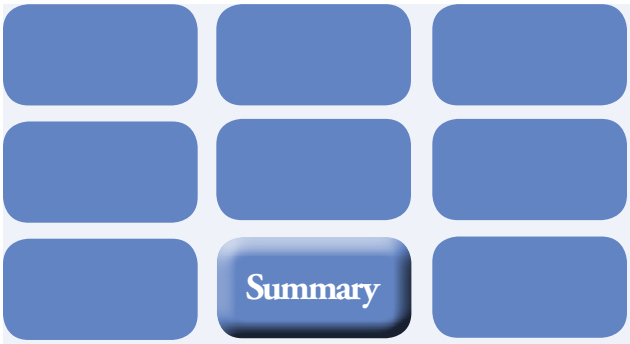
The final budget funds the following programs: Neighborhood Preservation Program at $10 million; the Rural Rental Assistance Program at $21 million; the Rural Preservation Program at $4.2 million; and the new Rural and Urban Community Investment Fund at $6.7 million.

## *Funding for Other Housing Programs*

The following programs were funded at the same level as in SFY 2013-14:

- Low-Income Weatherization Program: Funded at $32.5 million.
- Public Housing Modernization Program: Funded at $6.4 million.

*For more information, contact Ken Harris at kharris@leadingageny.org or 518-867-8835.*




# Summary

## *Summary of NYS Budget by Functional Area*

| EXECUTIVE BUDGET | FINAL BUDGET |
|---|---|
| ONGOING PROGRAM FUNDING | |
| *Medicaid Global Spending Cap*<br>• Extend cap by one year through SFY 2015-16, with total State share DOH spending limited to $17.1B in SFY 2014-15 and $17.9B in SFY 2015-16. Also extend DOH "super-powers" to reduce spending if needed.<br>• Institute program to share savings with providers/ plans if spending is below projections, with up to 50% of shared savings reserved for distressed providers. | Includes Executive proposal, with language added requiring DOH/DOB to provide more detailed reporting on the basis for global cap spending projections, enrollment trends and actual spending by program area. |
| *Housing Programs*<br>• Increase funding for MRT supportive housing initiatives by $18.4M (State share) in 2014-15, bringing the total allocation to $100M in 2014-15 and $160M in 2015-16.<br>• Level-fund the following programs:<br>◊ Access to Home at $1M<br>◊ NORCs and Neighborhood NORCs at $2,027,000 each<br>◊ State Low-income Housing Credit Program at $8M<br>◊ Low-Income Housing Trust Fund program at $44.2M<br>◊ Low-Income Weatherization Program at $32.5M<br>◊ Public Housing Modernization Program at $6.4M | Includes Executive proposals. Decreases two-year funding for MRT supportive housing initiatives from $260M to $222M. Funding will be used for MRT supportive housing initiatives including $2M for the Senior Supportive Housing Services Program in SFY 2014-15 and $4M for SFY 2015-16. |
| *Adult Care Facilities and Assisted Living*<br>• Level-fund EQUAL at $6.5M and SSI Enriched Housing Subsidy at $475,000.<br>• Reappropriate some of past years' funding owed for EnAbLE, SSI Enriched Housing Subsidy, and QUIP funds, but not in full.<br>• SSI federal cost-of-living adjustment (COLA) pass-through for 2015. | Includes Executive proposals and provides an additional $7M for EnAbLE. |
| *Community Services Programs*<br>• Level-fund the following programs:<br>◊ Social adult day programs at $1,072,000<br>◊ Livable NY initiative at $122,500<br>◊ Congregate Services Initiative at $403,000<br>• Increase from last year:<br>◊ EISEP to $50.012M<br>◊ SNAP to $27.3M<br>• Allocate $20.3M for discretionary increases in funding for EISEP and CSE. | Includes Executive proposals. Adds $5M for additional services and expenses related to Community Services for the Elderly (CSE). |

## *Summary of NYS Budget by Functional Area*

| EXECUTIVE BUDGET | FINAL BUDGET |
|---|---|
| **ONGOING PROGRAM FUNDING** | |
| ***Home Care Waiver Programs***<br>Fund NHTD waiver housing subsidy at $2.3M and Traumatic Brain Injury waiver at $12.4M. | Includes Executive proposal. |
| ***Pay for Success Program***<br>Expand the Pay for Success initiative (also known as "Social Impact Bonds") from $30M in the 2013-14 budget to a total of $125M in the 2014-15 budget. | Reduced Executive Budget appropriation to $53M. |
| **NEW PROGRAM FUNDING** | |
| ***Delivery System Reform Incentive Program (DSRIP)***<br>• Principal mechanism for reinvestment of federal Medicaid savings in New York's health care delivery system, under the pending waiver application.<br>• Appropriate $4 billion for payments authorized by the waiver, contingent on waiver approval.<br>• Authorize DOH, OMH, OASAS, and OPWDD to waive regulations to permit the efficient implementation of DSRIP projects. | Includes Executive proposal and proposed appropriation, but includes other modifications:<br>• Requires the Commissioner to ensure that DSRIP is implemented on a statewide basis.<br>• Creates a DSRIP advisory panel to review applications for DSRIP, Capital Restructuring Financing Program and other MRT initiatives.<br>• Directs the Commissioner to make quarterly reports to Legislature concerning DSRIP progress, impact, regulatory waivers, and public input.<br>• DOH, OMH, OASAS, and OPWDD may not waive regulations related to patient safety, and waivers may not extend beyond the life of the project. |
| ***Capital Restructuring Financing Program***<br>• $1.2 billion in bond financing to fund capital projects involving restructuring, improvements to infrastructure, development of primary care capacity, and promotion of integrated delivery systems for hospitals, nursing homes and clinics.<br>• Provided preference for grantees under the proposed MRT waiver's DSRIP. | Includes Executive proposal with modifications:<br>• Eligible grantees expanded to include ALPs and home care agencies.<br>• Authority to support telehealth infrastructure.<br>• Grants available both to providers that receive DSRIP awards and those that do not.<br>• Criteria for awarding grants include statewide distribution of funds.<br>• Applications reviewed by DSRIP advisory panel. |
| ***Health Care Facility Restructuring Program***<br>Expand to permit loans to not-for-profit nursing homes, clinics, and any other not-for-profit facility licensed under Article 28. | Includes Executive proposal. |
| ***Health Information Technology Infrastructure***<br>• **SHIN-NY support:** $55M for an electronic health information super-highway to share health information among health care providers.<br>• **All Payer Database:** $10M for a repository of health care utilization and spending data to evaluate the performance of the health care delivery system.<br>• **State HIT initiatives:** $10M for DOH IT initiatives. | Includes Executive proposed appropriations. Establishes work group charged with evaluating and issuing a report on the state's health information technology infrastructure, including the APD, SPARCS, regional health information organizations (RHIOs), the SHIN-NY and medical assistance eligibility systems. |
| ***Community First Choice Option (CFCO)***<br>Allocate an additional $27.6M in federal funds in SFY 2014-15 from implementation of CFCO, which will expand availability of self-directed home and community-based services for Medicaid beneficiaries. | Includes Executive proposal. |

## *Summary of NYS Budget by Functional Area*

| EXECUTIVE BUDGET | FINAL BUDGET |
|---|---|
| **NEW PROGRAM FUNDING** | |
| *Behavioral Health Managed Care Transition*<br>• **Transition grants:** $20M for local governments, managed care plans, health homes and behavioral health providers for training and infrastructure.<br>• **Managed care payments for APGs:** Increase payments to managed care plans for reimbursement to ambulatory behavioral health providers.<br>• **Reinvestment:** Reinvest savings from transition of behavioral health benefits and population to managed care to increase funding for community based behavioral health services. | Includes Executive proposal. |
| **PROVIDER REIMBURSEMENT** | |
| *2% Across-the-Board Cut*<br>• Eliminate the cut, effective 3/31/14<br>• Allow DOH flexibility to continue the previously negotiated alternative savings options (e.g., assessments for RHCFs, ADHC and LTHHCPs and reduced EQUAL funding for ALPs) | Includes Executive proposal. DOH intends to eliminate the impact of continuing any alternative savings options through Medicaid rate add-ons and/or other alternatives. |
| *VAP Program*<br>Add LHCSAs to the eligible provider categories under the program. | Includes Executive proposal, and further expands eligible providers to also include consumer-directed personal assistance program fiscal intermediaries and behavioral health services. The existing VAP for hospitals, nursing homes, CHHAs and clinics is also codified in law. |
| *RHCF Case-Mix Index Constraint*<br>Caps statewide case-mix growth to 2% during any six month period. | Does not include Executive proposal. |
| *RHCF Managed Care Rates*<br>Requires managed care plans to pay a nursing home with which they do not have a contract the home's Medicaid fee-for-service rate. | Includes Executive proposal. Specifies that payments must include cash receipts assessment reimbursement. |
| *RHCF Quality Pool Eligibility*<br>No provision. | Allows homes to receive quality pool funding if they are disqualified solely on the basis of a specific case of an employee's misconduct. Also authorizes quality pool program in law. |
| *RHCF Intergovernmental Transfers (IGT)*<br>Continue the authority to make IGT payments of up to $300M per year to public nursing homes through 3/31/17. | Includes Executive proposal, with an increase in the maximum payments to $500M per year. |
| *Home Care Worker Wage Parity*<br>Adjust Medicaid rates for CHHAs, LTHHCPs and managed care plans effective 3/1/14 to fund compliance with the Wage Parity law requirements. Provide $350M ($150M State share) to support increased compensation to home health aides under these requirements. | Includes the Executive proposal. As of this writing, we understand that $350M plus up to $70M of additional funding will be allocated for wage parity requirements. |
| *Managed Care Contracts for Skilled Home Care*<br>Allocate $17M to adjust managed care rates to reflect increased costs of complying with requirement for skilled home care services provided through managed care plans to meet federal home health Conditions of Participation. | We understand the final budget includes $17M to support the additional costs associated with managed care plans contracting with agencies meeting the federal conditions of participation. |
| *Home Care Worker Recruitment & Retention*<br>Continue funding for personal care worker recruitment and retention at $272M for NYC and $22.4M for other areas of the State. Eliminate separate add-on in rates for the $100M for R&R for LTHHCPs, AIDS home care, hospices and MLTC plans. | Includes Executive proposal for personal care funding, but rejects proposal to eliminate separate add-on for R&R for LTHHCPs, AIDS home care, hospices and MLTC plans. |

## *Summary of NYS Budget by Functional Area*

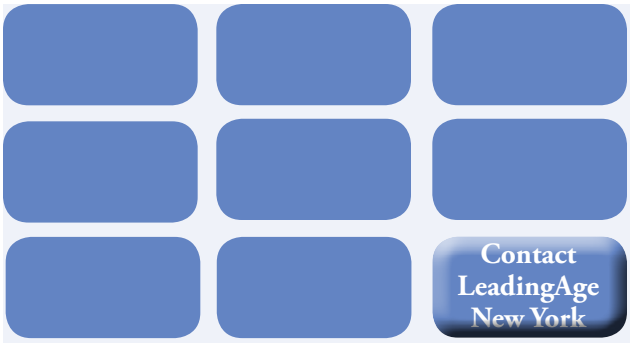
| EXECUTIVE BUDGET | FINAL BUDGET |
|---|---|
| **PROVIDER REIMBURSEMENT** | |
| ***CHHA Bad Debt and Charity Care***<br>Continue bad debt and charity care allowances for CHHAs through 12/31/14 at $1.7M. | Includes Executive proposal. |
| ***Expanded Pre Claim Review Process***<br>Expand current law requiring pre-claim reviews for CHHAs, LTHHCPs and personal care providers with Medicaid reimbursement of over $15M to include Medicaid managed care claims and dollars. | Includes Executive proposal. |
| **REGULATORY/PROGRAMMATIC INITIATIVES** | |
| ***Standard Wage for RHCFs***<br>All Medicaid managed care contracts with nursing homes would require payment of standard rates of compensation to nursing home workers. | Does not include Executive proposal. |
| ***Safe Patient Handling***<br>Not included in Executive proposal. | Requires hospitals, nursing homes and clinics to establish a safe patient handling committee and a safe patient handling program. |
| ***Private Equity Demonstration***<br>Authorize a demonstration to allow up to five business corporations to operate health care facilities that could include nursing homes. | Does not include Executive proposal. |
| ***Certificate of Need***<br>• **CON streamlining:** Eliminate requirement for need review of certain primary care and hospital projects.<br>• **Character and competence streamlining:** Reduce compliance record "look-back" period from 10 years to 7 years. Expand PHHPC discretion to approve applicants with repeat violations.<br>• **Transfer of ownership:** Align corporate and limited liability company processes under Article 28. | Does not include Executive proposal. |
| ***Regional Health Planning***<br>• **Regional Health Improvement Collaboratives:** $7M for regional collaboratives that would convene stakeholders to address regional health challenges.<br>• **Finger Lakes Health Systems Agency (FLHSA):** $2.5M for regional planning, statewide coordination and demonstration of best practices. | Includes Executive proposal for FLHSA. $9M appropriated for "population health improvement;" appropriation bill also include $9M for regional health planning, although we are told this is an error. |
| ***Assisted Living Program 6,000 Bed Expansion***<br>ALP program was to be expanded by 6,000 beds by March of 2014; proposal extended this by two years. | Modifies Executive proposal; accepting two-year extension but requiring DOH reporting to the Legislature on an annual basis. |
| ***Criminal History Record Check for ACFs***<br>No provision. | Adds language to require ACFs conduct a criminal history record check (CHRC) of all prospective employees and be reimbursed in the same manner as nursing homes and home care agencies. $3.1M appropriated for CHRC activities, including implementation of new ACF CHRC initiative. |
| ***Streamlining for ACFs, ALRs and ALPs***<br>• Enable ACFs to operate respite through notification rather than application.<br>• Increase allowable respite stay in ACF from 6 weeks to 120 days annually.<br>• Extends authorization for ACFs to operate respite and day programs by another 3 years.<br>• Allows EALRs and SNALRs expedited reviews of expansions of their programs of up to 9 beds.<br>• Expedited review for transfers of ownership of less than 10% and business conversions.<br>• Reduces character and competence review look-back from 10 to 7 years. | Includes Executive proposals other than reduced character and competence review look-back. Modifies proposal on EALP/SNALR expansions to allow only those facilities in good standing to expedite their expansions. |

## *Summary of NYS Budget by Functional Area*

| EXECUTIVE BUDGET | FINAL BUDGET |
|---|---|
| **REGULATORY/PROGRAMMATIC INITIATIVES** | |
| *Advanced Home Care Aides*<br>Advanced home care aides could provide nursing services to self-directing individuals assigned by and performed under the supervision of RNs employed by a CHHA, LHCSA or hospice. | Does not include Executive proposal. |
| *Long Term Home Health Care Program Capacity*<br>Eliminates the cap on LTHHCP slots allotted to each program. | Includes Executive proposal. |
| *Home Health Aide Medication Administration*<br>Amend the Nurse Practice Act to allow home health aides to administer medications, in accordance with regulations. | Does not include Executive proposal. |
| *Prescription Drugs*<br>• **Managed care co-payments:** Permit Medicaid managed care plans to charge a lower ($1) co-payment for preferred brand name drugs on the plans' formularies.<br>• **Prescriber prevails:** Eliminate prescriber prevails for drugs with generic equivalents.<br>• **Early refills:** Require prior authorization of refills sought when more than a 6-day supply should be remaining of the amount previously dispensed.<br>• **Off-label prescribing:** Impose prior authorization to determine whether a covered outpatient drug has been prescribed for an off-label use<br>• **EPIC:** No provision. | • Includes Executive proposal on managed care co-payments<br>• Does not include Executive proposals on prescriber prevails or off-label prescribing.<br>• Modifies early refills proposal to require prior authorization when more than a 10-day supply is remaining.<br>• Expands eligibility for EPIC catastrophic coverage to seniors with incomes up to $75,000 (singles) and $100,000 (married couples). |
| *Out-of-Network (OON) Requirements*<br>Create new consumer protections on coverage of OON services, disclosure requirements for hospitals and professionals on health plan network memberships and OON charges, disclosures on OON reimbursement by plans, and usual and customary rate computation. Also include processes for appeals of OON referral denials and dispute resolution for surprise bills. | Includes Executive proposal, with modification to define "hospital" as "general hospital," thereby exempting nursing homes from disclosure requirements. |
| **STATE PROGRAM ADMINISTRATION** | |
| *Medicaid Managed Care Advisory Review Panel*<br>Increase panel from 12 to 16 members, and require its membership to include representatives of Medicare/Medicaid dual eligibles and individuals with behavioral health needs and entities that serve dual eligibles and individuals with behavioral health needs. | Accepts and modifies Executive proposal by expanding the panel's duties to include: evaluation and adequacy of program materials; examination of trends in service denials; and assessment of access to care for people with disabilities. |
| *Home and Community–based Care Work group*<br>No provision. | Continue work group activities effective May 2014, and expand group's charge to include best practices for clean claims and related dispute resolutions. |
| *Managed Care Enrollment Broker*<br>Allow DOH to require counties that have implemented mandatory managed care programs to use DOH's enrollment broker for MMC and MLTC, including those regions now served by local social services districts. | Does not include Executive proposal. |

## *Summary of NYS Budget by Functional Area*

| EXECUTIVE BUDGET | FINAL BUDGET |
|---|---|
| **RECIPIENT ELIGIBILITY** | |
| ***Spousal Refusal***<br>Eliminate ability of Medicaid applicant to qualify if living with spouse who refuses to support. | Does not include Executive proposal. |
| ***Managed Care Fair Hearing Rights***<br>No provision. | Provides "aid continuing" for managed care enrollees, while the fair hearing process is pending, regardless of whether the fair hearing process extends beyond a current authorization period. |
| ***Presumptive Eligibility***<br>Expand presumptive eligibility determinations by qualified hospitals to include Modified Adjusted Gross Income (MAGI)-eligible applicants. | Includes Executive proposal. |
| ***MAGI Spend-Down***<br>Authorize spend-down to the MAGI equivalent of the applicable income standard. | Includes Executive proposal. |
| ***Liens and Estate Recoveries***<br>No provision. | Implements federal guidance by limiting recoveries from the estates of MAGI-eligible beneficiaries, age 55 or older at the time they receive Medicaid, to amounts expended for nursing home services, home and community-based services, hospital services and prescription drugs. Also, modifies the authority to impose liens on the property of certain individuals permanently placed in nursing homes and intermediate care facilities. |
| ***Basic Health Program (BHP)***<br>Create BHP, if in state's financial interest, to provide affordable coverage and additional federal funding. BHP will provide low-cost coverage for adults under age 65 with income between 133% and 200% of FPL and for non-federally-qualified immigrants with income below 200% of FPL. Income-eligible, non-federally-qualified immigrants would be covered by BHP instead of Medicaid, but Medicaid would continue to cover benefits excluded from the BHP. | Includes Executive proposal. |

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