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M E M O R A N D U M

TO: All Members

FROM: Advocacy and Public Policy Department

DATE: January 28, 2015

SUBJECT: **Governor's Proposed 2015-16 Executive Budget**

ROUTE TO: Administrator, Program Directors, Department Heads

ABSTRACT: Detailed summary of 2015-16 Executive Budget provisions.

I. INTRODUCTION

Governor Cuomo's $141.6 billion Executive Budget for state fiscal year (SFY) 2015-16 increases overall state funds spending by less than 2 percent, the fifth consecutive year of 2 percent or less growth. In addition to the $141.6 billion spending proposal, the budget also appropriates most of the $5.4 billion projected state windfall obtained from legal settlements with financial institutions.

The Governor announced some major policy proposals prior to the budget release, including a "Ten Point Plan to Combat Poverty and Fight Inequality." This plan includes raising the State's minimum wage and providing $486 million in housing assistance, an additional $220 million for homeless services, and a $50 million "Nonprofit Infrastructure Capital Investment Program."

In the health care arena, the Executive Budget provides $1.4 billion in additional capital investments to make infrastructure improvements and stabilize health care providers to advance health care transformation goals. The budget would also authorize the implementation of value-based payments, which would represent a significant and transformative method for managed care plans to reimburse providers based on shared risk and outcomes.

This memo follows the brief budget overview presented in our Jan. 21 e-mail to you – the day Governor Cuomo's budget was issued – and provides greater details on those aspects of the budget most relevant to LeadingAge New York's membership. While the various budget

proposals do not apply to every member type, we recommend you review our summary in its entirety to gain a perspective on what is happening globally and across the various sectors. With ongoing efforts aimed at redesigning Medicaid, coordinating care and services and reorganizing the health care delivery system, no sector or organization is unaffected and proposals aimed at one type of service provider could affect other providers.

LeadingAge NY is seeking further clarifications on certain budget proposals, and will provide that information in upcoming communications.

II. CROSS-SECTOR INITIATIVES

The following proposals impact multiple types of Medicaid providers and managed care plans. Budget proposals affecting specific service lines are summarized in Part III below.

Medicaid Global Spending

The proposed budget would permanently extend 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. Under existing law, the global cap is authorized through March 31, 2016.

- ***Overview:*** 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 (CPI). Under the global cap, DOH and the Division of the Budget (DOB) 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 expires on March 31, 2016 under current law, and would be extended indefinitely under the budget proposal. SFY 2014-15 Medicaid expenditures through Oct. 2014 are $5 million or 0.1 percent below global spending projections.
- ***Dollar increases:*** The global spending cap was set at $17.1 billion in the current fiscal year, and would grow to $17.9 billion in SFY 2015-16. Importantly, the growth in the global cap will not translate into automatic increases to providers. The funds are intended for increases in Medicaid enrollment, utilization of services and changes in service intensity.
- ***Shared savings provision*****:** The enacted SFY 2014-15 budget authorized a program under which DOH and DOB review Medicaid spending prior to January 1 each year to determine whether there are savings from the global cap. If there are savings for distribution, 50 percent or more are to be distributed proportionally in the first quarter of the calendar year based on claims and encounters submitted to Medicaid by each provider and plan during the previous three-year period. The remaining savings, up to 50 percent, are to be used by DOH to assist financially distressed and critically needed providers. While the Executive Budget would continue this program, we understand that DOH has determined there will be no shared savings distributed for SFY 2014-15.
- ***State takeover of local share growth:*** The proposed budget reflects the third year of the 3-year phase-out of growth in local share Medicaid expenditures enacted in SFY 2013-14. Annual growth in the local share of Medicaid will be capped at zero percent in SFY 2015-16.

Medicaid Trend Factors

Under existing law, trend factor (i.e., inflation) adjustments to Medicaid reimbursements are eliminated through March 31, 2015. This trend factor freeze has affected hospitals, nursing homes (except for pediatric facilities), adult day health care programs, home care agencies, personal care providers, assisted living programs, hospices and clinics. We are currently seeking clarification as to whether these trend factor eliminations are proposed to continue into the future. However, we cannot find evidence of any proposal to appropriate additional funding under the Medicaid program to accommodate trend factor adjustments in SFY 2015-16.

Vital Access Provider Funding

The Executive Budget includes a state funds appropriation of $290 million (i.e., $580 million with federal funds included) for the Vital Access Provider (VAP) program. Within the amount appropriated, the VAP funding set-aside for Critical Access Hospitals would increase from $5 million to $7.5 million, and VAP funding of $10 million would be set aside for providers serving rural areas and isolated geographic regions. Providers eligible for the rural enhanced payment would include hospitals, nursing homes, diagnostic and treatment centers, ambulatory surgery centers and clinics. These payments could take the form of temporary rate adjustments, lump sum payments or supplemental rate methodologies.

Value-Based Payments

Under the State's Medicaid Section 1115 waiver and its Delivery System Reform Incentive Payment (DSRIP) Program, by the end of the fifth year of DSRIP (2019), 90 percent of payments to providers by Medicaid managed care plans must be made through a value-based methodology (or a methodology other than fee-for-service). Similarly, the State's Fully-Integrated Duals Advantage (FIDA) Program requires the implementation of non-fee-for-service provider reimbursement methodologies. DOH intends to submit a plan for adopting value-based payment arrangements to CMS and receive approval by April 1, 2015.

The Executive Budget proposes new authority for the Commissioner of Health to authorize managed care plans to enter into value-based payment contracts with providers. It also permits the Commissioner to authorize DSRIP Program Performing Provider Systems (PPSs), or any subset of a PPS, to accept value-based payments. The proposal clarifies that PPSs are authorized to arrange by contract for the delivery of health services. It further authorizes the promulgation of regulations governing value-based payments, including:

- authorizing discrete levels of value-based payments that account for level of risk;
- placing conditions on any such level of value-based payment;
- requiring or adjusting reserves for managed care organizations and entities participating in value-based payments;
- authorizing the Commissioner to establish a reinsurance pool; and
- making any changes to value-based payments or methodologies as necessary to conform to the DSRIP waiver.

The proposal provides that the value-based payment provisions are not limited to the duration of the DSRIP waiver, or to the providers participating in DSRIP. The proposal also appears to apply beyond the Medicaid program to payments under other types of health coverage.

Capital Funding

The Executive Budget includes a proposal for $1.4 billion in new capital investments to make infrastructure improvements and provide additional tools to stabilize health care providers to advance health care transformation goals. This funding would be in addition to the $1.2 billion Capital Restructuring Financing Program that was authorized in last year's budget. The $1.4 billion would be allocated as follows:

- ***Brooklyn Health Care:*** $700 million in capital funding is included to stabilize the health care delivery system in central and east Brooklyn, reduce unnecessary hospital inpatient beds while improving the overall quality of inpatient and outpatient services and increase access to community-based primary and preventive health care services.
- ***Upstate Health Care:*** To meet the financial challenges that exist for smaller, community-based and geographically isolated hospitals and health care providers, the budget also reserves: (1) $300 million to create an integrated health care delivery system in Oneida County to reduce unnecessary inpatient beds and expand primary care services; and (2) $400 million to support debt restructuring and other capital projects to promote appropriate regional consolidations among health care providers and further health care transformation in rural communities.

Private Equity Demonstration Program

The Executive Budget again includes a proposal to authorize a pilot program to allow private equity investment in health care facilities "…to assist in restructuring the health care delivery system." Under this proposal, up to five business corporations would be established as health care facility operators. The corporations' powers would include the operation of a hospital (defined as a general hospital, nursing home or clinic), and could also include operation of a home care agency or hospice. The investor operators would be required to affiliate with an academic medical center or teaching hospital and would be eligible for debt financing through the Dormitory Authority of the State of New York (DASNY), local development corporations and economic development corporations.

Operators of facilities under this pilot would be exempt from the prohibition on corporate ownership of stock. Although investor and corporate ownership would be permitted, neither the corporations' stock nor the stock of its direct or indirect owners could be traded on a public exchange or over-the-counter market. Only principal stockholders would be subject to character and competence review.

In approving the establishment of a business corporation under this pilot program, the Public Health and Health Planning Council (PHHPC) would be required to consider the extent to which the corporation:

- provides equal or majority governance rights for its hospital partner;

- incorporates a representative governance model that defines responsibility for hospital operations and approval of shareholders, and reserves local authority to ensure access and quality;
- is incorporated as a benefit corporation under the Business Corporation Law;
- commits to maintaining or enhancing existing services and charity care;
- identifies a strategy to maintain or improve the quality of care;
- explains how it will make capital investments in the hospital, retain the workforce and satisfy obligations to benefit plans and pensions;
- will create a foundation to address public health needs; and
- describes how profit distributions will be made to ensure access, quality and capital.

The business corporation would be required to commit to allow its hospital partner to exercise authority over health care functions, provide ongoing reports to DOH and convene a local advisory board. The directors and officers of any corporation approved under this pilot would be required to consider the interests of the community, patients, and hospital workforce when making business decisions, in addition to satisfying their obligations as set forth in the Business Corporation Law.

The proposed legislation would impose several restrictions on the business entity in relation to exiting its investment and selling its interest in the hospital. In its application, the corporation would have to specify the expected duration of its investment in the hospital(s), whether it would provide a buy-back option for the hospital partner or an employee ownership plan upon exiting its investment, the safeguards to preserve access upon disposition to a subsequent investor, and the role of the hospital partner in negotiations to transfer ownership. The proposal would bar any approved business corporation from exiting its investment by re-selling the hospital for a period of three years. Any transfer of all or substantially all of the assets of the business corporation would have to be approved by the Commissioner.

The proposed legislation requires the Commissioner to provide the Governor and the Legislature with an evaluation of the pilot program within three years after the establishment of a business corporation as the operator of a health care facility under the program.

Support for Non-Profits

The Executive Budget includes proposals aimed at supporting community-based non-profit organizations with capital and other assistance:

- ***Nonprofit Infrastructure Capital Investment Program:*** A Nonprofit Infrastructure Capital Investment Program would be created to provide up to $50 million for capital projects that will improve the quality, efficiency and accessibility of human services organizations providing direct services to New Yorkers. Eligible investments would include renovations or expansions of space used for services; technology to support electronic records, data analysis and/or confidentiality; modifications to provide for sustainable, energy-efficient spaces; and renovations to promote accessibility. The program would be funded through the issuance of bonds by DASNY and the Urban Development Corporation.
- ***Office of Faith-Based Community Services:*** A new State Office of Faith-Based Community Services, headed by former Assemblyman Karim Camara, would be

authorized to assist community and faith-based organizations in providing education, health, workforce training, food programs and social services to communities. The Office will also work with the Empire State Development Corporation to encourage the development of faith-based businesses.

Certificate of Need and Health Planning

The Executive Budget reprises proposals to streamline Certificate of Need (CON) requirements that have been advanced for the past two years, including:

- ***Public Need*:** The proposed budget would eliminate the requirement of a public need review of: (1) establishment applications for primary care facilities; (2) construction applications by general hospitals and diagnostic and treatment centers for primary care services; and (3) construction applications by general hospitals and diagnostic and treatment centers that do not involve a change in capacity, services, major medical equipment, or geographic location, or the replacement of the facility. This proposal also gives the PHHPC and DOH the authority to eliminate financial review of these types of applications.
- ***Character and Competence:*** The proposed budget would streamline "character and competence" reviews by reducing the "look-back" period from 10 years to 7 years for consideration of the compliance record of applicants for establishment as operators of hospitals, nursing homes and diagnostic and treatment centers. This proposal would also give the PHHPC the discretion to approve an applicant for establishment, even if the applicant had experienced recurrent violations of regulations, provided that the applicant demonstrates that the violations cannot be attributed to any action or inaction of the applicant. Under current law, the PHHPC is prohibited from approving an applicant that has been subject to repeat violations within ten years that threaten the health, safety, or welfare of patients or residents.
- ***Transfer of Ownership:*** The proposed budget would align the review requirements for transfers of ownership in business corporations and limited liability companies that operate hospitals, nursing homes, or diagnostic and treatment centers. Under current law, the requirements vary based on the form of organization. The budget would also clarify that if a transfer of an ownership interest of 10 percent or more in a home care agency is executed without PHHPC approval, the agency's license or certificate of approval is subject to suspension or revocation.
- ***Population Health Improvement:*** The proposed budget continues last year's investment in regional population health activities with an appropriation of $13.5 million. In addition, the proposed budget again appropriates $2.5 million to the Finger Lakes Health Systems Agency to engage in regional planning, statewide coordination, and demonstration of best practices; to promote high-quality and accessible primary care; to provide technical assistance to support financial and business planning for integrated systems of care; and to assist primary care providers in the adoption, implementation and meaningful use of electronic health record technology.

Health Information Technology Infrastructure

The Executive Budget proposes to continue the following investments in health information technology (HIT) that were initiated in the SFY 2014-15 enacted budget:

- ***SHIN-NY support:*** Allocates $45 million to the State Health Information Network of New York (SHIN-NY) – an electronic health information highway to permit the sharing of health information among health care providers across the State. This amount is in addition to an estimated $50 million to be disbursed out of the SFY 2014-15 budget and a $30 million commitment for SFY 2016-17. The Executive Budget also proposes to permanently extend the authorization to appropriate funds for the development and promotion of the SHIN-NY.
- ***Claims Database:*** Invests $10 million in the All Payer Claims Database, 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 potentially for value-based payments.
- ***State HIT Initiatives:*** Invests $10 million, growing to $50 million over five years, in HIT initiatives that appear to target DOH's IT needs.

Workforce

The Executive Budget includes proposals affecting employee compensation, insurance costs and volunteerism:

- ***Minimum Wage:*** The State's minimum wage would be raised to $11.50 per hour in New York City and to $10.50 per hour in the remainder of the State. This proposal would take effect on Dec. 31, 2016. As of Dec. 31, 2014, the minimum wage rose to $8.75 per hour and, under existing law, will increase to $9.00 on Dec. 31, 2015.
- ***New York Health Exchange:*** A surcharge would be levied on all fully insured health insurance policies to expand funding for the State's health exchange, *New York State of Health.* This assessment would be levied on all domestic accident and health insurers in the individual, small group and large group insurance markets. It would *not* apply to Medicare or Medicaid managed care plans. The State estimates that the surcharge will provide approximately $70 million in new funding to support the health exchange under the provisions of the federal Affordable Care Act (ACA).
- ***Ebola Bill of Rights:*** A "bill of rights" would be created for health care professionals who volunteer to fight Ebola. Under this proposal, health care professionals could seek a leave of absence to volunteer to fight Ebola overseas without adverse employment consequences. The employer would be required to grant the request, unless the employee's absence would impose an undue hardship on the employer's business or operations. The leave of absence would include travel time, a period of service volunteering to fight Ebola, and a reasonable period of rest and recovery. The leave would have to be extended to include additional time for any quarantine. If the leave would create an undue hardship, the employer and employee would be required to attempt to agree on a shorter leave. If they cannot agree to a shorter leave, the leave of absence would be denied. An employee could petition the Commissioner of Health for a review of the denial of a leave request.

Medicaid Eligibility

- ***Presumptive Eligibility and Emergency Assistance:*** To address a court decision that required local social services districts to pay for emergency personal care services prior to a Medicaid eligibility determination, the Executive budget proposes to amend the presumptive eligibility and emergency assistance provisions of the Social Services Law.

The proposed amendments provide that: (1) neither the State nor a local social services district is required to provide temporary, pre-investigation monetary or other grants for the purpose of obtaining medical care, home care or other services; and (2) Medicaid reimbursement is available for services and supplies received prior to an eligibility determination only if the they were provided during the 3-month retroactive eligibility period or during a period of presumptive eligibility.

- ***Basic Health Plan (BHP):*** The BHP is an ACA program authorized in New York State under the SFY 2014-15 budget. It provides basic health coverage for individuals with incomes slightly over the Medicaid limits. The BHP also provides federal funding for health coverage for certain categories of lawfully-present immigrants whose Medicaid coverage has, until now, been funded exclusively with state dollars. Under the SFY 2014-15 budget, those immigrants (principally lawful permanent residents with less than five years of U.S. residency and persons residing under color of law) are eligible only for the BHP and not Medicaid. The proposed budget provides that, in addition to lawful permanent residents with less than five years of U.S. residency and persons residing under color of law, non-citizens with a valid non-immigrant status are eligible for the BHP rather than Medicaid.
- ***Spousal Support:*** The proposed budget once again seeks to limit "spousal refusal" as a means of qualifying for Medicaid. The budget proposal would allow an applicant to qualify for Medicaid without counting his/her spouse's income and assets only if the spouse is both *absent and* unwilling to support the applicant. Under current law, the income and assets of the spouse of an applicant for Medicaid will not be counted if the spouse refuses to support the applicant *or* the spouse is "absent."

Transportation

- ***State Transportation Management Contract:*** The Executive Budget would make permanent the authority of the Commissioner of Health to assume responsibility from the local social services districts for management and reimbursement of Medicaid transportation services, While making permanent the State's authority to contract with vendors to manage transportation services, the proposed budget would also subject such contracts to State competitive bidding requirements—eliminating an existing exemption.
- ***MLTC Transportation Carve-Out:*** *See the "Managed Care and Pharmacy" section for information about this proposal.*
- ***Assessment of Mobility and Transportation Needs:*** *See the "Home and Community-Based Services" section for information about this proposal.*

Pharmacy

- ***Prior Authorization and Prescriber Prevails:*** The Executive Budget once again proposes to eliminate the ability of a prescribing professional to override the preferred drug program and obtain Medicaid coverage of a prescription drug that is not on the preferred drug list. In addition, the budget proposes to expand prior authorization under the Clinical Drug Review Program by allowing the Commissioner of Health to require prior authorization of any drug prior to receiving a recommendation by the Drug Utilization Review Board.
- ***Brand Name Ingredient Cost/Dispensing Fees:*** The budget proposes to reduce reimbursement of the ingredient cost of multiple source and brand name prescription

drugs, while increasing the dispensing fees paid to pharmacies. Reimbursement would be reduced to Average Wholesale Price minus 24 percent or Wholesale Acquisition Cost minus minus 9 percent. Dispensing fees would be increased from $3.50 to $8.00 per prescription for brand name drugs.

- ***Pharmacy – Supplemental Rebates:*** The Executive Budget authorizes the Commissioner of Health to negotiate directly with pharmaceutical manufacturers for the provision of supplemental rebates, including utilization-based rebates for managed care enrollees. This provision would be limited to only outpatient drugs for which the manufacturer has in effect a rebate agreement with the federal secretary of health and human services.
- ***Pharmacy – 340B Drug Pricing:*** The Executive Budget proposal limits payment for drug claims submitted to a managed care organization by a provider covered under the federal 340B Drug Discount Program. Under the 340B program, drug manufacturers are required to provide outpatient drugs to qualifying health care providers at reduced prices. This provision seeks to limit payment to these providers to the actual acquisition cost based on the invoice price for the drug minus all discounts and other cost reductions under the 340B program.

Medicare-Medicaid Part B and Part C Crossover Payments

Medicaid presently pays certain health care practitioners and institutional providers 20 percent of Medicare Part B coinsurance amounts for Medicaid covered services and supplies provided to Medicare/Medicaid dually-eligible beneficiaries of fee-for-service Medicare. For dually-eligible beneficiaries enrolled in Medicare Advantage plans (Part C), the State currently pays the full amount of the beneficiary's cost sharing.

The proposed budget would limit Medicaid payment for Medicare Part B coinsurance amounts so that the total Medicare/Medicaid payment to the provider would not exceed the amount that the provider would have received for a Medicaid-only patient. DOB attributes $41.7 million in savings to this element of the proposal. The proposal would also limit Medicaid payment for Medicare coinsurance of dually-eligible beneficiaries enrolled in Medicare Advantage plans (Part C). Consistent with the treatment of fee-for-service coinsurance liability, total Medicare and Medicaid payments for services and supplies provided to Medicare Advantage beneficiaries would be limited to the amount that the provider would have received for a Medicaid-only patient. DOB attributes $49.7 million in savings to this part of the proposal.

This proposal would take effect on July 15, 2015. We are awaiting further details to determine whether/how these proposed revisions would affect LeadingAge NY members.

III. MANAGED CARE, LONG TERM CARE AND SENIOR SERVICES PROPOSALS

Managed Care

In general, the managed care provisions in the budget seek to continue the transition of additional populations and services into Medicaid managed care and to make targeted investments to facilitate those transitions. Notably, the proposed budget includes several managed care savings and investment initiatives that would be carried out administratively, without legislation. In the absence of legislation, limited information is available on these proposals at this time. LeadingAge NY will be seeking more detail on these initiatives as the budget process progresses.

- ***Managed Long Term Care (MLTC) Extenders:*** The Executive Budget proposes to make permanent the MLTC program, which was set to expire on Dec. 31, 2015. It also makes permanent the statutory authorization to to seek waivers to implement mandatory MLTC, the eligible populations for MLTC, and the requirement and timing of comprehensive assessments by MLTC plans. It further makes permanent certain MLTC "operating demonstrations."
- ***MLTC Transportation Carve-Out:*** The Executive Budget includes an administrative proposal to eliminate transportation from the MLTC benefit package and has attributed a $14.7 million savings to this action. The savings would grow to $29.4 million in SFY 2016-17. The savings would presumably be generated from reductions in MLTC premiums. As this proposal is not reflected in the legislation accompanying the budget, limited information is available at this time. *See the "Transportation" section for additional proposals.*
- ***MLTC Technology Demonstration*:** The proposed budget includes an MLTC Technology Demonstration with an associated investment of $1.0 million. The program would utilize home and community based supportive technologies to support individual independence in the home or the most integrated setting possible.
- ***Managed Care Ombudsman:*** The proposed budget would expand the managed care ombudsman program to cover all managed care products. It appropriates an additional $5 million, growing to $25 million by SFY 2016-17, for this purpose. As this proposal is not reflected in the legislation accompanying the budget, limited information is available at this time.
- ***Home Care Recruitment, Training and Retention Payments:*** The Executive Budget proposes to eliminate discrete home care recruitment, training and retention rate increases paid to MLTC plans and associated attestation requirements. According to the memorandum in support of the budget legislation, those payments would be made in the base rate.
- ***New York Health Exchange:*** *See the "Workforce" section for information about this proposal.*
- ***Basic Health Plan:*** DOH is moving forward with the implementation of the BHP authorized in the SFY 2014-15 enacted budget. To implement the BHP, the Executive Budget seeks to authorize the establishment of premium rates based on an actuarial analysis and in consultation with health plans. The proposed budget appropriates $35.7 million to support the BHP. *For more information, see the "Medicaid Eligibility" section.*
- ***Behavioral Health Payment Rates:*** The Executive Budget would require that managed care plans participating in the Child Health Plus program reimburse providers of ambulatory behavioral health services in accordance with the state's Ambulatory Patient Group (APG) rate methodology. Managed care organizations may negotiate different rates, subject to approval by the Commissioner of Health, in consultation with the commissioners of Alcoholism and Substance Abuse Services and Mental Health.
- ***Supplemental Medicaid Managed Care Payments:*** The Executive Budget proposes to expand the supplemental payments for professional services rendered by health care professionals affiliated with SUNY hospitals, public benefit corporations and public general hospitals. Under this proposal, such payments would be made not only for services provided to fee-for-service beneficiaries, but would also be paid for services to beneficiaries enrolled in managed care plans. Supplemental payments would be passed through managed care plans and distributed to providers as determined by the managed care model contract. The goal is to ensure payment equivalent to the average commercial

or Medicare rate that would otherwise be paid for the services of such physicians, nurse practitioners and physician assistants.

- ***Managed Care Transition for Foster Care Children:*** Last year's budget included authorization of $5 million to facilitate the managed care transition of children placed with voluntary foster care agencies. This year's Executive Budget proposal expands that amount to $15 million to support training and consulting services and investment in data collection and health information technology for voluntary foster care agencies.
- ***Health Homes Criminal Justice Collaboration:*** The proposed budget seeks to allocate grants of up to a $5 million (all funds) to facilitate coordination between health homes and the criminal justice system. Areas to be funded may include: staff training, health information technology and other technical assistance.
- ***Mainstream Managed Care Profit Cap:*** The Executive Budget proposes to impose a 5 percent cap on the profits of mainstream Medicaid managed care (MMC) plans. This proposal would be carried out administratively (i.e., without legislation). The projected $90 million in savings generated would be re-invested in quality initiatives through the MMC Quality Incentive Pool.
- ***Pharmacy:*** *See the "Pharmacy" section for additional proposals.*
- ***Medicare-Medicaid Part B and Part C Crossover Payments:*** *See the "Medicare-Medicaid Part B and Part C Crossover Payments" section for information on this proposal.*

Nursing Home Services

Budget proposals affecting multiple provider types (i.e., global cap, value-based purchasing, capital funding, VAP) are covered in separate sections of this memo. Proposals specific to nursing homes include the following:

- ***Energy Efficiency/Disaster Preparedness:*** This proposal would authorize DOH to develop an energy efficiency and/or disaster preparedness demonstration program for nursing homes. It limits the program to real property capital costs and authorizes DOH to write regulations to implement the program. A DOH white paper that describes the initiative, a collaboration that includes DOH, nursing home providers and the NY State Energy and Research Development Agency (NYSERDA) is available here. The goal is to facilitate energy audits to identify homes that may be best targeted for energy efficiency and/or disaster preparedness investment and to develop public/private options to help finance such investment.
- ***Nursing Home Rate Appeals Cap:*** Current law limits the amount of nursing home rate appeals that DOH may process to $80 million per year. This provision would extend this limit for an additional four years through March 31, 2019, while continuing the requirement that DOH consider financial hardship when prioritizing appeals. DOH would continue to have the authority to enter into negotiated settlements for multiple appeals. If the Universal Settlement of Litigation and Appeals goes forward, $50 million of each year's appeals cap will be used to fund the settlement, with the remaining $30 million available for the processing of appeals excluded from the settlement.
- ***Cash Receipts Assessment:*** The proposed budget would extend permanently the Medicaid-reimbursable 6 percent cash receipts assessment on non-Medicare cash receipts. Note that the additional non-reimbursable 0.8 percent assessment also remains in effect, pending final DOH determination on its continuation.

- ***Making Previous Cost Containment Measures Permanent:*** The proposed budget would make permanent a number of previously enacted Medicaid cost containments that require periodic reauthorization. These include past trend factor reductions and Medicare maximization requirements.
- ***Medicare-Medicaid Crossover Payments:*** *See the "Medicare-Medicaid Part B and Part C Crossover Payments" section for information about this proposal.*
- ***Training Initiative:*** The Executive Budget would provide $46 million in funding for a Nursing Home Advanced Training Initiative. This proposal would implement a new training program aimed at teaching staff to detect early changes in a resident's physical, mental, or functional status that could lead to hospitalization.

Home and Community-Based Services

The Executive Budget continues the implementation of Medicaid Redesign Team (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 managed care enrollment of Medicaid recipients who need more that 120 days of community-based long term care services. The proposed budget also includes several initiatives intended to carry out the State's obligations under the *Olmstead* decision to serve individuals with disabilities in the most integrated setting. In addition, the budget extends ongoing cost containment initiatives, such as Medicare maximization and past trend factor cuts. Proposals specific to home and community-based services include:

- ***Advanced Home Health Aide (AHHA):*** The Executive Budget again proposes an exemption from the Nurse Practice Act to permit a certification process and scope of practice for AHHAs in home care and hospice settings. This year's proposal directs the State Education Department (SED), in consultation with DOH to promulgate regulations that: (1) specify AHHA authorized tasks (which must include the administration of routine and pre-filled medication); (2) require direct supervision by a registered professional nurse and employment by a hospice, CHHA or LHCSA; (3) require completion of one year of experience as a home health aide and specified training; (4) require orders by an authorized practitioner; (5) specify minimum standards for training; and (6) require inclusion of AHHA in the home care registry. The regulations would prohibit an AHHA from holding himself/ herself out as a nurse and from assessing medication needs. The proposed legislation directs the SED to consider the recommendations of the workgroup of stakeholders that are providing guidance on the tasks which may be performed by the AHHA.
- ***Community First Choice:*** The Executive Budget proposes to invest additional funds secured through the federal Community First Choice Medicaid State Plan option to implement the State's Olmstead plan for serving individuals with disabilities in the most integrated setting.
- ***Assessment of Mobility and Transportation Needs:*** The Executive Budget would allocate $800,000 to conduct an assessment of the mobility and transportation needs of persons with disabilities and other special populations. The assessment would include identifying any legal, statutory or regulatory and funding barriers. The contractor retained to conduct the assessment would be required to consult with several State agencies, including the Department of Transportation, Office for People with Developmental Disabilities, Office of Aging, Office of Mental Health, and Office of

Alcoholism and Substance Abuse Services. The assessment would include recommendations for the development of a pilot demonstration project to coordinate medical and non-medical transportation services, maximize funding and enhance community integration.

- ***CHHA Episodic Payments:*** The Executive Budget includes an administrative proposal to re-base episodic payments from 2009 to 2013 costs, resulting in a $30 million annual reduction in Medicaid reimbursement for CHHAs. It also proposes to permanently extend CHHA episodic rates of payment for sixty-day episodes of care, except for such services provided to children under eighteen years of age and other discrete groups.
- ***CHHA Bad Debt and Charity Care:*** The proposed budget permanently extends authorizations for bad debt and charity care allowances for CHHAs.
- ***Medicare Maximization:*** The proposed budget permanently extends previous reimbursement reductions imposed if CHHAs and Long Term Home Health Care Programs (LTHHCPs) fail to reach regional targets for Medicaid revenue as a percentage of total Medicare and Medicaid re revenue.
- ***CHHA and LTHHCP Administrative and General (A&G) Caps:*** The proposed budget would make permanent the cap on A&G costs in CHHA and LTHHCP rates. It would also permanently remove a $1.5 million reconciliation limit for CHHA and LTHHCP A&G caps, thereby continuing to allow the State and federal governments to retain savings in excess of $1.5 million, and to prohibit adjustments to the cap if savings do not reach $1.5 million.
- ***Recruitment, Training and Retention Payments to MLTC Plans:*** *See the "Managed Care" section for information on this proposal.* Related funding information is presented below.
- ***2 Percent Across-the-Board Reduction:*** This cut was eliminated in last year's enacted budget, but the funding was not fully restored. Reportedly, the State is still waiting for CMS approval of the restoration.
- ***Spousal Support:*** *See the "Medicaid Eligibility" section for information about this proposal.*
- ***Presumptive Eligibility and Emergency Assistance:*** *See the "Medicaid Eligibility" section for information on this proposal.*
- ***Medicare-Medicaid Crossover Payments:*** *See the "Medicare-Medicaid Part B and Part C Crossover Payments" section for information about this proposal.*

Home Care Funding Appropriations

The Executive Budget proposes the following funding amounts:

- ***Rate Increase for the Nursing Home Transition and Diversion (NHTD)****:* The proposal includes an increase of $7.6 million for SFY 2015-16.
- ***NHTD waiver housing subsidy:*** The Executive Budget does not include a direct appropriation for this program. Instead, this program is lumped among 41 public health programs that would be divided into five pools and cut by 15 percent. It is impossible to know what the total cut to the NHTD housing subsidy would be because the budget language allows for flexibility in spending and the potential for the funding of new, undefined programs.

- ***Traumatic Brian Injury (TBI) Program****:* In addition to the level-funded $12.5 million appropriation for administering this program, $22.2 million is allocated for increases to the rates for various TBI waiver services.
- ***Investment in Caregiver Support:*** The Executive Budget proposes $25 million to support increased funding for caregiver respite services. In addition, funding is being increased for Alzheimer's Disease Assistance Centers and the Alzheimer's Disease Community Assistance Program.
- ***Personal Care Worker Recruitment and Retention (R&R):*** $272 million for New York City and $22.4 million for other areas of the State is provided for Medicaid adjustments supporting R&R of workers with direct patient care responsibility.
- ***Health Care Worker R&R:*** $100 million is allocated to support Medicaid rate increases for CHHAs, LTHHCPs, AIDS home care programs, hospice programs and MLTC plans for R&R of health care workers.
- ***Home Care Registry****:* The Executive Budget is proposing to level-fund the home care registry at $1.8 million.

Other Aging Services Initiatives and Funding

LeadingAge NY is pleased to report that the proposed budget maintains funding for most of the community-based services at the same level as last year.

As part of its efforts to support implementation of the State's Olmstead Plan and the Balancing Incentive Program (BIP), the Executive Budget proposes to explore the creation of an Office of Community Living. The goal of the new office would be to improve service delivery and outcomes for older adults and individuals with a disability by expanding community living integration services. The proposed budget directs the Director of the State Office for the Aging to consult with other agencies and stakeholders about the creation of a new office and to submit a report to the Legislature and the Governor by April 1, 2016.

The proposed budget also includes an increase in State funding for NY Connects to replace federal BIP funds which will expire in October 2015. The additional State funding will maintain ongoing operational support for NY Connects and the "No Wrong Door" initiative through the BIP. The proposed budget includes funding at $8.2 million in SFY 2015-16 and $18.1 million in SFY 2016-17.

The following proposals pertain to other aging services administered by the NYS Office for the Aging (NYSOFA) and DOH, most of which are designed to help seniors remain in their communities:

- ***Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs:*** Level-funding of $2,027,000 would be provided to each of the two models.
- ***Social Model Adult Day Programs:*** Social model adult day programs would be level-funded through NYSOFA at $1,072,000. As in previous years, preference will be given towards funding existing programs.
- ***Title XX funding:*** The proposed budget has reduced Title XX funding to $66 million. A portion of this funding has gone to support senior centers and senior services in New York City, as well as Nassau, Steuben and Erie counties.

- ***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. EISEP is level-funded at $50.012 million.
- ***Wellness in Nutrition (WIN) program:*** Formerly known as Supplemental Nutrition Assistance Program (SNAP), the proposed funding for WIN has been level-funded at $27.3 million. WIN funding is used to provide home-delivered meals, some congregate meals and other nutrition-related services to eligible frail elderly, including residents of senior housing facilities.
- ***Congregate Services Initiative:*** The Executive Budget proposes to level-fund CSI again 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:*** The proposed budget level-funds at this program at $122,500. The program is aimed at creating neighborhoods that consider the evolving needs and preferences of all their residents.
- ***Elderly Pharmaceutical Insurance Coverage (EPIC):*** Last year, the final budget included $195.9 million in funding for the EPIC program. This year, the proposed budget decreases the amount to $126.4 million. This will allow for a continuation of EPIC coverage for co-payments on drugs on a participant's Part D formulary during the initial coverage and catastrophic phases of Medicare Part D.
- ***Human services cost of living adjustments (COLAs):*** The proposed budget would defer COLAs in reimbursement of health and aging human service providers through March 31, 2016.
- ***Technical assistance/training for Area Agencies on Aging:*** The proposed budget includes the same amount as last year at $250,000 for the Association on Aging in New York State. This is to provide training, education and technical assistance to area agencies on aging and aging network contractors to help them adapt to changes in the health and long term care policy environment.

Adult Day Health Services

- ***Previous Trend Factor Cuts*:** The Executive Budget proposes to permanently extend previous years' reductions to Medicaid inflation factors.
- ***Cash Receipts Assessment:*** This proposal would permanently extend the 6 percent Medicaid- reimbursable cash receipts assessment levied on nursing home gross receipts from all non-Medicare patient care services and operating income, including adult day health care services.
- ***Transportation in Medicaid Managed Care:*** This proposal would permanently extend provisions authorizing DOH to contract with Medicaid Transportation vendors (such as Logisticare or Medical Answering Services), taking the responsibility out of the hands of local social services districts. Most counties made this transition over the course of several years. This affects ADHC programs that utilize Method 2, and for all registrants needing transportation to/from medical appointments.
- ***Social Adult Day Care (SADC) Funding:*** The Executive Budget proposes to level-fund SADC support at $1,072,000, with preferences given to existing grants.

Adult Care Facility and Assisted Living Services

Adult Care Facilities

- ***Quality Funding:*** Unfortunately, the proposal repeals the statute that created the Enhancing the Quality of Adult Living (EQUAL) quality program for Adult Care Facilities (ACFs), and eliminates the funding for the program, which was funded at $6.5 million last year. Historically, EQUAL funding has been 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. The Executive Budget proposal indicates that approximately half of these funds will be used instead to support the move of adult home residents to supportive community housing.
- ***SSI Enriched Housing Subsidy:*** The Executive Budget does not include a direct appropriation for the Enriched Housing Subsidy. Instead, this program is lumped among 41 public health programs that would be divided into five pools and cut by 15 percent. It is impossible to know what the total cut to the Enriched Housing subsidy would be because the budget language allows for flexibility in spending and the potential for the funding of new, undefined programs. The current 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 working over the past few years to ensure that past year's funding owed to ACFs is distributed. While we have had significant success, there remain some pockets of funding yet to be distributed. Unfortunately, only a portion of the owed money was re-appropriated – the Enhancing Abilities and Life Experience Program (EnAbLE) funding from 2009 – at $1.7 million.
- ***ACF Criminal History Record Check (CHRC) Funding:*** Effective Jan. 1, 2015, all ACFs must conduct CHRCs on certain prospective employees. $1.3 million was included in the Executive Budget proposal to support the administration of the expanded CHRC program.
- ***Adult Home Advocacy Program:*** This funding is allocated to the Justice Center at $170,000, as it has historically been funded. 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****:* The Adult Home Resident Council Support Project, historically operated by the Family Services League on Long Island, is level funded at $60,000.
- ***Limited LHCSA Program:*** The Executive Budget proposal would extend the limited LHCSA program in adult homes and enriched housing programs for another two years.
- ***SSI Rate:*** The Executive Budget proposal increases the SSI rate to be in line with the Cost of Living Adjustment (COLA) instituted on Jan. 1, 2015, and authorizes a further increase in 2016 based on the federal COLA.
- ***Advanced Home Health Aide:*** *See "Home Care Services" section located above.*

Transitional Adult Homes and Related Issues

- ***Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:*** $38 million is proposed for services and expenses associated with the provision of education, assessments, training, in-reach, care coordination, supported housing and the services needed by mentally ill residents of adult homes and persons with mental illness who are discharged from adult homes.
- ***Mental Health Transitions:*** Up to $7 million is 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 program 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. This program has been included in the budget at the same funding level for several years.

Senior Housing Services

The Executive Budget recommends $225 million for the Division of Housing and Community Renewal (DHCR), an increase of $9 million from the SFY 2014-15 Executive Budget. In addition, the Governor has proposed an additional $440 million in JP Morgan Settlement funds to support numerous housing initiatives.

- ***House NY:*** The 2015-16 Executive Budget proposal continues to fund the House NY program initiated in SFY 2013-14, which invests $1 billion of additional resources over five years to preserve and create 14,300 affordable housing units statewide. This five-year initiative would include the revitalization of 44 Mitchell Lama affordable housing projects that suffer from significant physical deterioration.
    - $42 million is allocated for Mitchell Lama projects;
    - $187.2 million is allocated for HCR and OTDA's capital programs that support the creation or preservation of affordable housing and supporting housing across the State.
- ***JP Morgan Settlement Funds:*** Nearly $440 million in the JP Morgan mortgage settlement funds would help those negatively impacted by the mortgage foreclosure process, including, for member purposes:
    - $116 million for NY/NY IV, a new statewide program to support 5,000 additional supportive housing units;
    - $100 million to preserve and create new affordable housing opportunities;
    - $25 million to improve seniors and veterans housing; and
    - $27 million to support rental assistance to those with HIV/AIDS.
- ***Supportive Housing*****:** $254 million is proposed over a two-year period for MRT Affordable Housing initiatives. LeadingAge NY remains a part of the MRT Affordable Housing workgroup.
- ***Low Income Housing Credit Program*****:** Level-funded at $8 million. Credits are given in equal installments for a ten-year period in the amount of $160 million.
- ***Access to Home:*** Level-funded at $1 million.

- ***NYS Low Income Housing Trust Fund:*** Proposes $47.7 million for providing grants to finance construction or rehabilitation of low-income apartment buildings.
- ***Preservation and Rural Preservation:*** Funding remains level at $8,479,000 for the Neighborhood Preservation Program and $3,539,000 for the Rural Preservation Program.
- ***Low-income Weatherization Program:*** Maintains funding at $32.5 million to assist multifamily projects and income eligible household by reducing their heating/cooling costs and improving the safety of their homes through energy efficiency measures.
- ***Public Housing Modernization Program:*** Level-funded at $6.4 million.

Continuing Care Retirement Communities

While the proposed executive budget does not contain any provisions that directly reference Continuing Care Retirement Communities (CCRCs), operators of these communities are encouraged to review the "*Nursing Home Services*" and "*Adult Care Facility and Assisted Living Services*" sections of this memo in particular for budget provisions that may affect them.

LeadingAge NY has been focusing on its CCRC legislative/regulatory agenda which includes passage of the continuing care at home legislation, regulation 140 reform, and an overall CCRC "revitalization" program. The revitalization program may seek to address several issues including statutory/regulatory barriers to CCRC development and expansion; duplicative administrative standards; and lack of capital. Perhaps most importantly, the recent discussions with the administration over the continuing care at home legislation illustrate a general lack of understanding of CCRCs and their issues.

In part because CCRCs are small in number and do not significantly impact the Medicaid budget, this sector does not draw significant attention at State budget time. One of our goals is to change that. We need to make certain that CCRCs are recognized for the critical role they currently play in providing New York seniors with an important care and housing option, and that lawmakers and policymakers understand how that role can be expanded.

Next Steps: Information and Advocacy

Over the next several days, LeadingAge NY will remain in contact with the administration and Legislature to clarify various budget proposals and advance our advocacy message.

In the meantime, we will be adding advocacy materials to our Legislative Action Center – we will let you know when it's time to take action! We encourage all members, their staff and seniors alike to participate in the 2015 LeadingAge NY/Adult Day Health Care Council/Hospice & Palliative Care Association Advocacy Day, which will be held on Tues., Feb. 10 in Albany – register today! We will also host a conference call from 10:30 a.m. until 12 p.m., Fri., Feb. 6 to review the contents listed in this document, as well as Advocacy Day logistics. To participate, please dial 866-380-9615 and use Guest Access Code: 548776#. The call will be recorded.

If you have questions on the 2014-15 Executive Budget or LeadingAge NY's advocacy initiatives, please contact Ami Schnauber at aschnauber@leadingageny.org or Dan Heim at dheim@leadingageny.org; or call us at (518) 867-8383.