

Mon., March 31, 2014

Colleagues:

The Governor and legislative leaders announced agreement on a \$138 billion budget for State Fiscal Year (SFY) 2014-15 and issued budget bills late Friday, March 28<sup>th</sup>. The bills are slated to be voted on this morning and sent to the Governor for approval, allowing for a fourth consecutive on-time budget. LeadingAge New York staff and the association's legislative counsel, Hinman Straub, worked actively with key lawmakers and staff to ensure members' needs and priorities were met.

Below is an initial summary of the final elements of the bill of most interest to our members. LeadingAge New York staff are currently analyzing the budget bills and will provide a more comprehensive analysis of the budget within a week. In the meantime, if you have any questions about the content of this document or the budget, please contact Ami Schnauber ([aschnauber@leadingageny.org](mailto:aschnauber@leadingageny.org)), Alyssa Lovelace ([alovelace@leadingageny.org](mailto:alovelace@leadingageny.org)) or Dan Heim ([dheim@leadingageny.org](mailto:dheim@leadingageny.org)) or call 518-867-8383.

### **Medicaid Spending**

- ***Global Cap Authority:*** Extends the Medicaid global spending cap for one year to March 31, 2016 along with the authority of the Commissioner of Health and State Budget Director to reduce spending if Medicaid expenditures are exceeding projections. State share Medicaid spending is limited to \$17.1 billion in SFY 2014-15 and \$17.9 billion in SFY 2015-16. The Legislature added detailed reporting requirements around how the cap is set and tracking of expenditures by service line.
- ***Global Cap Shared Savings:*** Authorizes distribution of savings accruing from the Medicaid global cap to be distributed proportionately to Medicaid providers and Medicaid managed care plans. Up to 50 percent of the funding would be earmarked for distribution to financially distressed and critically needed providers.
- ***Two-percent Cut Restoration:*** Restores the across-the-board two percent cut to Medicaid rates effective April 1, 2014 while maintaining the authority to continue alternative cost containment arrangements (e.g., assessment taxes, etc.) that were made in lieu of the two percent cut.

### **Health Care Investments/Planning**

- ***Vital Access Provider (VAP) Program:*** Authorizes the VAP program in law for all currently eligible providers (i.e., hospitals, nursing homes, Certified Home Health Agencies (CHHAs) and clinics), and expands eligibility for the program to also include licensed home care services agencies, consumer directed personal assistance programs and behavioral health providers. A total of \$313 million was appropriated for the program in SFY 2014-15.
- ***Delivery System Reform Incentive Payment (DSRIP) Program:*** Authorizes funding for incentive grants under DSRIP, a major component of the state's \$8 billion MRT waiver with the Federal government. The legislation: (1) seeks to ensure that DSRIP incentive payments are made

available statewide; (2) establishes a panel to advise the Commissioner on applications for funding; (3) requires the Commissioner to report quarterly to the Legislature on DSRIP progress; and (4) authorizes state agencies to waive regulations to eliminate duplicative requirements and promote efficiency.

- **Capital Restructuring Financing Program:** Creates \$1.2 billion in bonding authority under the joint direction of DOH and the Dormitory Authority to make capital grants that improve the financial stability, quality and efficiency of health care providers. As advocated by LeadingAge NY, Assisted Living Programs (ALPs) and home care agencies were added to the list of eligible providers which also includes hospitals, nursing homes and clinics. We are also pleased that telehealth development was added as a qualifying activity, and that grants will be available to providers that receive DSRIP awards, as well as those that do not.
- **Health Care Facility Restructuring Pool:** Includes the Governor's proposal to expand the eligible borrowers under this program to include not-for-profit nursing homes and diagnostic and treatment centers.
- **Health Information Technology:** Allocates up to \$65 million from the covered lives assessment revenues attributable to newly insured individuals to provide operational support for the State Health Information Network of New York (SHIN-NY), an All Payer Claims Database, SPARCS, Regional Health Information Organizations (RHIOS) and medical assistance eligibility systems. This investment will leverage up to \$30 million of Federal Medicaid funds for these projects for a total of up to \$95 million. The Commissioner of Health is to establish a workgroup to evaluate and develop recommendations on the state's health IT infrastructure.
- **Certificate of Need:** Does not include the Governor's proposals to: (1) eliminate public need review for certain primary care projects; (2) reduce the character and competence "look-back period" from 10 years to 7 years, and (3) relax the prohibition on approving the establishment of an proposed operator with "recurrent" violations.
- **Regional Health Improvement Collaboratives:** Appropriates \$2.5 million for the Finger Lakes Health Systems Agency, and allocates \$9 million for regional health improvement collaboratives to convene stakeholders to address regional health care challenges.
- **Private Equity Ownership of Hospitals, Nursing Homes and Clinics:** Does not include the Governor's proposal to create a demonstration program that would permit the establishment of up to five operators of health care facilities under Article 28 with private equity ownership. LeadingAge NY had concerns about the proposal.

### **Medicaid Eligibility**

- **Basic Health Plan:** Authorizes 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, including individuals under age 65 with income between 133% and 200% 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% of the FPL would be eligible for the BHP.
- **Spousal Refusal:** Rejects the Governor's proposal to eliminate the ability of individuals to qualify for Medicaid when living with spouses who refuse to support them.
- **Medicaid Liens:** Modifies the authority to impose liens on the property of certain individuals permanently placed in nursing homes and intermediate care facilities.

- **Medicaid Estate Recoveries:** Limits recoveries from the estates of beneficiaries, who qualify for Medicaid under the Modified Adjusted Gross Income test, to amounts expended for nursing home services, home and community-based services, hospital services and prescription drugs.
- **Integrated Eligibility System:** Allows the state to enter into a non-competitive contract to implement an integrated eligibility system covering Medicaid and human services programs, subject to the availability of enhanced federal financial participation.
- **Eligibility Integrity:** Authorizes DOH to enter into a non-competitive contract to review the accuracy of determinations of eligibility and eliminate duplicative benefits.

## Housing

- **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 MRT Affordable Housing allocation plan](#) is predicated on \$100 million being available in 2014-15. We do not know whether the reduction in funding will be attributed to this budget year or 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 homes and hospital beds effective April 1, 2014. Funding will be used for MRT supportive housing initiatives. LeadingAge NY is working to ensure that our members benefit from these initiatives and that funding will go to support affordable senior housing.
- **Expand Affordable Housing Opportunities:** \$100 million is allocated in a final agreement for storm recovery funds to be invested to create and preserve 3,000 affordable housing units in multi-family developments.
- **House NY Program Investments:** Adds \$40 million in new capital resources, supplementing the House NY program that was initiated last year.
- **Neighborhood and Rural Preservation Programs:** Funded at \$1,594,000 and \$665,000, respectively.
- **Naturally Occurring Retirement Community (NORC)/Neighborhood NORC:** Maintains previous year's funding levels of \$2.027 million for each program.

## Adult Care Facilities (ACFs)/Assisted Living

- **EnAble:** As advocated by LeadingAge NY, includes approximately \$7 million in additional past EnAble funds, including funding for the purchase of generators.
- **Criminal History Record Checks:** Requires all adult care facilities (ACFs) to conduct criminal history record checks for prospective employees, and authorizes reimbursement for them as is done in nursing homes and home care agencies. The budget allocates \$3.3 million for expenses related to this new initiative.
- **Supplemental Security Income (SSI) Enriched Housing Subsidy:** The SSI Enriched Housing Subsidy was funded at \$475,000; the same level as last year. The subsidy is for up to \$115 per month for each SSI recipient who resides in not-for-profit certified enriched housing programs, and is paid directly to the certified operator. If appropriations are insufficient to meet the \$115 monthly amount, the subsidy will be reduced proportionately.
- **EQUAL Program:** Maintains funding at \$6.5 million.
- **ALP expansion:** Extends the deadline for DOH to award a total of 6,000 new ALP beds by two years, through 2016, and requires DOH to provide progress reports to the Legislature on the development of additional capacity.

- **Respite Stays:** Increases the maximum respite stays for non-residents within ACFs from six weeks to 120 days during a twelve month period. and allows providers to start respite programs upon notice—rather than application- to DOH.
- **Expedited application review:** Creates an expedited review process for EALRs and SNALRs that are in good standing to get approval to operate up to nine additional beds. DOH currently allows such a process for up to five additional beds.

## Home Care

- **Home Care Worker Wage Parity:** Includes language requiring DOH to adjust Medicaid rates for services provided by CHHAs and LTHHCPs, to address cost increases from wage increases required by the Wage Parity Law. Total funding of \$380 million will be provided to CHHAs, LTHHCPs and Medicaid managed care plans to compensate home health aides at the 2014 level under the Home Care Worker Wage Parity law. Wage parity applies to home health aides providing services in the counties of Westchester, Suffolk, Nassau, and New York City.
- **LTHHCP Program Slots:** Eliminates the cap on Long Term Home Health Care Program slots allotted to each program.
- **LHCSA Vital Access Provider:** As noted above, LHCSAs are now eligible for VAP funding if they are planning closure; impacted by another agency's closure; subject to a merger or restructuring; impacted by a merger or restructuring; or otherwise seeking to ensure access to care.
- **HCBS Workgroup:** As advocated by LeadingAge NY, continues the work of the 11-member workgroup through SFY 2014-15, and requires the group to also make recommendations on clean claims submission and related dispute resolution.
- **Recruitment Training and Retention Program:** The final budget rejects the proposal to repeal the R&R funds for various home health and community-based service providers. The final budget extends funding through 2017 in the annual amount of \$100 million.
- **Personal Care Recruitment Training and Retention Reprogramming:** The final budget extends Recruitment Training and Retention funds for personal care services providers located in social service districts which do not include a city with a population of over one million persons. The final budget extends funding through 2017 in the annual amount of \$28.5 million.
- **Home Care Conditions of Participation:** We understand that the final budget includes \$17 million to support the additional costs associated with managed care plans contracting with agencies that meet the federal conditions of participation.

## Nursing Homes

- **CMI Cap:** Thanks to strong advocacy from LeadingAge NY, its members and other groups, the Legislature rejected the governor's proposal to cap the growth of each nursing home's case mix index at two percent for any six month period.
- **Standard Compensation:** Does not include the governor's proposal to require nursing homes to pay a standard rate of compensation. The proposal would have required Medicaid managed care plans to contractually require their nursing home providers to pay these state-set rates, without any additional reimbursement. LeadingAge NY worked with a broad coalition to defeat this proposal.
- **Safe Patient Handling:** Imposes safe patient handling (SPH) requirements on hospitals and nursing homes, despite our concerns. The legislation establishes a statewide SPH workgroup and

requires individual facilities to form SPH committees and have policies in place by 2017. Reduced worker's compensation rates will be developed for facilities implementing safe patient handling.

- **Managed Care Rate Protection:** LeadingAge NY secured amendments to this proposal by the Governor, which requires Medicaid managed care plans to reimburse nursing homes for permanently placed Medicaid residents at the full fee-for-service rate in effect at the time the service was provided, unless there is a different agreed upon rate.
- **Quality Pool:** Provides DOH with statutory authority to make quality pool adjustments retroactive to 2013, and includes LeadingAge NY language effective October 2014 enabling facilities to qualify for funding in cases when there were findings against individual employee(s) but the facility was not cited or culpable for the violation.
- **IGT Payments:** Extends authority for the state to make intergovernmental transfer payments to public nursing homes through SFY 2016-17 of up to \$500 million per year.

### Managed Care

- **Home Care Worker Wage Parity:** See summary under "Home Care" above.
- **Managed Care Consumer Advisory Review Panel:** Expands the Managed Care Consumer Advisory Review Panel to include consumer representatives of dual eligible beneficiaries and individuals with behavioral health needs.
- **Fair Hearings:** Provides that fair hearing and aid continuing rights attach to determinations by managed care plans, regardless of the expiration of any prior authorization period.
- **FIDA Appeals:** Authorizes the Commissioner to use contract staff to conduct FIDA appeals, in addition to State employees.
- **Medicaid Prescription Drug Co-payments:** 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.
- **DISCOs:** Rejects the Governor's proposal to allow managed long term care plans and HMOs to serve as Development Disability Individual Support and Care Coordination Organizations (DISCOs).
- **Investment in Behavioral Health Initiatives:** Includes several provisions to invest in the behavioral health delivery system, including: reinvestment of savings derived from the managed care behavioral health carve-in into community-based and residential behavioral health services; managed care premium increases to support payment of APGs to OASAS providers; VAP funding for behavioral health providers; and funding for managed care plans and health homes for infrastructure development related to the carve-in.
- **Nursing Home Rate Protection:** See summary under "Nursing Homes" above.
- **Home Care Conditions of Participation–Managed Care Contracting:** We are told that the final budget includes \$17M to support the additional costs associated with contracting with agencies that meet the federal conditions of participation.

### Prescription Drugs:

- **Medicaid Prescription Drug Co-Payments:** 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.

- **Off-Label Prescribing:** Rejects the Governor’s proposal to require prior authorization for off-label prescribing.
- **Early Refills:** 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.
- **Outsourcing Facilities:** Provides for registration, inspection and regulation of drug compounding outsourcing facilities.
- **Elderly Pharmaceutical Insurance Program:** Expands eligibility for EPIC catastrophic coverage to seniors with income up to \$75,000 (single) and \$100,000 (married couples).

### **Miscellaneous Provisions**

- **Social Adult Day Funding:** Funds state aid grants for programs at the existing level of \$1,072,000.
- **Pay for Success/Social Impact Bonds:** Increases the appropriation for this initiative from \$30 million in 2013-14 to \$53 million over two years, and authorizes investments in new initiatives including health care.
- **NY Connects:** Requires that any health care provider making a recommendation or referral for long-term care provide the patient with contact information for NY Connects in the appropriate county.
- **Disability Clinician Advisory Group:** Authorizes the Commissioner of Health 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.
- **Rural Dentistry Program:** Creates a mobile dentistry pilot program in Cattaraugus, Chautauqua, and Allegany Counties.
- **Health Care Reform Act (HCRA):** Extends the HCRA provisions by three years to December 31, 2017.
- **Out-of-Network Requirements:** Imposes new requirements on health plans concerning out-of-network coverage which may apply to MLTCs and FIDA plans. There are new requirements for health care professionals and acute care hospitals to provide notices on health plan participation and charges, and processes are created for appeals of out-of-network referral denials and dispute resolution for surprise bills.