

Dear Members:

Over the weekend, the [Senate](#) and the [Assembly](#) released their one-house budget bills and resolutions. The [Senate's resolution](#) helpfully itemizes their changes to the Executive Budget Submission. LeadingAge New York is pleased to report that nearly all of our priority issues have been included in the proposals in one way or another, which means they live to fight another day as the State moves toward a budget deal by the end of the month. Both houses are expected to begin acting on their budget proposals and immediately convene the Joint Budget Conference Committee process to begin negotiating a final budget.

Highlights of both the Senate and the Assembly one-house budgets as they relate to senior housing and long-term/post-acute care are provided below.

### **General Medicaid**

***Medicaid and Across-the-Board Cuts:*** Both the Senate and Assembly proposals add funding that would be sufficient to eliminate new Medicaid cuts proposed in the Executive budget, specifically rejecting the 1 percent across the board Medicaid cut. The Senate provides \$74.25 million to restore other cuts to long term care; Assembly restorations are similar. (Note that this does NOT necessarily suggest restoration of across-the-board cuts enacted last year, nor does it indicate a resumption of trend factors.)

***Medicaid Global Spending Cap:*** The Senate and Assembly reject the Executive's proposal to extend the Global cap to include SFY 2022-23. The Assembly proposes to repeal the Cap outright while the Senate calls on DOH to develop alternatives to the current Medicaid Cap.

### **Cross-Sector Provisions**

***Health Care Transformation Grants:*** Both houses accepted the Executive Budget's reappropriation of the Statewide Health Care Transformation Grant funds, and neither house modified the allocation of funds.

***Civil Penalties:*** The Senate and Assembly both eliminated the Governor's proposed increase in penalties for violations of the Public Health Law.

### **Nursing Homes**

***Nurse Staffing:*** The Senate adds \$200 million for acute care facilities and nursing homes to increase nurse staffing levels.

***Direct Care Spending Ratios, Executive Pay Cap and Penalties:*** The Senate and Assembly do not include the Executive's 30-day amendment proposals to establish nursing home minimum spending thresholds, cap executive pay, and increase penalties for violations of Public Health Law in their respective budget proposals. However,

both the Senate and Assembly have passed stand-alone bills that would set minimum spending ratios for nursing homes, indicating that the proposals will be addressed outside of the budget.

**Medically Fragile Children/Young Adults:** The Senate adds a provision that authorizes DOH to authorize young adults with medical fragility residing in pediatric nursing facilities to remain in place after reaching age 21 and to establish new nursing facilities to serve such young adults. It adds \$328.5 million for pediatric facilities. The Assembly adds language establishing utilization review standards and other provisions for health plans governing the authorization of care for medically fragile children.

**E-Prescribing:** Both the Senate and Assembly reject the Governor's proposal to limit the availability of e-prescribing waivers.

**Vital Access Provider Funding:** Both the Senate and Assembly accept the Executive's proposal for \$132 million in VAP funding as well as provisions to establish a source of funding for financially distressed hospitals and nursing homes.

## MLTC

- **Quality Pool:** The Assembly restores the MLTC quality pool; it is unclear whether the Senate's bill included this restoration.
- **Savings through EISEP Investment:** The Assembly takes \$11.3M in Medicaid savings (through MLTC) as a result of the investment of \$5M in EISEP. The Senate takes \$60M in savings as a result of a \$27M EISEP investment.

## Home Care

**Home Care Wages:** The Senate incorporates a version of the Fair Pay for Home Care Act legislation in the budget, including \$624 million to increase the minimum wage for the lowest paid home health care workers - a minimum of 106% increase of minimum wage by April 1, 2021 and 112% increase of minimum wage by October 1, 2021. Certification and attestation of salary increases will be required by providers and local governments.

**Civil Penalties:** The Senate and Assembly both eliminated the Governor's proposed civil penalties for violations of the Public Health Law directed at long term care facilities, home care and hospice agencies.

**WRR Funding:** The Senate rejects the Governor's reduction in funding for the Workforce Recruitment and Retention (WRR) program. The Assembly funds WRR at \$272M for direct care workers in NYC; \$22.4M in rest of state; funds health care workers at \$100M.

**Telehealth:** The Senate modifies the Executive proposal on comprehensive regulatory telehealth reform by maintaining flexibilities with distant sites, amending originating site language to omit the list of authorized sites, and creating telehealth reimbursement parity with in-person services. The definition of telehealth includes both audio and audio/visual modalities. The Assembly modifies originating site language in the same manner as Senate, but does not include the other changes proposed in the Executive or Senate bills.

**Home Care Workforce:** The Senate one-house adds new language requiring the Department of Health to establish a schedule for when competency exams for home care workers that reside outside the state will be offered (S.1201).

**NHTD/TBI Carve-out:** Both houses prohibit the transition of NHTD/TBI services to Medicaid Managed Care.

**Fiscal Intermediaries:** The Senate requires the Commissioner of Health to reoffer contracts for fiscal intermediaries (FIs) for the Consumer Directed Personal Assistance Program to ensure FIs are physically located in counties they serve and ensure FIs have experience serving individuals with developmental disabilities and serving racial and ethnic minorities. Provides for at least 5 new contracts each for FIs serving those populations and requires at least 2 FIs per county with a population of 200,000 or more.

**Eligibility:** The Assembly expands the Medicaid eligibility income disregard for housing to apply to individuals seeking 'immediate need personal care or CDPAS' to support a discharge from a nursing home or ACF to the community.

## **ACF/AL**

**EQUAL Funding:** Both the Assembly and Senate reject the Governor's proposal restore both the programmatic and capital EQUAL funding at \$3.266M each.

**Enriched Housing Subsidy:** Both the Assembly and the Senate reject the Governor's proposal and restore the program at \$380,000.

**SSI Increase for Congregate Care Level 3 Rate for ACF Residents:** Both the Assembly and the Senate position, consistent with Executive Budget proposal, do not include an increase in the state portion of the SSI benefit for ACF residents.

**Civil Penalties:** Both the Assembly and the Senate reject the Executive budget 30-day amendment proposal to increase civil penalties for adult care facilities (ACFs) from up to one thousand dollars per day to up to ten thousand dollars per day, as well as the Executive proposal to eliminate the ability to rectify a violation within thirty days and avoid a penalty for certain types of violations. It should be noted that there is standalone legislation proposing increases in civil penalties under consideration in the Legislature currently.

**ACF Temporary Operator:** The Assembly and the Senate reject the Governor's proposal to amend the current statute authorizing the Commissioner to appoint a temporary operator in ACFs, removing the requirement that the violations seriously endanger the life, health or safety of a resident; allowing for a temporary operator to be appointed for violations that endanger life, health or safety.

## **Senior Housing**

**Spending Plan:** The Senate and Assembly continue funding to support full implementation of the five-year affordable and supportive housing capital plan through reappropriations. The Senate modifies the Executive's recommendation for housing capital to provide \$750M for the New York City Housing Authority and \$200M for statewide public housing authorities for use on capital projects and other improvements. The Assembly modifies the Executive's recommendation for housing capital to provide \$500M for the New York City Housing Authority and \$125M for statewide public housing authorities for weatherization, heating needs, elevators, lead remediation, and other critical maintenance projects. The Assembly also allocates \$100M for the Mitchell Lama Rehabilitation and Preservation Program.

**Mortgage Insurance Fund Reserves:** The Senate and Assembly both modify the Executive's proposed use of Mortgage Insurance Fund (MIF) reserves. The Senate would provide \$14.7M for the Neighborhood Preservation Program and \$6.3M for the Rural Preservation Program, both increases over the Executive's proposal for those programs. The Assembly modifies the Executive's proposed use of MIF reserves to provide \$20M for the Homeowner Protection Program (HOPP).

**Late Fee/Security Deposit Legislation:** The Senate and Assembly both reject the Executive's proposal to ban late fees and allow the use of security deposits to pay rent.

The Senate advances language to do the following:

- **Establish a Federally Funded COVID-19 Emergency Rental Assistance Program (S.2742-C):** Provides rent arrears vouchers to landlords on behalf of tenants experiencing financial hardship due, directly or indirectly, to the COVID-19 pandemic.
- **Establish the Housing Access Voucher Program (S.2804-A):** Creates the Housing Access Voucher Program which would provide a cash subsidy to eligible low-income individuals and families that are homeless or facing imminent loss of housing. This program is funded at \$200M by the Senate.
- **Establish the Housing Our Neighbors with Dignity Act (S.5257):** Allows the Division of Housing and Community Renewal (DHCR) to acquire vacant commercial properties and distressed hotel properties with fewer than 150 rooms in New York City and convert them into permanently affordable residential housing. This program is funded at \$250M by the Senate.

The Assembly advances language to do the following:

- Require the Governor to submit, as part of the annual executive budget, a statewide comprehensive five-year capital plan to support the development, preservation, and improvement of affordable housing in New York. The five-year plan would be required to provide for the development and/or rehabilitation of affordable housing targeted to low-income seniors.
- **Establish a Statewide Emergency Rental Assistance Program** to provide benefits to eligible households to prevent eviction and homelessness.

## Other

**Medical Respite Pilot:** Both houses accept, with modifications, the Executive proposal to establish a medical respite pilot program for individuals who need to be discharged from a hospital, but are homeless or at risk of homelessness.

**Ambulettes:** The Assembly would require DOH to review adequacy of ambulette rates.

**COLAs:** Both houses provide COLAs for human services providers.

### **Next Steps**

The Assembly and Senate will be debating and passing their one-house budget resolutions **today** and will immediately convene budget conference committees to begin final budget negotiations. The Legislature and the Governor have just 16 days to reach a final SFY 2021-22 Budget agreement.

Now that we know where each house stands on our issues, it is imperative that we keep up the pressure on lawmakers to ensure they properly invest in long-term care and our priorities make it into the final budget. Please [call your lawmakers](#) and remind them of your priorities, thank them (where appropriate) for what they were able to get addressed in the one-house proposals, and let them know how critical it is to have these initiatives addressed in the final budget:

- [Oppose Proposed Cuts to Nursing Homes](#)
- [Oppose Proposed Cuts to ACF/AL Providers](#)
- [Oppose Proposed Cuts to Home and Community-Based Services](#)
- [Ensure Access to Safe and Affordable Senior Housing in this Year's Budget](#)
- [Support CCRC's in This Year's Budget](#)

These final weeks of March will reveal a great deal regarding both the final budget and the distribution of federal relief provided by the American Rescue Plan. Your voice and hard work to advance our priorities and oppose harmful cuts is so appreciated. ***Thank you for your dedicated participation in advocacy.***

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