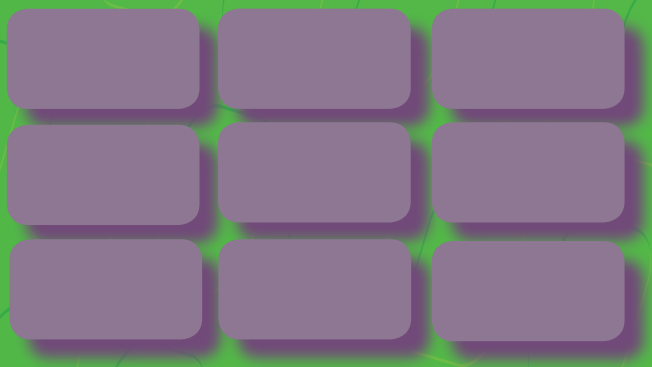


LeadingAge™ New York

2018-19 New York State BUDGET

What it means for you

Overview

Final Budget for State Fiscal Year 2018-19

The final budget for State Fiscal Year (SFY) 2018-19, which is effective for the period April 1, 2018 through March 31, 2019, was agreed to by the governor and Legislature on March 30, 2018. The $168.3 billion plan reflects the eighth consecutive year of 2 percent or less growth in state operations spending.

LeadingAge New York worked on several issues during the budget and effectively advanced key objectives, secured revisions to some budget proposals and successfully opposed 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 care and senior service lines.

Medicaid Global Spending

The final budget continues the Medicaid Global Spending Cap ("Global Cap"), including the State's "superpower" authority to make spending reductions if the Global Cap is breached, for two additional years through SFY 2019-20. The Global Cap places an overall limitation on State Medicaid expenditures made through the Department of Health (DOH), and limits growth in these expenditures to the ten-year rolling average increase in the Medical Consumer Price Index (CPI).

Based on the 3.2 percent average increase in the Medical CPI, projected Medicaid spending under the Global Cap will increase from $18.27 billion in SFY 2017-18 to $18.863 billion in SFY 2018-19, for an increase of $593 million. Global cap spending, together with State Medicaid spending adjustments for minimum wage increases, the local share growth takeover and other programs will result in total projected State Medicaid spending through DOH of $20.96 billion for SFY 2018-19. Total Federal, State and local Medicaid spending in SFY 2018-19 is estimated at $70 billion, an increase of $1.6 billion from SFY 2017-18.

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 2019-20.

Under the global cap shared savings program enacted in 2014, DOH and DOB will review Medicaid spending prior to the start of each calendar year to determine whether actual spending is below the global cap projection. If there are savings available for distribution, 50 percent or more is to 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, is to be used to assist financially distressed and critically needed providers as determined by DOH. Based on currently available information, there were no savings available for distribution during SFY 2017-18.

Medicaid Trend Factors and Prior Year Cuts

The following prior period Medicaid cost containment provisions that require periodic renewal are extended. The Assembly one-house budget would have conferred a trend factor adjustment on all Medicaid providers, but the final budget provides no legislative authority to do so.

- **Trend Factor:** Under the 2017-18 enacted budget, trend factor (inflationary) adjustments are eliminated through March 31, 2019 for all Medicaid providers (except for pediatric nursing homes). This year's budget included a technical correction to the 2017-18 budget language clarifying that there will be no trend factor adjustments during SFY 2018-19.
- **Other Cuts and Taxes:** Previous cost containment measures including cash receipts assessments on nursing homes and adult day health care (ADHC) programs; prior year trend factor reductions affecting Medicaid providers and home care administrative and general cost caps were already extended through March 31, 2019 as part of the 2017-18 enacted budget.

Vital Access Provider Funding

The final budget level-funds the Vital Access Provider (VAP) program at $132 million. The VAP program provides temporary rate adjustments or lump sum payments to eligible providers to preserve access to services in areas experiencing provider restructuring, reconfiguration and/or closure. VAP funds provide operational support, and are not to support capital costs. Nursing homes and home care agencies are among the provider types eligible to apply for VAP funding.

Minimum Wage Funding

The SFY 2016-17 enacted budget authorized phased-in increases to the State's minimum wage. The 2018-19 final budget reportedly includes $450 million in State funding, an increase of approximately $195 million over SFY 2017-18 levels, to support the direct cost of minimum wage increases for Medicaid-funded services provided by home care agencies, nursing homes, Assisted Living Programs (ALPs,) hospices, hospitals and other providers.

Statewide Health Care Transformation Program

The final budget includes a third round of the Statewide Health Care Facility Transformation Program (SHCFTP) that was initiated in the SFY 2016-17 enacted budget. Administered jointly by DOH and the Dormitory Authority of the State of New York (DASNY), the program is funded at $525 million and financed through a combination of DASNY bonds and State budget capital funding.

The SHCFTP funding will be available for many of the same purposes as the first two rounds, which include capital projects, debt retirement, working capital, and other non-capital projects that facilitate health care transformation and expand access to health care services, including, but not limited to a merger, consolidation, acquisition or other activities intended to create financially sustainable systems of care or preserve or expand essential health care services. However, the final budget expands these purposes to include: (1) modernizing obsolete facility physical plants and infrastructure; (2) fostering participation in value-based payment arrangements; (3) increasing the quality of resident care or experience in nursing homes; and (4) improving health information technology capability, including telehealth, to strengthen the acute, post-acute and long-term care service continuum.

The grant awards may be offered without a competitive bid or request for proposals, and will not be available to support general operating expenses. Regarding program funding:

- A minimum of $60 million is allocated to community-based health care providers, which includes home care agencies, diagnostic and treatment centers, mental health clinics, alcohol and substance abuse treatment clinics, primary care providers and, for the first time, hospices.
- A minimum of $45 million is allocated specifically to nursing homes.
- Up to $20 million of the funds not otherwise earmarked for community-based providers or nursing homes may be allocated to the new ALP solicitation process for up to 500 new ALP beds in counties where there is one or no ALP provider and up to 500 beds in counties where ALP occupancy is greater than 85 percent.

- ALPs and adult care facilities are also added as eligible applicants for SHCFTP funding not specifically earmarked in the above three categories.

As in previous rounds, grant awards to providers will be conditioned on achieving certain process and performance metrics and milestones to be determined by DOH. DOH, in turn, is required to report quarterly to the Legislature on the progress of funded projects.

Medicaid Integrity

The final budget includes the following provisions relative to Medicaid audits and false claims:

- The NYS False Claims Act (FCA) is amended to equalize the penalties that may be assessed under the State's FCA with the penalties allowed by the Federal FCA, as adjusted for inflation by Federal law. The NYS per claim civil penalty currently ranges between $6,000 and $12,000. The Federal FCA per claim penalties – which will be the new levels applicable in New York effective September 1, 2018 – range from $10,957 to $21,563. Both the federal and state statutes permit additional penalties up to three times the amount of all damages. Under this revision, the Attorney General must provide an annual report on the amount of monies recovered by the Medicaid Fraud Control Unit for FCA penalties for the preceding calendar year.
- The statewide Medicaid integrity and efficiency initiative is extended through March 31, 2020, to continue and increase audit recoveries.

The following Executive Budget proposals were rejected by the Legislature and are not included in the final budget: (1) clarifying that Medicaid payments to managed care organizations (MCOs) and, in turn, by MCOs to providers/subcontractors remain public funds, and that the MCO is required to recover overpayments when identified in a state audit; (2) requiring MCOs to report all potential fraud, waste, or abuse to the Office of the Medicaid Inspector General (OMIG), or be fined up to $100,000 for each determination; (3) allowing OMIG to fine providers or MCOs for failing to comply with Medicaid rules, regulations or directives; and (4) subjecting MCOs that submit inaccurate cost reports or encounter data to fines of up to $100,000 and excluding cases of fraud, waste or abuse from caps on encounter data penalties.

Health Care Transformation Fund

The Executive Budget had included a proposal to establish a new Healthcare Shortfall Fund to ensure continued availability and expansion of funding for health services, and mitigate risks associated with the potential loss of federal health care funding. The final budget includes a modified version, known as the Health Care Transformation Fund, "to support health care delivery, including for capital investment, debt retirement or restructuring, housing and other social determinants of health, or transitional operating support to health care providers." The Commissioner of Taxation and Finance is required to notify the Legislature of any transfer of monies from this fund, and the Director of the Budget must provide quarterly reports on the receipts and distributions of the health care transformation fund. Further specifics on fund spending are currently lacking.

The sources of funding are expected to be revenues from the sale of Fidelis assets to Centene; recaptured "excess reserves" of certain non-profit, mainstream Medicaid managed care plans; and unspecified other revenues. Although the amount is not specified in the budget bills, the fund is expected to receive $1 billion over four years.

Centene, the for-profit insurance company purchasing Fidelis for $3.75 billion, will provide New York State with $500 million per year over the next five years. Centene will make a $340 million contribution annually over a five-year period. The other $160 million will emanate from taxes and fees that Fidelis is expected to pay once it becomes a for-profit health insurer.

Health Information Technology Infrastructure

The final budget continues the following investments in health information technology (HIT) that were initiated in the SFY 2014-15 budget:

- **SHIN-NY Support:** Appropriates $30 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.
- **Claims Database:** Appropriates $10 million in funding for 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.
- **State HIT Initiatives:** Appropriates $10 million in annual funding for HIT initiatives that target DOH's technology needs.

Telehealth Expansion

The final budget expands the definition of a "telehealth provider," "originating site," and "remote patient monitoring" for purposes of telehealth services that qualify for Medicaid reimbursement. The new definition of "telehealth provider" adds "residential health care facilities serving special needs populations," credentialed alcohol and substance abuse counselors, Early Intervention providers, Office for People with Developmental Disabilities (OPWDD) clinics and day and residential programs, and other providers designated by the commissioners of DOH, Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS) or OPWDD.

Under the amended definition of "originating site," the telehealth services that can be provided in a patient's residence are no longer limited to remote patient monitoring. In addition, OPWDD day and residential programs can serve as originating sites. Remote patient monitoring may include interactive follow-up communications, including communications by telephone.

The final budget also requires the state agencies to issue a single guidance document that: (a) identifies any differences in regulations or policies issued by the agencies; and (b) assists consumers, providers, and health plans in understanding and facilitating the appropriate use of telehealth in addressing barriers to care. This provision is effective as of October 1, 2018.

Consolidation of Public Health Programs

DOH administers several public health awareness and prevention programs reflecting several priorities. The programs vary by size and contract terms. Similar to a proposal last year, the Executive Budget had included a proposal to consolidate 30 public health appropriations totaling $46.7 million into four program pools: (1) disease prevention and control; (2) maternal and child health; (3) public health workforces; and (4) health outcomes and advocacy. Funding for each pool would have been reduced by 20 percent.

The final budget does not include the governor's consolidation proposal or the additional 20 percent reduction in funding to the programs. Accordingly, the following programs of interest to LeadingAge NY members are allocated the same funding as they were last year: (1) enriched housing subsidy ($380,000); and health workforce retraining program ($9.16 million).

Medicaid Eligibility

Once again, the Legislature rejected Executive Budget proposals to:

- Limit "spousal refusal" as a means of qualifying for Medicaid. Under existing current law, the income and assets of the spouse of a Medicaid applicant are not be counted if the spouse refuses to support the applicant or the spouse is "absent."
- Reduce the "floor" for the community spouse resource allowance for institutional (i.e., nursing home) Medicaid eligibility from $74,820 to $24,180. This proposal would have reduced the asset limit for couples with total assets of between $24,180 and $150,000, who would be able to retain the greater of $23,844 or half of their assets. Under existing law, they can retain the greater of $74,820 or half of their assets.

Community Paramedicine

This Executive Budget proposal, which is not included in the final budget, would have permitted health care providers to collaborate with community paramedicine programs. It would have allowed emergency medical personnel to provide care within their certification, training, and experience in residential settings beyond the initial emergency medical care and transportation of sick and injured persons as currently permitted. Community paramedicine collaboratives would include, at a minimum: (1) a general hospital, nursing home, or diagnostic and treatment center; (2) a physician; (3) an emergency medical services provider; and (4) where the services are provided in a private residence, a home care services program.

Pharmacy

The final budget includes several pharmacy initiatives intended to reduce Medicaid spending on prescription drugs, but rejects the Executive's proposal to eliminate "prescriber prevails" in drug coverage determinations. It also contains new limits on opioid prescribing and creates an Opioid Stewardship Fund to support the prevention and treatment of opioid addiction. The budget continues the Elderly Pharmaceutical Insurance Program (EPIC) with an appropriation of $132.58 million.

Pharmacy Savings Initiatives

The pharmacy savings initiatives incorporated into the final budget include:

- **Dispensing Fee for Pharmacies under Fee-for-Service Medicaid:** Raises the dispensing fee by 8 cents for all drugs, except those that may be dispensed without a prescription and are not classified as "covered outpatient drugs.
- **Generic Drug Rebates:** Extends until April 1, 2020 legislation enacted last year that reduces the price increase that triggers additional rebates from manufacturers of generic drugs.
- **Medicaid Drug Spending Growth Cap:** Extends for another year the cap on Medicaid spending on drugs. Spending growth would be capped at the ten-year rolling average of the Medical CPI plus four percent and minus a savings target of $85 million. The final budget imposes additional requirements on DOH to report specified information to the Drug Utilization Review Board (DURB) and prohibits DOH from requiring prior authorization of any drug, unless the drug has first been referred to the DURB for a supplemental target rebate review.
- **Medication Adherence:** This administrative initiative does not require legislation, and no detail is available at this time.
- **Rebate Risk Assessment:** Under this administrative action, DOH will contract with a vendor to assess the risk associated with the rebate billing and collection protocols, with the expectation of generating $30 million in all funds savings.

The final budget does not include several other cost containment proposals advanced in the Executive Budget:

- **Prescriber Prevails:** Would have eliminated the ability of prescribers to override the prescription drug coverage decisions of the Medicaid Preferred Drug Program or of a managed care plan.
- **Comprehensive Medication Management:** Would have authorized pharmacists to enter into medication management protocols in collaboration with physicians to treat at-risk patients.
- **Covered Over-the-Counter Drugs:** Would have authorized DOH to modify, without a notice and comment period, the list of Medicaid-covered drugs that may be dispensed without a prescription.
- **Copayments:** Would have increased the beneficiary copayment for nonprescription drugs from $0.50 to $1.00.

Opioid Addiction Treatment and Prevention

The final budget includes the following initiatives intended to combat the opioid addiction epidemic:

- **Opioid Stewardship Fund:** Establishes an Opioid Stewardship Fund to receive $100 million from opioid manufacturers and distributors that sell or distribute opioids in New York State. The amount to be paid by each manufacturer and distributor will be calculated based on its share of the total morphine milligram equivalents (MMEs) sold in New York. MMEs sold or distributed to hospice programs and OASAS clinics are excluded from the calculation, as are MMEs attributable to buprenorphine, methadone, and morphine. The funds are to be used to support programs operated, certified or approved by OASAS to provide opioid treatment, recovery, addiction prevention, and education services and to support the prescription drug monitoring program. This provision was adopted in lieu of the Executive budget proposal to impose a 2 percent surcharge on opioid sales.
- **Opioid Prescribing:** Prohibits the prescribing of opioids for pain with a duration of more than 3 months or past the time of normal tissue healing, unless the medical record includes a treatment plan that follows generally-accepted national professional standards or governmental guidelines. These requirements will not apply to patients being treated for cancer that is not in remission, in hospice or end-of-life care, or receiving opioids under palliative care. A related provision excludes from Medicaid coverage opioids prescribed in violation of these standards. These provisions are expected to reduce opioid use by 20 percent by 2020.
- **Outpatient Treatment:** Prohibits health insurers from requiring prior authorization or conducting concurrent review of the first two weeks of outpatient substance use disorder treatment by facilities certified by OASAS that participate in the insurer's network, provided that certain notification requirements are met. The legislation also requires providers to use a peer-reviewed assessment tool and limits the grounds upon which an insurer can deny coverage. It further limits the cost-sharing obligations of consumers to co-payments, coinsurance and deductibles otherwise required by the insurance policy.

Pharmacy Benefit Managers

- **Audits:** The final budget imposes limitations and requirements on audits of pharmacies by pharmacy benefit managers (PBMs), including requirements related to the timing and notice provided of audits, the time period covered by audits, the number of prescriptions audited, the provision of the preliminary and final audit reports, and retroactive claims denials based on the discovery of clerical errors. These provisions do not apply to audits under Medicaid, Medicare, or other "federally funded programs," nor do they apply to audits in response to suspected fraud or concurrent reviews.
- **Contracts:** The final budget prohibits PBMs from imposing contractual provisions that prevent pharmacies from disclosing to consumers information concerning cost-sharing amounts, therapeutic equivalents, and alternative methods of purchasing prescription drugs. It also prohibits contractual provisions that allow pharmacies to collect copayments that exceed the pharmacy's charges.

Mainstream Medicaid Managed Care Provisions

The final budget includes the following provisions affecting mainstream Medicaid managed care plans:

- **Excess Reserve Recapture:** Authorizes DOH to "redeploy" the excess contingent reserves of certain non-profit, mainstream, Medicaid managed care plans, known as prepaid health services plans or "PHSPs." The Department is permitted to redeploy reserves exceeding a presumptive reserve ceiling, which can be no less than 150 percent of the applicable minimum contingent reserve. Such excess reserves would be deposited into the Health Care Transformation Fund (see summary above). The legislation prohibits non-profit PHSPs with excess reserves from transferring or lending funds to a subsidiary or affiliate to avoid a redeployment of its reserves. Managed Long Term Care (MLTC) plans are not subject to excess reserve redeployment under this provision.
- **Health Homes:** Requires Medicaid managed care special needs plans and other managed care plans serving "high-risk" beneficiaries to meet reasonable targets for health home participation and authorizes DOH to impose penalties for failure to meet targets. The final budget rejects the Executive's proposal to provide incentive payments to health home beneficiaries for participating in wellness activities.
- **Laboratory Overutilization:** Seeks to administratively reduce laboratory services overutilization by establishing clinical efficiency standards. The provision is effective April 1, 2018, and is expected to result in a gross savings of $15 million in the first year, increasing to $20 million in SFY 2019-20.

The following Executive Budget proposals are not included in the final budget:

- **DSRIP PPS Partnership:** This proposal would have required managed care plans to submit a Performing Provider System (PPS) partnership plan to DOH with short and long term approaches for effective collaboration with each PPS in the plan's service area.
- **PCMH Cap and VBP Incentive:** This proposal would have modified patient centered medical home (PCMH) payments in managed care as well as PCMH rates for providers engaged in value-based payment arrangements.

Miscellaneous Health Care Provisions

The final budget includes several additional initiatives of interest to health care stakeholders, including the following:

- **Social Work and Mental Health Licensure Clarifications:** Clarifies the counseling, care planning, and care management activities and services that may be performed only by licensed professionals and those that may be performed by unlicensed individuals. These provisions are intended to eliminate long-standing exemptions from professional licensure requirements that have been available to entities licensed or certified by various health and human services agencies.
- **Physician Misconduct:** Authorizes the Commissioner of Health to order physicians to cease practicing medicine if they are charged with a felony and the alleged conduct constitutes an imminent danger to health.
- **Integrated Health and Behavioral Health Care:** Eliminates barriers to providing integrated health and behavioral health care by facilities that are licensed by DOH, OMH, OASAS, or OPWDD and are authorized to provide integrated care.
- **Medicaid Coverage of Physical Therapy:** Increases the Medicaid fee-for-service physical therapy benefit from 20 visits to 40 visits per year.
- **Traumatic Brain Injury Clinics:** Proposes that, at a minimum, the amount paid to clinics for services provided to individuals participating in the Traumatic Brain Injury Waiver who are also eligible for Medicare will be the Medicaid rate minus the amount paid by Medicare.

- **Health Home/HCBS Criminal History Record Checks:** Requires criminal history record checks for employees of health homes, subcontractors of health homes, and any entity that provides Home and Community-Based Services (HCBS) to enrollees with a diagnosis of a developmental disability or who are under age 21.
- **Health Home/HCBS Mandated Child Abuse Reporting:** Requires reporting of child abuse and neglect by employees of a health home, health home care management agency, or HCBS providers that have regular contact with children.
- **Rural Health:** Adds $2.2 million for rural health care access development and rural health network development.

The final budget does not include the following health care proposals in the Executive Budget:

- **Retail Practices:** Would have authorized "retail practices," operated by business corporations (including publicly-traded corporations) or licensed health care facilities to provide limited services at retail sites.
- **Medicaid Non-Emergency Transportation Supplement**: Would have eliminated $4 million in supplemental payments to non-emergency transportation providers in rural communities.
- **Health Insurance Windfall Profit Tax:** Would have required for-profit insurers to pay a 14 percent tax on net underwriting gain to offset anticipated tax relief afforded by federal tax changes.

Mandated Recycling of Organic Waste

For the second consecutive year, the Executive Budget included a proposal to require certain high-volume generators of food waste including health care facilities, manufacturers, supermarkets, large restaurants and higher educational institutions recycle their food waste beginning January 1, 2021. Under the proposed requirements, such businesses would have needed to divert excess edible food and food scraps to food banks, animal feed operations, composting facilities, anaerobic digesters, or other organics recycling facilities. The final budget does not include this proposal.

Tax Code-Related Revisions

The final budget includes the following provisions aimed at blunting the impact of a provision in the federal Tax Cuts and Jobs Act that limits State and Local Tax (SALT) deductions to $10,000 per year. However, it is not yet clear whether these provisions will be considered permissible by the federal government.

- **Create Charitable Contribution Funds:** Two new state-operated Charitable Contribution Funds will be created to accept donations to improve health care and education in New York. Taxpayers who itemize deductions would be able to claim these charitable contributions as deductions on their Federal and State tax returns. Any taxpayer making a donation may also claim a State tax credit equal to 85 percent of the donation amount for the tax year after the donation is made. School districts and other local governments would also be allowed to create charitable funds. Donations to these funds would provide a reduction in local property taxes (via a local credit) equal to a percentage of the donation.
- **Create Alternative Employer Compensation Expense Program (ECEP):** While Federal tax reform eliminated full SALT deductibility for individuals, businesses were not affected. Under the final budget, employers would be able to opt-in to a new ECEP structure. Employers that opt-in would be subject to a 5 percent tax on all annual payroll expenses exceeding $40,000 per employee, phased in over three years beginning on January 1, 2019. The progressive personal income tax system would remain in place, and a new tax credit corresponding in value to the ECEP would cut the personal income tax on wages and ensure that State filers subject to the ECEP would not experience a decline in take-home pay.

The final budget also decouples the state tax code from the federal tax code, where necessary, to avoid more than $1.5 billion in State tax increases that would result solely from increases in federal taxes.

Other Provisions

The final budget includes various programmatic provisions with little impact on State spending, including the following:

- **Sexual Harassment Prevention Requirements:** Requires all employers to adopt sexual harassment prevention policies and training programs; prohibits mandatory arbitration provisions pertaining to sexual harassment in employment agreements; and prohibits non-disclosure provisions in settlement agreements pertaining to sexual harassment allegations, except at the complainant's request; and establishes liability to contractors and vendors who are subject to sexual harassment in the workplace.
- **Disclosure of Election Campaign Advertisers on Social Media:** Provides for oversight under the Election Law of paid internet and digital advertisements, online platforms, and expenditures by foreign nationals and governmental entities.

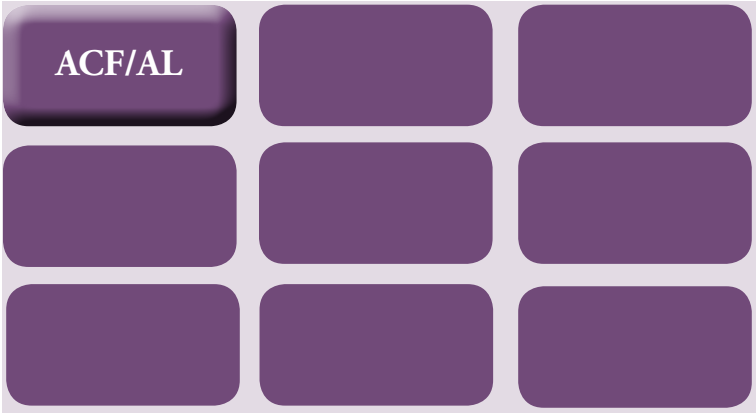
Organization of This Report

The remainder of this LeadingAge NY report on the final SFY 2018-19 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 and Hospice	Managed Long Term Care	Nursing Homes
Senior Housing	Summary	Contact LeadingAge New York



ACF/AL

SFY 2018-19 Final State Budget

Adult Care Facilities and Assisted Living

In addition to some of the overarching provisions covered in the "Overview" section of this report, discussed below are proposals that directly impact adult care facilities (ACFs) and assisted living.

SSI Increases

Despite the considerable advocacy efforts of LeadingAge NY and the membership, an increase in the Supplemental Security Income (SSI) rate for ACFs was not included in the final budget, aside from language authorizing a pass-through of the federal cost-of-living (COLA) adjustment. The federal COLA, if any, is applied on January 1st of each year. While we were successful in getting legislation passed last year in the Assembly and Senate to implement an increase in the State SSI supplement, only the Senate included it in their one-house budget proposal this year. The issue was reportedly under consideration in the last hours of the budget negotiations, but unfortunately did not survive.

Capital Funding

The final budget includes a third round of the Statewide Health Care Facility Transformation Program, which is discussed in greater detail in the "Overview" section of this report. Notably, ACFs and ALPs are newly identified as eligible applicants for this funding. We have been advocating for ACF and assisted living providers to be able access these and other capital funds, which have historically gone to other sectors of the health care system. In addition, the language allows for up to $20 million in grant funds to be allocated for the ALP beds awarded under the new solicitation process discussed under the ALP subsection of this report, with funding prioritized for awards made for new beds in counties where there is one or no ALP provider.

ACF Quality Funding

The final budget includes the Executive Budget proposal to maintain the Enhancing the Quality of Adult Living (EQUAL) quality program for ACFs at $6.5 million, the same amount as last year. EQUAL funding has been available to adult homes and enriched housing programs that serve recipients of SSI or Safety Net Assistance benefits, including 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.

Enriched Housing Subsidy

We are pleased to report that the final budget rejects the Executive budget proposal to place the Enriched Housing subsidy into a pool of several programs, and cut the aggregate funding by 20 percent. The final agreement reflects the Senate and Assembly's proposals to restore the subsidy as a discrete line-item at last year's funding level of $380,000. The subsidy pays $115 per month per SSI recipient to operators of not-for-profit certified enriched housing programs, to the degree that funding is available.

Criminal History Record Checks (CHRC)

The final budget accepts the Executive proposal to level fund services and expenses related to CHRCs for ACFs at $1.3 million.

Assisted Living

The final budget includes the Executive Budget proposal to establish a new program to subsidize the cost of assisted living for those individuals living with Alzheimer's disease and dementia who are not eligible for Medicaid. The program will authorize up to 200 vouchers to individuals through an application process and pay for up to seventy-five percent of the average private pay rate in the respective region. DOH may propose rules and regulations regarding this provision. LeadingAge NY is actively working on the implementation of this concept with the Alzheimer's Association and other assisted living stakeholders. In fact, DOH has already begun to collect data from Special Needs Assisted Living Residences (SNALRs) to implement this initiative.

Assisted Living Program

Trend Factor: Despite the Assembly's inclusion of a Medicaid trend factor in their one-house bill, the final agreement reflects the Executive proposal for a zero trend factor. This is discussed in the "Overview" section of this report.

Minimum Wage: It is reported that the final agreement includes $450 million to support minimum wage increases for health care providers, which includes the ALP. This issue is discussed in the "Overview" section of this report.

ALP Expansion: We are very pleased that the final agreement includes different avenues for expansion of the ALP for existing providers and for the development of new programs. We have been advocating for a rational expansion of the program based on community need, and are pleased to see aspects of our proposal reflected in the budget language. The final language slightly modifies the Executive Budget proposal.

Existing ALPs Ability to Expand:

- Existing ALPs can apply to DOH for up to nine additional ALP beds that do not require major renovation or construction. The ALP must agree to dedicate these additional beds to serve only Medicaid recipients, be in good standing with DOH, and in compliance with appropriate state and local requirements as determined by DOH.
- Existing ALP providers licensed on or before April 1, 2018, may submit applications under this beginning no later than June 30, 2018 and until a deadline to be determined by DOH.
- Existing ALP providers licensed on or before April 1, 2020, may submit such applications beginning no later than June 30, 2020 and until a deadline to be determined by DOH.

The number of additional ALP beds approved under the above process will be based on the total number of previously awarded beds either withdrawn by applicants or denied by DOH, which we are told equals about 1,000 beds. DOH will utilize an expedited review process allowing certification of the additional beds within 90 days of their receipt of a satisfactory application.

New ALP Providers/Programs:

DOH has also authorized to solicit and award applications for up to a total of 1,000 new ALP beds through two initiatives:

- 500 beds are targeted for counties where there is one or no ALP providers, pursuant to criteria to be determined by the commissioner. DOH is authorized to award any beds that are left over from this solicitation to the second targeted solicitation, below.
- 500 beds are targeted for counties where utilization of existing ALP beds exceeds 85 percent. All applicants must comply with the federal home and community-based settings rule.

To be eligible to be awarded ALP beds under these processes, an applicant must agree to:

- dedicate such beds to serve only individuals receiving Medicaid;
- develop and execute collaborative agreements within 24 months of an application being made to DOH, in accordance with DOH published guidance, between at least one of each of the following entities: an ACF; a nursing home, and a general hospital; and
- enter into an agreement with an existing managed care entity.

Future ALP Beds:

Beginning April 1, 2023, additional ALP beds will be approved on a case-by-case basis whenever DOH is satisfied that public need exists at the time and place and under circumstances proposed by the applicant. Consideration of public need may include factors such as, but not limited to, regional occupancy rates for ACFs and ALP occupancy rates and the extent to which the project will serve Medicaid beneficiaries.

Additionally, existing ALP providers may apply for approval to add up to nine additional ALP beds that do not require major renovation or construction under an expedited review process. The expedited review process is available to applicants that are in good standing with DOH, and in compliance with appropriate state and local requirements as determined by DOH. The expedited review process will allow certification of the additional beds for which DOH is satisfied that public need exists within ninety days of their receipt of a satisfactory application.

Additional Issues of Interest to the ALP: There were several proposals that, while not directly impacting the ALP, are of interest:

- **Nursing home benefit limited in MLTC:** The nursing home benefit under MLTC will be limited to three months. See the "Managed Long Term Care" section of this report for more details.
- **UAS Score for MLTC Eligibility:** The final budget did not include the Executive Budget proposal to change the UAS score threshold for MLTC eligibility to nine. See the "Managed Long Term Care" section of this report for more details.
- **LHCSA moratorium:** A temporary moratorium on new Licensed Home Care Services Agencies (LHCSAs) is in the final budget. However, per our advocacy, new LHCSAs established as a part of a new ALP are exempt from this moratorium. See the "Home Care and Hospice" section of this report for more details.

Transitional Adult Homes and Related Issues

The below items may be of interest to ACF and assisted living providers that serve the mental health population.

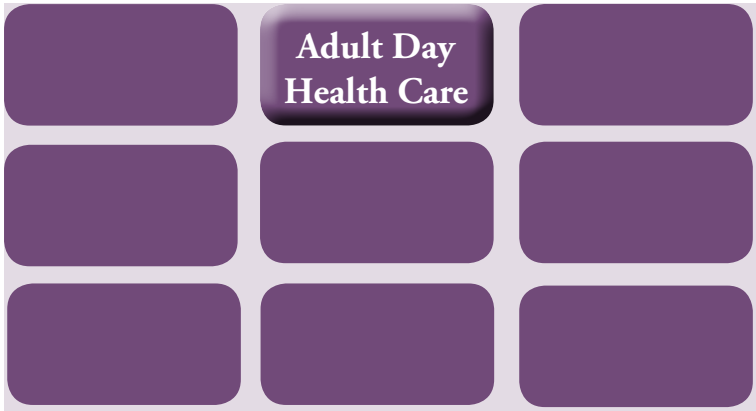
- **Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:** As was the case last year, $38 million is allocated to provide education, assessments, training, in-reach, care coordination, supported housing and services needed by mentally ill residents of adult homes and persons with mental 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. The first is a behavioral health care management program for people with serious mental illness. The second is 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 is 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.

Other ACF Programs

The below items may be of interest to ACFs and assisted living facilities, but do not have a direct impact on providers. The final budget includes nearly all the following Executive Budget proposals:

- **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.
- **Adult Home Quality Enhancement Account:** The final budget includes $500,000 for State operations related to services and expenses to promote programs to improve the quality of care for residents in adult homes.
- **Assisted Living Residence Quality Oversight Account:** The budget includes $2.1 million in funding for state operations for services and expenses related to the oversight and licensing activities for assisted living facilities.
- **Coalition for the Institutionalized Agenda and Disabled (CIAD):** The Executive budget included $75,000 for CIAD, which advocates for residents of adult homes in NYC. We have not been able to verify that this additional funding is in the final budget, although prior period funding has been reappropriated.

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



Adult Day Health Care

SFY 2018-19 Final State Budget

Adult Day Health Care

The final budget includes few provisions specifically affecting adult day health care (ADHC) providers. Other aspects of the budget that may affect ADHC (e.g., trend factor, cash receipts assessments) are covered in the "Nursing Homes" section of this report.

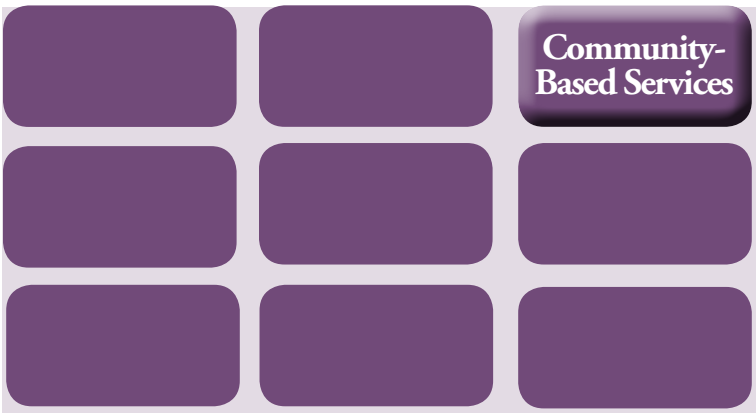
ADHC Transportation

In response to strong advocacy by the Adult Day Health Care Council (ADHCC), the final budget does not include an Executive Budget administrative proposal to allow the State's Medicaid transportation broker (Medical Answering Services) to manage all transportation of ADHC registrants. The associated $7.42 million of anticipated State savings was restored by the Legislature.

Social Adult Day Care (SADC)

SADC services were level-funded at $1,072,000 to provide grants to support these programs through the New York State Office for the Aging (NYSOFA).

For more information, contact Anne Hill at ahill@leadingageny.org *or 518-867-8836.*



Community-Based Services

SFY 2018-19 Final State Budget

Community-Based Services

The final SFY 2018-19 budget provides $245.6 million for aging services, an increase from $239.4 last year. The following proposals relate to aging services programs administered by NYSOFA and DOH, most of which are designed to help seniors remain in their communities by providing access to education, food, housing services, counseling, caregiver support, transportation, socialization and more.

- **Community Services for the Elderly:** The final budget allocates $28.93 million to the Community Services for the Elderly (CSE) Program for SFY 2018-19, and adds another $2.25 million in funding. It continues the exemption on the county share of the $3.5 million in additional funding that has been added to CSE over the past several fiscal years. The budget continues to provide $1.1 million in discrete transportation funding to CSE to provide localities the flexibility to direct resources where they are needed most.
- **Expanded In-home Services for the Elderly Program (EISEP):** The final budget level-funds EISEP at $50.1 million. 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.
- **Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs:** The final budget provides funding for NORCs and NNORCs each at $2,027,500 and adds another $2 million for each category. Funding priority is given to the renewal of existing contracts with NYSOFA. No other language is provided clarifying the program after last year's award process.
- **Social Adult Day Care (SADC):** SADC services were level-funded at $1,072,000 to provide grants to support these programs through NYSOFA.
- **Continue Alzheimer's Caregiver Supports:** The final budget appropriates $50 million over two years for services for individuals living with Alzheimer's disease and other dementias, and their caregivers. The funding will support care and support services, including respite.
- **Wellness in Nutrition (WIN) program:** WIN is level-funded in the final budget at $27.5 million. Formerly known as the Supplemental Nutrition Assistance Program (SNAP), this 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 (CSI):** The final budget provides CSI with level-funding at $403,000. This program promotes wellness and ensures that older adults do not face unnecessary isolation and deterioration. It 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 final budget level-funds this program at $122,500. The program is aimed at helping local communities plan and create neighborhoods that reflect the evolving needs and preferences of all their residents, including their aging population.
- **Title XX funding:** The final budget maintains the same funding level as last year, $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.
- **Discontinue Underutilized Cost-of-Living Adjustment:** The final budget includes the Executive Budget proposal to eliminate the statutory authorization for DOH to provide COLAs for "human service providers." DOH is currently authorized to provide COLAs for various public health programs, including HIV/AIDS, nutrition, tobacco, and school health, which would have totaled $19.9 million. In addition, the proposal defers the COLA until March 31, 2019 for NYSOFA and OCFS programs, to achieve a savings of $19.1 million. Last year, the COLA was deferred until March 31, 2019 for OPWDD, OASAS, and OMH programs.
- **NY Connects:** The final budget allocates $43.7 million to support the sustainability of NY Connects. The program is administered by NYSOFA and local offices for the aging.
- **Technical Assistance/Training for Area Agencies on Aging:** Level funding of $250,000 is allocated to the Association on Aging in New York State 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.
- **Other Programs:** The final budget funds the following programs for SFY 2018-19 as noted: (1) Caregiver Resource Centers at $353,000; (2) the Long Term Care Ombudsman Program at $1.2 million; and (3) Respite Services for the Elderly at $656,000.

For more information, contact Meg Everett at meverett@leadingageny.org or 518-867-8871.

Home Care and Hospice

SFY 2018-19 Final State Budget

Home Care and Hospice

The final budget includes several provisions aimed at controlling growing MLTC expenditures, providing oversight and tracking of care and services provided to Medicaid beneficiaries, and initiating new health care delivery constructs to facilitate provider collaboration and service access in the home and community. Major components of the budget affecting multiple providers (e.g., trend factor, minimum wage, capital funding, VAP, etc.) are covered in the "Overview" section of this report.

For information on Executive Budget proposals to: (1) limit the number of MLTC network LHCSA providers; (2) provider marketing and referral ban; (3) increased UAS eligibility threshold; (4) continuous MLTC eligibility requirement; and (5) 12-month MLTC lock-in, please refer to the "Managed Long Term Care" section of this report.

Specific provisions affecting home care and hospice services include:

LHCSA Moratorium and Need Demonstration

The final budget establishes a moratorium on the approval of LHCSA applications, effective April 1, 2018 through March 31, 2020. The moratorium does not apply to LHCSAs that have received establishment approval or contingent establishment approval, but are not yet operational. The moratorium also does not apply to: (1) LHCSA establishment applications submitted with an ALP application; (2) applications seeking to transfer ownership of an existing LHCSA that has been operating for a minimum of 5 years for the purpose of consolidating ownership of two or more LHCSAs; and (3) an application where the applicant demonstrates that it would address a serious concern such as a lack of access to home care services in the geographic area or a lack of adequate and appropriate care, language and cultural competence, or special needs services.

Effective April 1, 2020, all LHCSA establishment applications will be required to demonstrate public need for the LHCSA and the financial feasibility of the proposed LHCSA operator.

Registration of LHCSAs

The final budget requires all LHCSAs to register annually with DOH. LHCSAs not registered are not permitted to operate after January 1, 2019. If a LHCSA fails to submit a full set of registration materials by the deadline set by DOH, it must pay a $500 penalty per month for every month or partial month in default. Upon the next annual registration, failure to register in prior years will require payment of all unpaid fees. DOH will post registration status of all LHCSAs on its website. It may revoke a license if a LHCSA fails to register twice, not necessarily consecutively, or has established a pattern of not registering.

Cost Reporting by LHCSAs, Health Homes, and FIs

The final budget requires LHCSAs, health homes, and Consumer Directed Personal Assistance Program (CDPAP) Fiscal Intermediaries (FIs) to submit Medicaid cost reports to DOH. The Department will specify frequency and format of reports and type of information required and must provide 90 days' notice before reports are due. If reporting is inaccurate or incomplete, DOH will notify the provider, and the provider must submit information within 30 days. Extensions are allowed if provider gives sufficient reason for noncompliance within the 30-day period. Reports must be certified according to requirements set by DOH.

Marketing Oversight for CDPAP Fiscal Intermediaries

CDPAP fiscal intermediaries are prohibited from publishing any false, misleading or unapproved advertising. FIs must submit all advertisements to DOH prior to dissemination and DOH has 30 days to render a decision on whether it is acceptable or not. FIs disseminating any false or unapproved advertising have 30 days to cease advertising upon notice from DOH. Two or more such infractions will result in prohibition of services and revocation of FI authorization.

Medicaid Waiver Program Extensions

The final budget delays carving the Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) Medicaid waiver programs into the MLTC benefit package until January 1, 2022. It also extends spousal budgeting provisions for persons receiving services under the NHTD waiver through April 1, 2023. Finally, the budget authorizes DOH to continue the Care at Home Medicaid waivers, which allow disabled children with nursing home level of care to receive services at home, through March 31, 2023.

DOH Study of Home and Community Based Services in Rural Areas

The budget provides for a study of availability and access to HCBS in rural areas of the State. The study will focus on factors affecting availability such as transportation costs, costs of direct care personnel including home health aides, personal care attendants and other direct services personnel, and opportunities for telehealth and technological improvement to deliver services and improve efficiencies.

The budget authorizes DOH to provide targeted enhancements to personal care fee-for-service rates and rates under Medicaid waiver programs, such as NHTD/TBI programs. The total amount allocated for the study and enhanced rates is $3 million in SFY 2018-19. Effective dates for the study are not provided. The language requires DOH to consult with the newly created Rural Health Council in conducting the study.

Hospice Residence Rates

The final budget adds statutory language requiring DOH to establish a methodology as of July 1, 2018 to ensure a prospective 10 percent increase in the Medicaid reimbursement rates for hospice residence providers, relative to the reimbursement rates in effect as of March 31, 2018.

Home Care Appropriations

The final budget reflects the following funding amounts:

- **Personal Care Worker Recruitment and Retention (R&R):** The final budget again level-funds $272 million for New York City and $22.4 million for other areas of the State for Medicaid adjustments supporting R&R of workers with direct patient care responsibility.
- **Health Care Worker R&R:** The final budget again provides $100 million to support Medicaid rate increases for CHHAs, LTHHCPs, AIDS home care programs, hospice programs and MLTC plans for R&R of health care workers.
- **CHHA Bad Debt and Charity Care:** The final budget includes level funding of up to $1.7 million for eligible publicly-sponsored CHHAs that demonstrate losses from a disproportionate share of bad debt and charity care.
- **Traumatic Brain Injury Program:** Services and expenses related to TBI are level-funded at $12.465 million.
- **NHTD Waiver Housing Subsidy:** The NHTD Waiver Housing Subsidy is funded at $1.84 million. Last year, it was reduced by 20 percent and included in a large pool of consolidated public health programs.
- **Home Care Registry:** The final budget level funds the home care registry at $1.8 million.
- **Criminal History Record Checks (CHRC):** The final budget level-funds CHRCs for non-licensed long term care employees of CHHAs, LTHHCPs, AIDS home care providers, LHCSAs and nursing homes at $3 million.
- **Elder Abuse Investigations:** The final budget includes $500,000 to expand Enhanced Multidisciplinary Teams (EMDTs) to investigate financial exploitation of the elderly. This funding will be used to draw down $2 million in Federal funding through the Office of Victim Services to maintain the EMDT program.

For more information, contact Meg Everett at meverett@leadingageny.org or 518-867-8871.

Managed Long Term Care

SFY 2018-19 Final State Budget

Managed Long Term Care

The final budget includes $312 million in gross (i.e., state and federal) savings related to Managed Long Term Care, growing to $491 million in SFY 2019-20. However, half of the savings are related to the provision that limits the long-term nursing home benefit in MLTC to three months. The final budget rejects rate reductions for "excess" contingent reserves, maintains transportation under MLTC management, reduces reimbursement for administration, sets LHCSA contract limits, delays the carve-in of waivers until 2022, and makes several other legislative and administrative changes.

Several of the provisions outlined below (e.g., administrative component reduction, social day care efficiencies) will be implemented under DOH's administrative authority which provides the Department with greater latitude in determining the scope and details of the initiative. DOH has indicated it would be providing guidance for several of these.

"Excess" Contingent Reserves Recoupment

The final budget does not include the proposal to authorize DOH to reduce the rates of not-for-profit Medicaid managed care plans, including MLTCs, that have accumulated contingent reserves exceeding the minimum amount required. See the "Overview" section of this report for more details.

MLTC Transportation Carve-Out

The final budget does not include the proposal to require MLTC plans to use the state's Medicaid transportation managers for their members' non-emergency medical transportation. Instead, the budget retains statutory language that excludes transportation services provided or arranged for enrollees of MLTC plans from the State's transportation vendor contracts.

UAS Eligibility Threshold

The final budget does not include the proposal to set a minimum Universal Assessment System (UAS) score of 9 as a threshold for MLTC enrollment. Recent analysis by DOH suggests 11 percent of MLTC members have UAS scores between 5 and 10 while only 0.5 percent have a score of 5 or lower.

Cut to Administrative Cost Reimbursement

The final budget agreement reduces reimbursement for administrative costs to single-capitated MLTC plans. DOH will reduce the current, capped administrative reimbursement amount by $15 to $200 per member per month for enrollees receiving services in the community. The Department has solicited, and has signaled a willingness to consider, recommendations for regulatory relief in recognition of this reduction. This provision will be implemented administratively and is scheduled to take effect on April 1, 2018. It will reduce funding to MLTC plans by $37.8 million in this fiscal year, increasing to $39.7 in SFY 2019-20.

Continuous MLTC Eligibility Requirement

The final budget specifies that an MLTC member must need 120 continuous days of community-based long term care services to be eligible for MLTC enrollment. It is effective April 1, 2018 and is expected to result in gross (i.e., state and federal) savings of $9.63 million in this fiscal year, increasing to $20.2 million in SFY 2019-20.

Social Day Benefit Efficiencies

The final budget agreement includes the administrative provision aimed at managing the MLTC social adult day benefit more efficiently by eliminating excess contracts, adjusting member utilization and executing other reasonable approaches to better utilize the benefit. DOH intends to achieve these goals and the considerable savings associated with the provision by providing education and guidance to MLTC plans on effective use of the benefit. This provision is effective April 1, 2018 but will be implemented based on DOH administrative authority and timeline. It is expected to result in gross savings of $56.25 million in the first year, increasing to $78.75 million in SFY 2019-20.

MLTC Enrollment Lock-in

The final budget authorizes DOH to prohibit MLTC members, after their initial 90 days of enrollment, to voluntarily transfer plans more frequently than once every twelve months, unless it is for "good cause." Good cause includes poor quality of care, lack of access to covered services or providers experienced with dealing with the member's care needs, or as determined by DOH. This provision is effective October 1, 2018, and is expected to result in gross savings of $10.45 million in the first year, increasing to $11.2 million in SFY 2019-20.

Disenrollment of Low Utilization Members

The final budget includes the administrative provision requiring MLTC plans to dis-enroll members who qualified for MLTC enrollment but who have not utilized community-based long term care services for a 30-day period. DOH intends to provide guidance and implement this provision with sufficient flexibility to allow an exceptions process for extenuating circumstances. This provision is expected to be effective October 1, 2018, but will be implemented based on DOH administrative authority and timeline. It is expected to result in gross savings of $2.48 million in the first year, increasing to $5.2 million in SFY 2019-20.

Fee-For-Service Medicaid for Long-Stay Nursing Home Residents

The enacted budget authorizes DOH to exclude from MLTC enrollment permanent nursing home residents after three months of consecutive nursing home care. Residents meeting the criteria would be disenrolled and revert to fee-for-service Medicaid for their nursing home stay. DOH is required to continue to support service delivery and outcomes that would result in community living. The provision is effective April 1, 2018, although it will be implemented later in the year. It is expected to result in a gross savings of $158 million this year and $246 million in SFY 2019-20.

Note: Implementation decisions, including start dates and whether the provision applies to all types of MLTC plans, are not final and are under discussion at DOH. Preliminary information suggests that when DOH selects an implementation date:

- ***MLTC members who have been permanent nursing home residents for a continuous period of three months or longer will be disenrolled and revert to fee-for-service Medicaid;***
- ***New permanent Medicaid residents entering a nursing home who are enrolled in an MLTC plan will be disenrolled and revert to fee-for-service Medicaid after three continuous months of nursing home care;***
- ***New permanent Medicaid residents entering a nursing home who are not enrolled in an MLTC plan would not be enrolled and remain in fee-for-service Medicaid from the start of their permanent stay.***

MLTC plans would continue to cover non-permanent Medicaid nursing home stays as they currently do. DOH has signaled the intention to reconvene the advisory group that assisted with the transition of the nursing home benefit into managed care to help identify and address issues precipitated by this change.

As additional information becomes available, it will be posted here for your information.

Provider Marketing and Referral Ban

The Executive Budget included an administrative proposal that would restrict community-based long term care provider-sponsored marketing activities and prohibit a provider who refers an individual to the Conflict Free Evaluation and Enrollment Center (CFEEC) for MLTC enrollment from providing service to the individual after they are enrolled in MLTC.

The final budget includes a requirement that CDPAS Fiscal Intermediaries not disseminate any advertisement until reviewed and approved by DOH. At this time, it is uncertain whether the CDPAS FI advertising provision replaces the originally proposed marketing and referral ban. The anticipated savings in the state spending plan is the same as originally proposed and is expected to result in gross savings of $9.85 million in the first year, increasing to $20.74 million in SFY 2019-20.

Limit Number of Network LHCSA Providers

The final budget authorizes DOH to establish regional limits on the number of LHCSAs with which an MLTC plan may contract based on plan enrollment in the region. For Region 1 (comprised of New York City, Long Island and Westchester County) the limit is one LHCSA per 75 members, effective Oct. 2018, and one per 100 members as of Oct. 2019. The limit in other regions is set at one agency per 45 members as of Oct. 2018 and one per 60 members as of Oct. 2019. DOH is authorized to require plans to provide evidence annually of compliance and provides flexibility to DOH to allow exceptions where needed to ensure appropriate access and to ensure continuity of care.

A moratorium on LHCSA authorizations is also established from April 1, 2018 through March 31, 2020. For more information on this initiative, please refer to the "Home Care and Hospice" section of this report. These LHCSA provisions are expected to result in a gross savings of $27.4 million in the first year, increasing to $69.4 million in SFY 2019-20.

VBP Penalties

The final budget agreement includes the administrative provision to increase current penalties for managed care plans that fail to meet required levels of Value-Based Payment (VBP) contracting by $20 million. While DOH indicated their initial focus is on mainstream plans, this administrative provision could be applied to MLTC as well and is expected to result in gross savings of $20 million in the first year, increasing to $108 million in SFY 2019-20.

Plan-to-Plan Transfers

The final budget requires MLTC plans that receive members from another plan due to a merger or acquisition to submit a report to DOH on the continuity of care of members who transferred in within 12 months of the transaction.

TBI and NHTD Waiver Carve-in

The enacted budget delays the transfer of the Traumatic Brain Injury and Nursing Home Transition and Diversion Waivers into managed care until January 1, 2022.

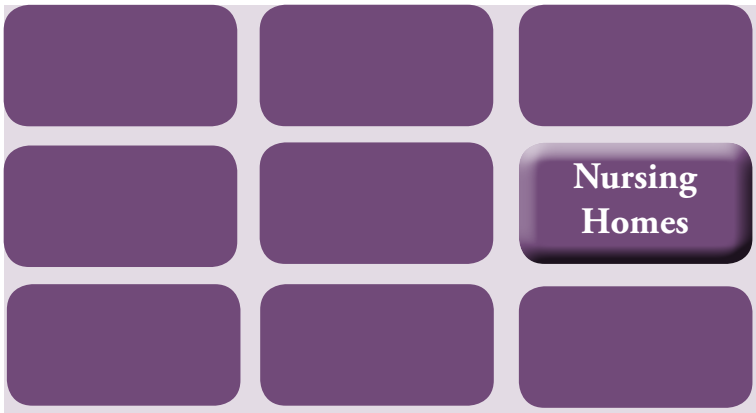
Enrollment Broker Contract

The final budget extends Maximus's contract to provide enrollment broker and "conflict-free evaluation and enrollment" services for three years without a competitive bid, but requires DOH to release a request for applications prior to the expiration of the extension.

OMIG Provisions

Provisions of the budget relating to Medicaid integrity and audits are covered in the "Overview" section of this report.

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



SFY 2018-19 Final State Budget

Nursing Homes

The final budget includes several provisions affecting nursing homes. Major components of the budget affecting multiple providers (e.g., trend factor, minimum wage, capital funding, VAP, etc.) are covered in the "Overview" section of this report. Provisions specifically impacting nursing homes are detailed below.

Fee-For-Service Medicaid for Long-Stay Nursing Home Residents

The nursing home benefit in MLTC will be limited to three months, after which already permanently placed MLTC enrollees will revert to fee-for-service (FFS) Medicaid. All individuals who are newly permanently placed and are not already enrolled in an MLTC will remain in the FFS program while residing in the nursing home. See the "Managed Care" section of this report for more details.

Low Quality Score Penalty

This provision will reduce Medicaid reimbursement by two percent to homes with low Nursing Home Quality Initiative (NHQI, a/k/a "Quality Pool") scores. Homes that scored in the lowest quintile in the most recent year and scored in the lowest or second lowest quintile in the previous year would have their Medicaid rate reduced by two percent for one year. This is expected to affect as many as 100 homes, although DOH would be required to waive the reduction in cases when it determines the facility is in financial distress. The provision is effective April 1, 2018, and is estimated to generate $15.3 million in total savings annually.

It is anticipated that pending NHQI payment adjustments (totaling $50 million per year) for rate years beginning in 2013 will be made during 2018 as well.

Case-Mix Rationalization

The budget reflects implementation of an administrative proposal that would reduce case mix-driven Medicaid rate increases by $15 million annually. DOH and the provider community would revisit the current case-mix data collection and calculation process to promote accurate Minimum Data Set (MDS) reporting and reduce audit findings. DOH has been concerned about continuing case-mix growth, as well as an increase in MDS audit findings which resulted in $30 million in rate reductions for 2014.

One Percent Rate Supplement

This administrative measure sets a timeline to make future payments to facilities to reinvest prior-period collections from the 0.8 percent non-reimbursable cash receipts assessment that have not been applied to the Universal Settlement. The assessment was implemented in lieu of a two percent across-the-board cut that was imposed on most Medicaid providers, which was repealed April 1, 2014. However, nursing homes have continued to pay the assessment. DOH plans to supplement nursing home Medicaid payments by $70 million per year, retroactive to April 2014. If this proposal is approved by the Centers for Medicare and Medicaid Services, the State will increase nursing home Medicaid reimbursement prospectively by $70 million each year. In addition, in each of the next four state fiscal years an additional $70 million ($140 million total per year) will be paid to address the four-year retroactive period.

The 0.8 percent assessment remains in effect for nursing home and ADHC cash receipts.

Capital Reimbursement Streamlining and Cut

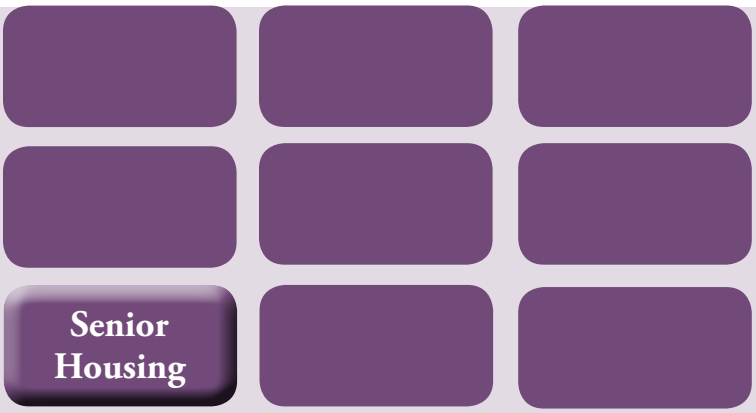
The final budget does not include the proposal to create a workgroup on streamlining Medicaid capital reimbursement methodologies, which would have been charged with producing a one percent savings in nursing home and hospital capital expenditures. DOH would have been authorized under the proposal to reduce overall capital reimbursement to achieve a one percent savings beginning in SFY 2018-19, which would have impacted nursing homes by an estimated $7.6 million annually.

Prior Years' Measures

Last year's final budget authorized the following measures, which remain in effect:

- **Hospitalization Bed Hold Elimination:** Medicaid coverage and payment for hospitalization bed hold payments for beneficiaries aged 21+ who are not enrolled in hospice was eliminated effective April 1, 2017. DOH has temporarily delayed implementation, pending the adoption of authorizing regulations.
- **Prior Cost Containment Extenders:** Prior year trend factor cuts and Medicare maximization provisions that require periodic extensions are in effect through March 31, 2019.
- **Cash Receipts Assessment:** The authority for the six percent reimbursable cash receipts assessment on nursing home and ADHC receipts remains in effect through March 31, 2019.
- **Intergovernmental Transfer (IGT) Payments:** The State has authority through March 31, 2020 to make Intergovernmental Transfer (IGT) payments of up to $500 million per year to nursing homes operated by counties and municipalities, including the NYC Health & Hospitals Corporation.

For more information, contact Dan Heim at dheim@leadingageny.org *or 518-867-8866.*



SFY 2018-19 Final State Budget

Senior Housing

LeadingAge NY is pleased to report that the final budget continues the $20 billion, five-year affordable and homeless housing and services initiative by supporting the creation or preservation of more than 100,000 units of affordable housing and 6,000 units of supportive housing. A portion of this investment is dedicated to affordable senior housing.

Housing Capital Funding

The final budget continued the State's commitment to the $2.5 billion affordable housing plan enacted last year. This plan includes the allocation of $125 million for the development or rehabilitation of 100 percent senior housing, targeted to low-income seniors aged 60 and above.

Affordable Senior Housing Resident Service Assistant Program

The final budget does not include the proposal to create the Affordable Senior Housing Resident Service Assistant Program or funding for such a program. Legislation in the Assembly and the Senate (A.10017-A (Cymbrowitz) and S.7866-A (Little)) would create a Senior Resident Service Assistant Program, and it is a priority of LeadingAge NY to advocate for the passage of these bills during the remainder of the legislative session.

State Low Income Housing Tax Credit

The final budget does not include the Executive Budget proposal to defer the use and refund of certain business tax related credits, including the low income housing tax credit, for three years if such credits exceeded an aggregated amount of $2 million.

The budget also approves the bifurcation of the State Low Income Housing Tax Credit (SLIHC) from the Federal Low Income Housing Tax Credit. This will allow for separate investors in the Federal and State tax credits on the same transaction.

Finally, the budget approves the certification of SLIHC, allowing for the transfer of a portion or all of the SLIHC to another taxpayer. The transfer of the SLIHC is limited to the first level of investor who is not an owner.

The approval of bifurcation and certification should increase the value of SLIHC and its resulting equity.

Residential Emergency Home Repairs for the Elderly

The final budget establishes the "Residential Emergency Services to Offer Home Repairs to the Elderly Program" in the private housing finance law to assist senior citizen homeowners with the cost of addressing emergencies and code violations that pose a threat to their health and safety or affect the livability of their home by providing financial assistance for the cost of making repairs that may enable such homeowners to continue to live independently in their own homes.

Access to Home

Access to Home, which provides building modifications for seniors and persons with disabilities so they can remain independent, was funded at its traditional level of $1 million.

Neighborhood and Rural Preservation Programs

The Neighborhood and Rural Preservation Programs, which provide operating grants to non-profit housing companies in nearly every corner of the state to support their work in housing and community revitalization, were funded at approximately $8.5 million and $3.5 million, respectively, from excess Mortgage Insurance Fund reserves.

New York City Housing Authority

The final budget includes an additional $250 million for capital investments to address habitability issues including heating, mold, and lead, and other such conditions affecting the health and safety of tenants in the New York City Housing Authority (NYCHA), bringing total state funding for NYCHA to $550 million. To expedite repairs to NYCHA facilities, the final budget includes design/build legislation allowing design/build teams to work under a single contract. The budget also includes oversight provisions for NYCHA.

Funding for Other Housing Programs

The following programs were also funded in the final budget:

- **Affordable Housing Corporation:** The Affordable Housing Corporation, which provides grants to governmental, not-for-profit, and charitable organizations to help subsidize the cost of newly constructed houses and the renovation of existing housing, was funded at its traditional level of $26 million.
- **Housing Opportunities Program for the Elderly**: Formerly known as RESTORE, this program provides home improvement grants for low-income, elderly homeowners. It was funded at its traditional level of $1.4 million.
- **Other Capital Programs:** The Homes for Working Families Program was funded at $14 million. The Low-Income Housing Trust Fund, which provides grants of up to $125,000 per unit to construct or renovate low- and moderate-income single and multi-family housing projects, is funded at $44 million, representing a net decrease of $21 million from last year's final budget, which included additional funding for the program from Mortgage Insurance Fund Reserves. The Public Housing Modernization Program was level-funded at $6.4 million.

Miscellaneous

- The budget extends certain consumer protections for homeowners facing foreclosure to homeowners facing reverse mortgage foreclosure.
- The budget eliminates the requirement that recipients of Community Service Block Grant funds secure a 25 percent local match, thereby conforming State law to Federal statute.

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Summary

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAM FUNDING	
Adult Care Facilities and Assisted Living • Funds EQUAL at last year's level of $6.5M. • Includes $1.3M for ACF criminal history record check (CHRC) program. • Creates a voucher program for people with Alzheimer's living in Assisted Living. • Puts enriched housing subsidy into a pool of public health programs, which is cut by 20%.	Includes Executive proposals on EQUAL funding, ACF CHRC funding and Assisted Living Alzheimer's Voucher program. Does not include Executive proposal to pool public health programs and restores enriched housing subsidy as a discrete line item at last year's funding of $380,000.
Community-based Services Level-funds or slightly increases funding for the following programs: ▪ EISEP at $50.1M. ▪ WIN at $27.5M. ▪ Community Services for the Elderly (CSE) at $28.3 M and $1.1M for discrete transportation funding. ▪ Livable NY Initiative at $122,500. ▪ Congregate Services Initiative at $403,000. ▪ Caregiver Support funded at $50M for 2 years. ▪ Title XX funding of $66M. ▪ Social adult day care at $1,072,000. ▪ NY Connects at $44.5M for 2 years.	Includes Executive proposal with small adjustments to funding for WIN ($27.4M); CSE ($31.2M) and NY Connects ($43.7M for 2 years).
Consolidation of Public Health Programs Consolidates 30 public health appropriations totaling $46.7M into four program pools: (1) disease prevention and control; (2) maternal and child health; (3) public health workforces; and (4) health outcomes and advocacy. Reduces funding for each pool by 20%.	Does not include Executive proposal. Enriched housing subsidy ($380,000); and health workforce retraining program ($9.16M) are funded at SFY 2017-18 levels.
Healthcare Transformation Fund Creates Healthcare Shortfall Fund to guard against risk of potential loss of federal funding.	Modifies Executive proposal to create a Health Care Transformation Fund to support investments in health care delivery. Funded with revenues of Fidelis sale, excess reserves of managed care plans and other revenues. Further specifics on fund spending not yet available.
Health Information Technology Infrastructure • $30M for SHIN-NY to permit sharing of health information among health care providers. • $10M for the All Payer Claims Database, a repository of health care utilization and spending data. • $10M for DOH information technology initiatives.	Includes Executive proposal.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAM FUNDING	
Home Care Recruitment, Training and Retention • Continues funding for personal care worker recruitment and retention at $272M for NYC and $22.4M for other areas of the state. • Continues recruitment, training and retention funding at $100M for CHHAs, LTHHCPs, AIDS home care programs, hospice programs and MLTC plans.	Includes Executive proposal.
Housing Programs • Continues $20B 5-year investment in affordable housing, supportive housing, and related services begun in SFY 2016-17 to create or preserve 100,000 units of affordable housing and 6,000 units of supportive housing. Funding includes $3.5B in capital resources; $8.6B in State and Federal tax credits and other allocations; and $8B for operation of shelters and supportive housing units and rental subsidies. • Funds existing programs: ▪ Access to Home at $1M. ▪ Affordable Housing Corporation at $26M. ▪ Low-Income Housing Trust Fund program at $44M. ▪ Housing Opportunity Program for the Elderly (HOPE) at $1.4M. ▪ Public Housing Modernization Program at $6.4M. ▪ Neighborhood and Rural Preservation Programs at $8.5M and $3.5M, respectively. • Provide $200M in funding to NYC Housing Authority (NYCHA) for improvements.	• Continues the five-year investment of capital funds to expand affordable and supportive housing projects. This includes the allocation of $125M over five years for the development or rehabilitation of 100% senior housing, targeted to low-income seniors aged 60 and above. • Includes Executive proposals for existing programs. • Modifies Executive proposal to add $250M in capital for repairs to NYCHA facilities and include design/ build authority and oversight requirements.
Medicaid Global Spending Cap Continues the cap (including the State's "superpower" authority to make spending reductions if the Global Cap is breached) through March 31, 2020, with total state share DOH spending limited to $18.9B in SFY 2018-19, an increase of $593M over the SFY 2017-18 cap.	Includes Executive proposal.
Minimum Wage Includes $450M in state funding to support the direct cost of minimum wage increases for Medicaid-funded services provided by home care agencies, nursing homes, ALPs, hospices, hospitals and other providers.	Includes Executive proposal.
NORCs/NNORCs Level-funds both programs at $2,027,500 each. Funding priority would be given to the renewal of existing contracts with NYSOFA.	Modifies Executive proposal to add $2M to each program for total combined funding of $8,055,000.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAM FUNDING	
Statewide Health Care Facility Transformation Creates third round of the Statewide Health Care Facility Transformation Program initiated in the SFY 2016-17 budget. Program is funded at $425M and financed through a combination of DASNY bonds and state budget capital funding. Up to $20M of the funding set-aside to develop additional ALP beds.	Modifies Executive proposal to increase total funding to $525M, add ACFs and hospices as qualifying providers in addition to ALPs, and broaden use of $20M ALP set-aside for new bed development.
TBI and NHTD Waiver Programs Level-funds the TBI program at $12.4M and the NHTD waiver housing subsidy at $1.84M.	Includes Executive proposal.
VAP Program Includes appropriation of $132M for VAP.	Includes Executive proposal.
PROVIDER/PLAN REIMBURSEMENT	
Hospice Residence Rates Administratively increases rate by 10%, set a benchmark rate and include specialty rates in the weighted average rate calculation.	Modifies Executive proposal by adding statutory language requiring DOH to set a methodology as of 7/1/18 to ensure a 10% increase relative to the Medicaid reimbursement rate as of 3/31/18.
Human Services COLA Increases Eliminate DOH authority to provide Cost-of-Living Adjustments (COLAs) to human services providers, and eliminate COLA adjustments for NYSOFA programs until 3/31/19.	Includes Executive proposal.
Medicaid Non-Emergency Transportation Eliminates $2 million in supplemental payments to non-emergency transportation providers in rural communities.	Does not include Executive proposal.
Medicaid Trend Factor The 2017-18 enacted budget was to have eliminated trend factor adjustments through 3/31/19 for all Medicaid providers except pediatric nursing homes. A proposed technical correction would clarify no trend factor adjustments in SFY 2018-19. The Assembly one-house budget included a trend factor adjustment.	Includes Executive proposal.
MLTC Administrative Cost Reimbursement Administratively reduces reimbursement cap for plan administrative activities from $215 to $200 per member per month for single-capitated plans.	Includes Executive proposal.
Nursing Home Capital Reimbursement Creates a workgroup to streamline Medicaid capital reimbursement and produce a one percent savings in nursing home and hospital capital expenditures.	Does not include Executive proposal.
Nursing Home Case-Mix Rationalization Administratively reduces case mix-driven Medicaid rate increases by $15M annually by revisiting the current case-mix data collection and calculation process.	Includes Executive proposal.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROVIDER/PLAN REIMBURSEMENT	
Nursing Home Low Quality Score Penalty Reduces Medicaid reimbursement by two percent to homes with Nursing Home Quality Initiative scores in the lowest two quintiles. DOH may waive the reduction when the facility is in "extreme financial distress."	Modifies Executive proposal to require DOH to waive the reduction when it determines the facility is in "financial distress."
Nursing Home Rate Supplement Repays nursing homes over 4 years for a $70M per year retroactive rate supplement using funds collected from the 0.8% non-reimbursable cash receipts assessment since 2014.	Includes Executive proposal.
SSI Rate for ACFs Passes through federal SSI COLA but makes no increase in the state portion of the SSI Level 3 rate for ACF services. Senate one-house budget included state SSI increases.	Includes Executive proposal.
TBI Clinic Payments Requires, at a minimum, that the amount paid to clinics for services provided to dual eligible TBI Waiver participants will be the Medicaid rate minus the amount paid by Medicare.	Includes Executive proposal.
PROGRAMMATIC INITIATIVES	
ALP Expansion Allows existing ALP providers to expand by 9 or fewer beds through an expedited process. Authorize 500 new ALP beds to be awarded in counties with 1 or fewer ALPs, and 500 additional beds in counties where utilization of existing ALP beds exceeds 85 percent.	Modifies Executive proposal to include a future public need process starting in 2023.
Community Paramedicine Permits health care providers to collaborate with emergency medical personnel to provide care beyond initial emergency medical care and transportation.	Does not include Executive proposal.
Continuous Services Need to be Eligible for MLTC Specifies that an MLTC member must require 120 days of continuous community based long term care services to be eligible for MLTC enrollment.	Includes Executive proposal.
Health Home/HCBS Criminal History Record Checks Requires criminal history record checks for employees and subcontractors of health homes and any entity that provides home and community-based services to enrollees with a diagnosis of a developmental disability or who are under age 21.	Modifies Executive proposal by including requirement to provide employee with report and delaying direct observation requirement for employees with pending record checks.
Health Home/HCBS Child Abuse Reporting Requires reporting of child abuse and neglect by employees of a health home, health home care management agency, or home and community-based services providers.	Modifies Executive proposal by limiting requirement to employees who have regular and substantial contact with children.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAMMATIC INITIATIVES	
Health Insurance Windfall Profit Tax Levies 14% tax on for-profit insurers to offset anticipated tax relief afforded by federal tax changes.	Does not include Executive proposal.
Integrated Health and Behavioral Health Care Eliminates barriers to providing integrated health and behavioral health care by facilities licensed by DOH, OMH, OASAS, or OPWDD that are authorized to provide integrated care.	Includes Executive proposal.
LHCSA Moratorium and Need Demonstration No provision.	Places moratorium on new LHCSA approvals through 3/31/20. Does not apply to: (1) LHCSAs already approved but not yet operational; (2) LHCSA with an ALP application; (3) transfer of ownership of LHCSA to consolidate 2 or more LHCSAs; or (4) application to address lack of access to home care, language and cultural competence, or special needs services.
Managed Care Enrollment Broker Contract No provision.	Extends Maximus's contract for managed care enrollment services for three years.
Managed Care Health Homes Participation Requires Medicaid managed care special needs plans and other managed care plans serving "high-risk" beneficiaries to meet targets for health home participation and authorize penalties. Provide incentives for participation in wellness activities and avoiding hospitalizations.	Modifies Executive proposal by limiting the conditions under which penalties can be imposed and rejecting the Executive's proposal to provide incentive payments to health home beneficiaries.
Managed Care Laboratory Overutilization Administrative proposal to establish clinical efficiency standards for laboratory services.	Includes Executive proposal.
Managed Care Plan-to-Plan Transfer Reporting No provision.	Requires plans that receive members from another plan due to a merger or acquisition to submit a report to DOH on the continuity of care of those members.
Managed Care PPS Partnership Plans Administrative proposal to require managed care plans to submit partnership plans for each DSRIP Performing Provider System in their service area outlining collaboration approaches.	Does not include Executive proposal.
Managed Care VBP Penalties Administrative proposal to increase current penalties for managed care plans that fail to meet established VBP contracting thresholds.	Includes Executive proposal.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAMMATIC INITIATIVES	
Mandated Recycling of Organic Waste Requires certain high-volume generators of food waste, including health care facilities, manufacturers, supermarkets, large restaurants and higher educational institutions to recycle their food waste beginning 1/1/21.	Does not include Executive proposal.
Medicaid Cost Reports Requires any Medicaid provider, whether FFS or managed care, to submit a cost report reflecting costs incurred delivering care to Medicaid recipients. DOH to specify reporting requirements. When applicable, managed care plans to carry out report collection.	Specifically requires LHCSAs, Health Homes and Fiscal Intermediaries to file cost reports, as required by DOH. Providers to be given 90 days' notice, and 30 days to correct submissions. Reports must be certified.
Medicaid Coverage of Physical Therapy Increases the Medicaid fee-for-service physical therapy benefit from 20 visits to 40 visits per year.	Includes Executive proposal.
Medicaid Integrity • Raises the penalties assessable under the State's False Claims Act (FCA) to the levels in the Federal FCA. • Extends the statewide Medicaid integrity and efficiency initiative through 4/1/23. • Requires managed care organizations (MCOs) to recover overpayments from providers when identified in a state audit. • Requires MCOs to report all potential fraud, waste, or abuse to OMIG or face fines. • Allows OMIG to fine providers or MCOs for non-compliance with Medicaid requirements. • Subjects MCOs that submit inaccurate cost reports or encounter data to fines of up to $100,000.	Includes Executive proposal to increase state FCA penalties; extends statewide Medicaid integrity and efficiency initiative through 3/31/20; does not include remaining proposals.
MLTC Disenrollment of Low Utilization Members Administratively requires plans to dis-enroll members living in the community who have not used community-based long term care services in 30 days.	Includes Executive proposal.
MLTC Enrollment Lock-in Authorizes DOH to prohibit MLTC members from changing plans more often than once a year without cause after the initial 30- or 45-day enrollment period.	Modifies Executive proposal to allow unlimited changes during the first 90 days of enrollment and by defining "good cause."
MLTC "Excess" Contingent Reserve Authorizes DOH to reduce the rates of not-for-profit Medicaid managed care plans, including MLTCs, that have accumulated contingent reserves exceeding the minimum amount required.	Does not include the proposal for MLTC but authorizes the Commissioner of Health to "redeploy" the excess contingent reserves of certain non-profit, mainstream, Medicaid managed care plans (i.e., PHSPs).

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAMMATIC INITIATIVES	
MLTC-LHCSA Contract Limit Administratively prohibits an MLTC plan from contracting with more than ten LHCSAs.	Modifies Executive proposal by setting regional limits on the number of LHCSAs an MLTC may contract with based on plan enrollment. For downstate, the limits are 1 LHCSA per 75 members as of 10/18 and per 100 members as of 10/19. For other regions, the limits are 1 LHCSA per 45 members as of 10/18 and per 60 members as of 10/19.
MLTC Social Day Benefit Efficiencies Administrative proposal to manage social adult day benefit more efficiently by eliminating excess contracts, adjusting member utilization and other approaches through education and guidance to plans.	Includes Executive proposal.
MLTC UAS Eligibility Threshold Sets a Universal Assessment System score of 9 as the minimum score for MLTC enrollment.	Does not include Executive proposal.
Nursing Home Benefit Limits the nursing home benefit in MLTC to 6 months, after which already permanently placed MLTC enrollees revert to fee-for-service Medicaid.	Modifies Executive proposal to limit the nursing home benefit to 3 months.
Opioids • **Surcharge:** Imposes a surcharge on the first sale of any opioid in the State by a pharmacy, manufacturer, wholesaler, or outsourcing facility. • **Prescribing:** Excludes from Medicaid coverage opioids prescribed for pain for more than 3 months or past the time of normal tissue healing, unless supported by a specified treatment plan. • **Treatment Coverage:** No provision.	• Modifies Executive proposal to set up an Opioid Stewardship Fund to receive $100 million from manufacturers and distributors. Opioids sold to hospices are excluded from collection amounts. • Modifies Executive proposal by prohibiting prescribing of opioids for pain for 3 months or past time of tissue healing, unless supported by acceptable treatment plan. Does not apply to patients with cancer or in end-of-life care. Excludes from Medicaid coverage opioids prescribed in violation of these standards. • Prohibits health insurers from requiring prior authorization or concurrent review of first 2 weeks of outpatient substance use disorder treatment by in-network facilities certified by OASAS. Requires peer-reviewed assessment tool and limits cost-sharing.
Other Pharmacy Provisions • **Comprehensive Medication Management:** Allows pharmacists to enter medication management protocols with physicians and/or nurse practitioners to support the treatment of at-risk patients. • **Dispensing Fee for Pharmacies under Fee-for-Service Medicaid:** Increases dispensing fee by 8 cents for all drugs, except those dispensed without a prescription and not classified as "covered outpatient drugs.	• Does not include Executive proposal. • Includes Executive proposal.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAMMATIC INITIATIVES	
• **Covered Over-the-Counter Drugs:** Authorizes DOH to modify, without notice and comment period, the list of Medicaid-covered drugs that may be dispensed without a prescription.	• Does not include Executive proposal.
• **Copayments:** Increases the beneficiary copayment for nonprescription drugs from $0.50 to $1.00.	• Does not include Executive proposal.
• **Generic Drug Rebates:** Extends until 2023 legislation enacted last year that reduces the price increase that triggers additional rebates on generic drugs.	• Modifies Executive proposal by extending the reduction until 4/1/20.
• **Medicaid Drug Spending Growth Cap:** Extends for another year the cap on Medicaid spending on drugs.	• Includes Executive proposal; adds reporting requirements.
• **Medication Adherence:** Requires managed care plans to implement medication adherence programs.	• Includes Executive proposal.
• **Pharmacy Benefit Managers:** No provision.	• Imposes new requirements and limitations on pharmacy audits by PBMs and PBM contracts.
• **Prescriber Prevails:** Eliminates "prescriber prevails" for FFS drugs not on preferred drug list and specified drugs not on managed care plan formulary.	• Does not include Executive proposal.
• **Rebate Risk Assessment:** DOH to contract with a vendor to assess the risk associated with the rebate billing and collection protocols.	• Includes Executive proposal.
Provider Marketing and MLTC Referral Ban Administratively restricts community-based long term care provider marketing activities and prohibits providers who refer an individual to MLTC to be the service provider for that person once they are enrolled in MLTC.	Requires CDPAS Fiscal Intermediaries to obtain approval for any advertising materials, and prohibits publishing false, misleading or unapproved advertising by CDPAS FIs. It is unclear whether this replaces or supplements the Executive's proposal.
Registration of LHCSAs No provision.	Requires annual registration of LHCSAs with DOH. Failure to submit results in $500 per month penalty. LHCSAs missing twice or have established a pattern of not registering could have license revoked.
Retail Practices Authorizes "retail practices," operated by business corporations (including publicly-traded corporations) or licensed health care facilities to provide limited services at retail sites.	Does not include Executive proposal.
Sexual Harassment Prevention Requirements Imposes various requirements and prohibitions mainly on state and local government agencies, public authorities and the Legislature to address sexual harassment in the workplace.	Modifies Executive proposal to require all employers to adopt sexual harassment prevention policies and training programs; prohibit mandatory arbitration provisions in employment agreements; prohibit non-disclosure provisions in settlement agreements except at the complainant's request; and establish liability to contractors and vendors who are subjected to sexual harassment in the workplace.

Summary of NYS Budget by Functional Area

EXECUTIVE BUDGET	FINAL BUDGET
PROGRAMMATIC INITIATIVES	
Social Work and Mental Health Licensure Clarifies counseling, care planning, and care management activities and services that may be performed only by licensed professionals. Eliminate long-standing exemptions from professional licensure requirements for entities licensed or certified by various health and human services agencies.	Modifies Executive proposal by revising the activities and services that may be performed by unlicensed individuals and the grandfathering provision.
Study on HCBS in Rural Areas DOH to: (1) study access to HCBS in rural areas, factors affecting availability, and opportunities to improve access; and (2) provide targeted Medicaid rate enhancements for personal care. $3M allocated for study and enhanced rates.	Modifies Executive proposal to require DOH to consult with the newly created Rural Health Council in conducting the study.
TBI and NHTD Waiver Transition to MLTC No provision.	Delays transition of TBI and NHTD waivers into Managed Long Term Care until 1/1/22.
Telehealth Expansion Expands the definitions of "telehealth provider," "originating site," and "remote patient monitoring."	Modifies Executive proposal to expand definitions of "telehealth provider," "originating site," and "remote patient monitoring" and add nursing homes serving special needs populations to list of telehealth providers.
Transportation Carve-out Eliminates transportation from the MLTC benefit package and adjusts plan premiums accordingly. Utilize state transportation manager for MLTC and ADHC participants.	Does not include Executive proposal.
BENEFICIARY ELIGIBILITY	
Spousal Refusal Allows 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.	Does not include Executive proposal.
Community Spouse Resource Allowance Reduces the "floor" for the community spouse resource allowance for institutional (i.e., nursing home) Medicaid eligibility from $74,820 to $24,180.	Does not include Executive proposal.

Contact LeadingAge New York

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