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## MEMORANDUM

**TO:** All Members

**FROM:** Advocacy and Public Policy Department

**DATE:** January 23, 2017

**SUBJECT:** Governor's Proposed 2017-18 Executive Budget

**ROUTE TO:** Administrator, Program Directors, Department Heads

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ABSTRACT: Detailed summary of 2017-18 Executive Budget provisions.

### **I. INTRODUCTION**

On Tuesday, Jan. 17, 2017, Governor Cuomo released his [State Fiscal Year \(SFY\) 2017-18 Executive Budget proposal](#), entitled "Excelsior, Ever Upward." The Executive Budget proposes a \$152.3 billion spending plan and largely tracks the proposals the Governor laid out in his six State of the State addresses. This plan closes a projected \$3.5 billion deficit and proposes additional spending of \$1 billion on education and \$576 million on Medicaid.

The budget would increase State operating funds spending by 1.9 percent, representing the seventh consecutive year of 2 percent or less growth. The Governor's budget includes an additional \$1.4 billion from financial institution monetary settlements received in SFY 2016-17 that is set aside for one-time capital investments, and a \$150 million deposit to the State's Rainy Day Reserves which would total \$2.5 billion at the end of SFY 2017-18.

Foregoing a single speech to the Legislature, Governor Cuomo delivered a series of regional [State of the State addresses](#). He outlined his vision for a Middle Class Recovery Act—focusing on jobs and infrastructure, access to education, and lower taxes—as well as a New York Promise agenda, which would "advance social justice and affirm New York's progressive values." In addition, the Governor laid out proposals for comprehensive ethics reform and

initiatives to combat the State's heroin and opioid epidemic. There are [35 key proposals](#) in the Governor's 2017 agenda, ranging from tuition-free college and an increased child care tax credit for middle class families to the development of a 750-mile walkway across the State.

In the health care arena, the Executive Budget proposes to increase total Medicaid funding (state, federal and local) to \$65.15 billion in SFY 2017-18, reflecting an increase of \$2 billion from SFY 2016-17.

As in prior years, the Governor has incorporated programmatic changes into the Health and Mental Hygiene appropriation bill, in order to limit the ability of the Legislature to make changes to his proposed budget. This year, he has also inserted language that authorizes the Director of the Budget to reduce appropriations as necessary, in the event that revenues (including federal revenues) do not match the amounts assumed in the State's financial plan. In addition, the appropriations bill appends to each programmatic change a provision that would nullify the change if the Legislature appropriates sufficient additional funds. This language appears to envision retaining (rather than striking) the programmatic changes in the legislation, even if the Legislature restores funding. Together these provisions may be intended to provide greater flexibility to the Executive if federal funding is reduced, and available funds are not sufficient to meet programmatic needs.

The following is a summary of the health, Medicaid and housing proposals advanced by the Governor. Part II of the memo covers proposals that affect multiple service lines; Part III describes service-line specific proposals; Part IV covers pharmacy-related issues; Part V summarizes the Governor's proposal on financial exploitation of vulnerable adults; Part VI covers miscellaneous Executive Budget issues and Part VII covers the government reform proposals. As you will see, there are several issues of importance to the LeadingAge NY membership that will require advocacy efforts as we head into State budget deliberations. The memo concludes with more information on advocacy opportunities for members.

## **II. CROSS-SECTOR HEALTH CARE INITIATIVES**

The following proposals impact multiple types of Medicaid providers and managed care plans, and should be reviewed by all readers. Budget proposals affecting specific service lines are summarized in Part III below.

### **Medicaid Global Spending Cap**

The Executive 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 2018-19. The Global Cap represents 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 would rise from \$17.692 billion in SFY 2016-17 to \$18.259 billion in SFY 2017-18, for an increase of \$567 million. State Medicaid spending adjustments to the Global Cap for minimum wage increases, the local share growth takeover and other programs total an additional \$780 million, resulting in total projected State Medicaid spending of \$19.039 billion for SFY 2017-18.

As alluded to above, the Governor further proposes to authorize the Director of the Budget to adjust projected Medicaid expenditures under the Global Cap to take into account any changes made by the federal government to the availability of federal financial participation in Medicaid or to Medicaid eligibility criteria.

### **State Takeover of Medicaid Local Share Growth**

For all social services districts except New York City, the Executive Budget continues the State's commitment to bear the full cost of any growth in non-federal Medicaid expenditures. In other words, local social services districts, other than New York City, will continue to be exempt from sharing in the cost of any increases in Medicaid spending. According to the Division of the Budget, local Medicaid savings from the State takeover will total \$3.2 billion cumulatively in SFY 2017-18.

The Governor proposes to reduce State Medicaid cost sharing to New York City by \$50 million, but this cut would not be implemented if the City enters into a joint savings allocation plan with DOH to increase allowable federal claims for preschool and school supportive health by \$100 million. The joint savings allocation plan must be approved by DOH, and a determination will be made annually as to whether New York City will achieve the savings identified in the joint savings allocation plan and avoid any disallowances of State Medicaid cost sharing.

### **Capital Funding**

The Governor proposes to create a second round of the Statewide Health Care Facility Transformation Program (SHCFTP) that was initiated in the SFY 2016-17 budget. Administered jointly by DOH and the Dormitory Authority of the State of New York (DASNY), the program would be funded at \$500 million and financed through a combination of DASNY bonds and State budget capital funding.

The SHCFTP funding would be available for similar purposes as the first round that was established in last year's budget. These purposes 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. Consistent with last year's program legislation, grant awards may be offered without a competitive bid or request for proposals, and will not be available to support general operating expenses.

According to the Governor's proposal, criteria to be considered by DOH in making awards would include how the project contributes to the integration of health care services or the long term sustainability of the applicant or the preservation of health care services in the communities served; whether the proposed project aligns with Delivery System Reform Incentive Payment (DSRIP) goals; and geographic distribution considerations.

Of the \$500 million proposed for the program, \$50 million would be allocated to Montefiore Medical Center, and at least \$30 million allocated to community-based health care providers that demonstrate they would fulfill a need for acute inpatient, outpatient, primary, home care, or residential health care services in a community. These providers would include home care

agencies, diagnostic and treatment centers, mental health clinics, alcohol and substance abuse treatment clinics, and primary care providers.

Projects that received funding under the Brooklyn Health Care Facility Transformation Program or the Oneida Health Care Facility Transformation program would be ineligible for this program. Priority would be given to projects that did not receive round one funding under the SHCFTP solicitation issued last July (Note: round one awards have not yet been announced as of the date of this memo).

The Governor's proposal would, unlike last year's program, condition grant awards to providers on achieving certain process and performance metrics and milestones to be determined by DOH. DOH, in turn, would be required to report quarterly to the Legislature on the progress of funded projects.

### **DSRIP Incentive Payment Funding**

The proposed Budget includes \$4 billion to continue to fund performance payments for the twenty-five Performing Provider Systems statewide for their work on various projects in the DSRIP program.

### **Vital Access Provider Funding**

The proposed Budget includes an appropriation of \$132 million for Vital Access Providers (VAP), as well as a reappropriation of \$212 million of existing VAP funds. The Governor's Briefing Book states that the budget would provide a total of \$334 million in funding to support critical health care providers through the State's VAP and Value Based Payment Quality Improvement (VBP QIP) programs. The VBP QIP program is aimed at financially-distressed hospitals.

### **Workforce**

- **Minimum Wage:** The final 2016-17 State budget authorized phased-in increases to the State's minimum wage. The 2017-18 Executive Budget includes \$255.4 million in State funding, an increase of \$211.4 million over current fiscal year 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), hospitals and other providers.
- **Paid Family Leave:** Last year's final budget included a provision, commencing in January 2018, requiring employers to provide employee-funded, paid leave for purposes of caring for a newborn child or a seriously ill family member or other qualifying event. Under that legislation, the Superintendent of Financial Services and the Chair of the Workers Compensation Board were empowered to determine whether insurance coverage of this benefit would be subject to community rating or experience rating. The 2017-18 Executive Budget would establish a fund that would facilitate the implementation of a risk-adjustment mechanism in the event that the benefit is community-rated.

## Consolidation of Public Health Programs

As noted in the budget briefing materials, DOH administers several public health awareness and prevention programs reflecting a multitude of priorities. The programs vary by size and contract terms. The Executive budget would consolidate 39 public health appropriations totaling \$122.9 million into four pools: (1) disease prevention and control programs; (2) maternal and child health programs; (3) health workforce programs; and (4) health outcomes and advocacy programs. Funding for each pool would be reduced by 20 percent, achieving total savings of \$24.6 million, and DOH would be given added flexibility to support ongoing programs or new investments to meet new or emerging public health priorities.

Of potential interest to LeadingAge NY members are the following affected programs and the amounts they would ordinarily be fully funded at: (1) worker retraining (\$11.45 million); (2) Nursing Home Transition and Diversion (NHTD) waiver housing subsidy (\$2.4 million); and (3) enriched housing subsidy (\$475,000).

## Health Care Regulation Modernization Team

The Executive Budget proposes to create a Health Care Regulation Modernization Team, modeled on the Medicaid Redesign Team. This multi-stakeholder group would be charged with providing guidance on a “fundamental restructuring” of the statutes, regulations and policies that govern the licensure and oversight of health care facilities and home care, in order to align them with delivery system reforms.

- **Composition:** Up to 25 voting members appointed by the Governor, including State employees, the chair and co-chair of the Public Health and Health Planning Council, two members designated by the majority and minority leaders of the Assembly, two members designated by the majority and minority leaders of the Senate, and other stakeholders with expertise in inpatient and outpatient health care delivery, behavioral health, home health, community-based organizations, health insurance, workforce, health care facility design and construction, consumer rights, and “other relevant areas.”
- **Issues that may be considered:**
  - Certificate of Need (CON), licensure and construction approval streamlining;
  - Streamlining and aligning statutes and regulations to reduce duplication or inconsistency with federal laws and regulations;
  - Increasing flexibility on licensing and scope of practice for clinicians and caregivers;
  - Integration of primary care and behavioral health services;
  - Integration, standardization and increased flexibility of telehealth regulations;
  - Increasing flexibility in the use of observation beds, ambulatory surgery centers, clinics, nursing homes, assisted living, home health, freestanding emergency departments, community paramedicine, and other models;
  - Modernizing the licensing and regulation of care management, home care and other services delivered in the home;
  - Aligning care models involving home and community-based services, consistent with the report of the Olmstead Development and Implementation Cabinet;
  - Exploring regional application of regulations especially in the case of isolated or impoverished areas;

- Calibrating facility and home care agency inspections and the scope of CON review based on provider performance on quality measures and other metrics;
- Expanding public notification and engagement prior to major health system changes;
- Evaluating changes in statutes and regulations to support timely and effective emergency medical services and pre-hospital care; and
- Authorizing the commissioners of the relevant agencies to conduct time-limited demonstration programs to test new procedures and processes for organizing, financing and delivering health care, upon public notice and a 30-day comment period.
- **Timeline:** Commences July 1, 2017. A report to the Governor of findings and recommendations is due by December 31, 2017. By January 31, 2018, the Commissioner of Health would recommend to the Governor the continuation or termination of the group.

## Medicaid Eligibility

The Executive Budget includes a proposal, once again, to limit “spousal refusal” as a means of qualifying for Medicaid. The proposal would allow an applicant to qualify for Medicaid without counting his/her spouse’s income and assets only if the spouse is both *absent and* unwilling to support the applicant. Under current law, the income and assets of the spouse of an applicant for Medicaid will not be counted, if the spouse refuses to support the applicant *or* the spouse is “absent.” The proposal would save an estimated \$10 million in State funding annually.

## Administrative Hearing Office Consolidation

The Governor proposes the creation of a new Division of Central Administrative Hearings led by a Chief Administrative Law Judge (ALJ), to be appointed by the Governor. The Chief ALJ would be authorized to reorganize and consolidate administrative hearing functions within executive agencies, consistent with a plan approved by the Director of the Budget. Thus, instead of operating under the auspices of the agencies that are parties to the administrative proceedings they hear, the ALJs would be employed by an independent unit of the executive branch.

## Health Information Technology Infrastructure

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

- **SHIN-NY Support:** 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 (APD), which will serve as a repository for health care utilization and spending data that can be used to evaluate the performance of the health care delivery system.
- **State HIT Initiatives:** Appropriates \$10 million in annual funding for HIT initiatives that target DOH’s technology needs.

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

#### **Managed Care**

The Executive Budget includes Medicaid managed care savings proposals totaling \$172.45 million, of which \$51.45 million are primarily related to Managed Long Term Care (MLTC). Some of the proposed managed care savings initiatives outlined below (e.g., marketing ban, “fining mechanism”, quality bonus reductions) would be carried out administratively, without legislation. In the absence of proposed legislative language, limited information is available on these proposals at this time. LeadingAge NY will be seeking more detail on these initiatives as the budget process progresses. Key proposals include:

#### **MLTC Provisions**

- ***MLTC Eligibility:*** Authorizes DOH to raise the clinical eligibility requirements for enrollment in MLTC plans to permit only those who require a nursing home level of care to enroll. Beneficiaries enrolled in a plan as of Oct. 1, 2017 would be able to maintain their enrollment. Also specifies in statute that to be eligible for MLTC enrollment an individual must need 120 continual days of long term care from the date of enrollment. This proposal would take effect on Oct. 1, 2017. A similar provision was proposed in last year’s budget but rejected by the Legislature. The State’s spending plan assumes a \$5.5 million savings in SFY 2017-18 from this proposal, increasing to \$15.2 million in SFY 2018-19.
- ***MLTC Transportation Carve-Out:*** Eliminates transportation from the MLTC benefit package and delegates responsibility for managing Medicaid transportation for MLTC members to the State’s transportation management contractor(s) on a fee-for-service basis. This proposal would take effect on Oct. 1, 2017. While this requirement exists for mainstream Medicaid managed care, it was proposed and rejected in both of the previous two State budget cycles for MLTC. The State has attributed a \$7.95 million all funds savings to this action in SFY 2017-18, growing to \$15.9 million in SFY 2018-19.
- ***MLTC Marketing Ban:*** An administrative provision that prohibits MLTC plans from engaging in marketing activities. The goal seems to be to limit the rate of enrollment growth. The State has attributed a \$6 million all funds savings to this action in SFY 2017-18, growing to \$24 million in SFY 2018-19.
- ***Implementation of a “Plan Fining Mechanism” by DLTC:*** We are seeking additional information on the fines and mechanisms being contemplated by this administrative provision that would become effective on Dec. 1, 2017. The State has attributed a \$2 million all funds savings to this action in SFY 2017-18, and \$2.5 million in SFY 2018-19.
- ***Reduction of MLTC Quality Bonus:*** This administrative provision reduces MLTC quality payments by \$30 million from \$150 to \$120 million. Because the quality payments do not represent additional funds but are funded through a premium withhold, the provision likely represents a \$30 million funding cut (i.e., the State will withhold \$150 million in premiums but only pay out \$120 million in quality payments). The State has attributed an annual \$30 million all funds savings to this action in SFY 2017-18 and SFY 2018-19.
- ***FIDA Fair Hearing Staffing Extender:*** Extends for two years, from Jan. 1, 2018 to Jan. 1, 2020, authority for the Office of Temporary Disability Assistance (OTDA) to conduct FIDA fair hearings using contracted staff.

## Mainstream Medicaid Managed Care Provisions

- ***Requiring Medicare Coverage:*** Tightens Medicaid eligibility for managed care enrollees who are eligible for Medicare benefits but not enrolled in the program. The State has attributed a \$51 million all funds savings to this action in SFY 2017-18, growing to \$204 million in SFY 2018-19.
- ***Reduction of Mainstream Medicaid Managed Care Quality Bonus:*** The State has attributed an annual \$40 million all funds savings to this administrative action in SFY 2017-18 and SFY 2018-19.
- ***Reduction in the number of VBP Pilots:*** The State has attributed an annual \$10 million all funds savings to this administrative action in SFY 2017-18 and SFY 2018-19.
- ***Reduction in Facilitated Enrollment Funding:*** The State has attributed an annual \$20 million all funds savings to this administrative action for SFY 2017-18 and SFY 2018-19.

## Nursing Homes

Along with extending a number of cost containment provisions from prior years that require periodic extenders, the Executive Budget incorporates only one new proposal targeted exclusively at nursing homes: the discontinuation of bed hold payments.

- ***Elimination of Bed Hold:*** Eliminates bed hold payments to all nursing home providers, including pediatric units and homes, by deleting the section of Public Health law that authorizes such payments. While materials accompanying the budget state that the requirement that a nursing home hold a bed for a resident who temporarily leaves the nursing home will be preserved, we are seeking more information on whether DOH is contemplating a change to the current requirements in the nursing home code [10 NYCRR 415.3(h)(3)] that a home make the first available bed available to a returning resident consistent with its bed hold policy. Additionally, the budget language requires that an across-the-board reduction for all nursing homes – other than pediatric facilities – be made to achieve an annual savings of \$18 million. This would replace the existing bed hold-related, \$18 million across-the-board cut that is currently reflected in nursing home Medicaid rates. Both provisions would become effective on April 1, 2017. The State has attributed an annual \$22 million all funds savings to these actions in SFY 2017-18 and SFY 2018-19.
- ***Trend Factor Elimination:*** Extends for three years, through March 31, 2020, the provision that no trend factor adjustment greater than 0 percent be made to Medicaid rates for Medicaid providers, including nursing homes (except for pediatric nursing homes).
- ***IGT Extender:*** Extends for three years, through March 2020, the State's authority to make Intergovernmental Transfer (IGT) payments of up to \$500 million per year to county nursing homes.
- ***6 Percent Cash Receipts Assessment Extender:*** Extends for three years, through March 2020, the authority for the six percent reimbursable cash receipts assessment. The additional 0.8 percent non-reimbursable assessment is authorized by a different section of law that continues to be in effect.
- ***Prior Cost Containment Extenders:*** Extends for three years, through March 2020, prior year trend factor cuts and Medicare maximization provisions that require periodic extensions.



## Home Care and Hospice Services

The Executive Budget continues the implementation of Medicaid Redesign Team (MRT) recommendations begun in SFY 2011-12. As a result of the MRT, these reforms have continued to change how home care services are provided in New York State, especially MRT #90 which mandates managed care enrollment of Medicaid recipients who need more than 120 days of community-based long term care services.

In addition, the budget extends ongoing cost containment initiatives, such as Medicare maximization, administrative and general cost caps, past trend factor cuts and others. Specific proposals affecting home care and hospice services include:

- ***Hospice-Related Services:*** The proposed budget includes a proposal suggesting that Medicaid would discontinue payments for hospice-related services otherwise covered by Medicare. We are awaiting further clarification on this proposal, which would take effect 6/1/17 and result in \$4.4 million in State savings on an annual basis.
- ***Extending Elimination of Trend Factors:*** Continues the elimination of mandatory trend factors in provider reimbursement for three years through March 31, 2020 for CHHAs, LTHHCPs, AIDS home care programs, and personal care provider services.
- ***CHHA and LTHHCP Administrative and General Caps:*** Continues, through March 31, 2020, the existing caps on CHHA and LTHHCP reimbursable administrative and general costs, which limits reimbursement to the statewide averages.
- ***CHHA Episodic Payments:*** Last year's final budget extended the authority for CHHA episodic rates of payment for sixty-day episodes of care until March 31, 2019. The episodic payment methodology does not apply to services provided to children under eighteen years of age and other discrete groups.

## Home Care Appropriations

The Executive Budget reflects the following funding amounts:

- ***Personal Care Worker Recruitment and Retention (R&R):*** The proposed budget 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 Executive budget is again proposing level-funding at \$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 proposed 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 (TBI) program:*** Services and expenses related to TBI would be level-funded at \$12.4 million.
- ***NHTD Waiver Housing Subsidy:*** The NHTD housing subsidy, which is normally fully funded at \$2.4 million, is included in a group of public health programs that would be

consolidated and reduced by 20 percent. See “Consolidation of Public Health Programs” in Section II of this memo for more information.

- **Home Care Registry:** The Executive Budget is proposing to level fund the home care registry at \$1.8 million.
- **Criminal History Record Checks (CHRC):** The proposed budget level-funds CHRCs for non-licensed long-term care employees including employees of CHHAs, LTHHCPs, AIDS home care providers, licensed home care service agencies (LHCSAs) and nursing homes at \$3 million.

## Other Aging Services Initiatives and Funding

The FY 2017-18 Executive Budget recommends \$235.5 million for aging services, representing an overall cut of approximately five percent from last year’s funding level of \$247 million. The legislative language accompanying individual program appropriations would allow the Director of the Budget to reduce funding in the event federal funding for these aging programs is reduced. The following proposals pertain to aging services administered by the New York State Office of Aging (NYSOFA) and DOH, most of which are designed to help elders remain in their communities:

- **Increase Community Services for the Elderly:** The proposed budget allocates \$30.1 million in total to the Community Services for the Elderly (CSE) Program for SFY 2017-18, continuing the \$1 million increase provided last year. In addition, the proposed budget provides \$1.1 million in discrete transportation funding to CSE to provide localities the flexibility to direct resources where they are needed most. It also removes the exemption on the county share of the \$3.5 million in funding that has been added to CSE over the past two fiscal years.
- **Continue Alzheimer’s Caregiver Supports:** The proposed budget continues the \$25 million investment in care and support services for individuals living with Alzheimer’s disease and other dementias, and their caregivers. This initiative provides support through investments in regional contracts for caregiver support organizations, funding for Centers of Excellence that specialize in treating this disease, and funding for the Alzheimer’s Community Assistance Program, which is implemented through local chapters of the Coalition of Alzheimer’s Associations.
- **Discontinue Underutilized Cost of Living Adjustment (COLA):** Funding was enacted in 2015 to provide a wage increase targeted to direct care workers and direct service providers. DOH and NYSOFA providers have not adopted this COLA as anticipated, citing the complexity of identifying the targeted workers.
- **Change with NY Connects:** Shift support for NY Connects from the State’s General Fund to the Federal Balancing Incentive Program grant. This will account for a State savings of \$3.4 million annually. It is important to note this will not have any impact to existing services.
- **Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs:** Level-funding of \$2,027,500 would be provided to each of the two models.
- **Wellness in Nutrition (WIN) program:** Formerly known as Supplemental Nutrition Assistance Program (SNAP), WIN would be level-funded at \$27.5 million. WIN funding is used to provide home-delivered meals, some congregate meals and other nutrition-related services to eligible frail elderly, including residents of senior housing facilities;

- ***Expanded In-home Services for the Elderly Program (EISEP):*** EISEP is a community based long term care program that provides case management, non-medical in-home, non-institutional respite, and ancillary services needed by New Yorkers aged 60 and over. EISEP is proposed for level-funding of \$50.1 million.
- ***Congregate Services Initiative:*** The Executive Budget proposes to level-fund CSI at \$403,000. This program provides information and assistance, referral, transportation, nutrition, socialization, education, counseling and caregiver support to persons in senior centers and other congregate settings.
- ***Livable NY Initiative:*** The proposed budget level-funds this program at \$122,500. The program is aimed at creating neighborhoods that consider the evolving needs and preferences of all their residents.
- ***Title XX funding:*** The proposed budget maintains the same Title XX funding 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.
- ***Technical assistance/training for Area Agencies on Aging:*** The proposed budget includes the same amount as last year at \$250,000 for the Association on Aging in New York State. This is to provide training, education and technical assistance to area agencies on aging and aging network contractors to help them adapt to changes in the health and long term care policy environment.

## Adult Day Services

Two proposals made in last year's Executive Budget are repeated in this year's proposal:

- ***Transportation for Method 1 Adult Day Health Care (ADHC) Programs:*** Administratively authorize DOH to contract with Medicaid transportation brokers (i.e., Medical Answering Services) to manage all transportation of ADHC registrants. This affects all ADHC programs that own their own vehicles or contract with vendors to transport registrants to and from programs (i.e., Method 1). The same proposal was successfully defeated in last year's budget.
- ***Social Adult Day Care (SADC) Funding:*** Level-fund SADC support at \$1,072,000, with preferences given to existing grantees.

## Adult Care Facility and Assisted Living

In addition to some of the overarching proposals mentioned earlier in this document, the below are proposals that directly impact adult care facilities (ACFs) and assisted living.

### ACFs

- ***Quality Funding:*** The Enhancing the Quality of Adult Living (EQUAL) program is funded at \$6.5 million, the same amount as last year. As is the case with many other appropriations, the funding can be reduced if revenue and federal support is less than anticipated. EQUAL funding is available to adult homes and enriched housing programs that serve recipients of Supplemental Security Income (SSI) or Safety Net Assistance benefits, including ALPs and Assisted Living Residences (ALRs). It has been distributed

based on a formula developed by DOH, based on the number of people in receipt of the aforementioned benefits, as well as the size of the facility.

- **SSI:** The budget does *not* include an increase in SSI, aside from language authorizing a pass-through of the federal cost of living adjustment. The federal COLA, if any, is applied on Jan. 1 of each year.
- **Enriched Housing Subsidy:** Historically, the program has been appropriated at \$475,000, and paid \$115 per month per SSI recipient to operators of not-for-profit certified enriched housing programs. In the Executive Budget, it is included in a group of public health programs that would be consolidated and reduced by 20 percent. See “Consolidation of Public Health Programs” in Section II of this memo for more information.
- **Criminal History Record Check Funding:** The proposal includes \$1.3 million for services and expenses related to CHRCs for ACFs. This is the same funding level as last year.
- **Health Care Regulation Modernization Team:** This proposal is discussed above in more detail. LeadingAge NY is already engaged in a comprehensive ACF/AL regulatory reform effort with DOH, however this may provide additional opportunities for flexibility or innovation.

### **Assisted Living Programs**

- **Trend Factor:** The proposal extends by three years the elimination of the ALP Medicaid trend factor, meaning there would continue to be no inflation factor increase to the ALP Medicaid rate until at least 2020.

### **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. These programs have been funded at these levels for several years:

- **Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:** \$38 million is proposed for services and expenses associated with the provision of education, assessments, training, in-reach, care coordination, supported housing and the services needed by mentally ill residents of adult homes and persons with mental illness who are discharged from adult homes.
- **Mental Health Transitions:** Up to \$7 million is appropriated to the Research Foundation for Mental Hygiene, in contract with the Office of Mental Health, for two demonstration programs. One program would be for a behavioral health care management program for people with serious mental illness. The other program would be for a mental health and health care coordination demonstration program for persons with mental illness who are discharged from impacted (transitional) adult homes in NYC. In addition, up to \$15 million would be made available for grants to counties and NYC to provide medication and other services necessary to prescribe and administer medication.

### **Other Issues of Interest to ACF/AL Providers**

The below items may be of interest to ACF and assisted living providers, but do not have a direct impact on providers. All of the appropriations are at the same level as last year’s funding.

- ***Adult Home Advocacy Program:*** This funding is allocated to the Justice Center at \$170,000. 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.
- ***Coalition for the Institutionalized Agenda and Disabled (CIAD):*** This organization, which advocates for residents of adult homes in NYC, is funded at \$75,000
- ***Adult Home Resident Council:*** The Adult Home Resident Council Support Project, historically operated by the Family Services League on Long Island, is funded at \$60,000.
- ***Adult Home Quality Enhancement Account:*** The proposal 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 proposal includes \$2.1 million in funding for State operations for services and expenses related to the oversight of and licensing activities for assisted living facilities.

## Senior Housing

The Executive Budget proposes to reallocate nearly \$2 billion in capital funds for a range of affordable housing initiatives, and add an additional \$500 million to a five-year capital plan. Included in this plan is \$125 million for senior housing, a priority budget request of LeadingAge NY. The budget includes a new tax abatement program for New York City developers to replace the lapsed 421-A program, which offers tax breaks in return for reserving certain no apartments for people at a range of low and moderate incomes.

Nearly \$2 billion in capital for affordable housing was approved as part of the 2016-17 adopted budget, but the funds could not be released until a spending plan could be agreed to by the Governor and Legislature. After several rounds of negotiations, no agreement was reached by the beginning of the 2017 session. The \$2 billion is now included in the Executive Budget with a more detailed allocation plan (which includes the \$125 million for senior housing), which will be subject to discussion and legislative approval through the regular budget process. The Governor's proposal would eliminate the need for an agreed-upon "MOU" with the Legislature for the funds to be released.

The Executive Budget allocates funds for senior housing, but it does not create a new Affordable Senior Housing program, with its own rules and scoring criteria, as LeadingAge NY and other advocates had requested. LeadingAge NY anticipates supporting legislation that would create such a program, which is critical to encouraging developers to build affordable senior housing.

Little detail is included about how the earmarked senior housing funds would be awarded. LeadingAge NY has recommended that Homes and Community Renewal award an average of \$100,000 unit for senior housing developments, using other capital resources such as tax-exempt bonding or low-income housing tax credits.

The Executive Budget annual appropriations for affordable housing programs are consistent with previous budgets. Some of these programs are used to develop senior housing, or provide other housing related services for seniors.

- ***State Low-Income Housing Credit (SLIHC)***: Includes \$8 million, which is consistent with prior year appropriations. Advocates had asked that SLIHC be increased to meet much higher demand.
- ***Housing Opportunity Program for Elderly (HOPE)***: HOPE, which provides home improvement grants for elderly homeowners, is level-funded at \$1.4 million.
- ***Access to Home***: Funded at its traditional appropriation level of \$1 million.
- ***Affordable Housing Corporation***: Level-funded at \$26 million.
- ***Low Income Housing Trust Fund***: Funded at \$65.2 million, of which \$21 million is from the Mortgage Insurance Fund (MIF), representing a net increase of \$10 million from SFY 2016-17.
- ***Public Housing Modernization Program***: Level-funded at \$6.4 million.
- ***Homeless Housing Assistance Program (HHAP)***: Operated by the Office of Temporary Disability Assistance (OTDA), HHAP is level-funded at \$64 million.
- ***Neighborhood and Rural Preservation Programs***: Community based programs in all parts of the State that operating community programs and assist seniors and others with housing problems, funded historic levels of approximately \$8.5 million and \$3.5 million, from excess reserves from the MIF.

#### IV. PHARMACY

The Executive Budget proposes several pharmacy initiatives estimated to save a total of \$185 million in the Medicaid program. The Budget continues the Elderly Pharmaceutical Insurance Program (EPIC) with an appropriation of \$132.6 million.

The pharmacy savings proposals include:

- ***Comprehensive Medication Management***: Expands the existing Collaborative Drug Therapy Management program currently authorized in Article 28 facilities. Under this proposal, qualified pharmacists trained in medication management of chronic diseases would be authorized to enter into medication management protocols with physicians and/or nurse practitioners to support the treatment of at-risk patients. Pursuant to the protocol, the pharmacist would be authorized to adjust the drug regimen, perform or order routine monitoring or lab tests, and access the complete medical record of the patient. Patient participation in a program would be voluntary.
- ***Prior Authorization of Refills of Controlled Substances***: Authorizes DOH to require prior authorization of any refill of a controlled substance when more than a 7-day supply of the previously dispensed amount should remain, if the drugs had been used as directed. Existing law provides DOH with this authority in relation to refills of any prescription when more than a 10-day supply should remain.
- ***Opioid Prescribing***: Makes it an “unacceptable practice” in the Medicaid program to prescribe opioids in violation of applicable laws or contrary to recommendations issued by the Drug Utilization Review Board, including violations of the following: the prior authorization requirement for opioid prescriptions in excess of four per month, the prior authorization requirement for refills when more than a seven-day supply should remain, and any other law restricting prescribing of opioids. Prescribers guilty of an unacceptable practice can be excluded from the Medicaid program.

- ***High Cost and Specialty Drug Reimbursement:*** Proposes legislation to increase transparency of drug prices and rein in the costs of high priced drugs. This proposal is similar to provisions included in last year's Executive Budget and rejected by the Legislature. It would require:
  - Disclosure by pharmaceutical manufacturers of extensive information concerning costs, pricing, utilization, and profits associated with selected "high priced drugs."
  - Review of high priced drugs by the Drug Utilization Review Board, which could recommend a benchmark price for such drugs;
  - Additional rebates to the Department in connection with Medicaid payments for drugs that exceed the benchmark
  - Imposition of a surcharge on amounts in excess of the benchmark paid on the "first sale" of each high priced drug in the State. Proceeds of the surcharge would be deposited into a high priced drug reimbursement fund that would be distributed proportionately to health insurers and the Medicaid program based on their costs incurred as a result of covering the high priced drugs subject to the surcharge.
- ***Non-Medicaid Pharmacy Benefit Manager Regulations:*** Proposes new registration, licensure, and disclosure requirements for pharmacy benefit managers (PBMs) that provide PBM services to health insurers. The proposal does not apply to PBM services provided to Medicaid managed care plans. However, as currently drafted, it appears to apply to PBM services delivered to Medicare Advantage Plans, PACE programs and duals plans. In addition to licensing PBMs, the Superintendent of Financial Services would be authorized to request information from PBMs, including any financial incentives to promote the purchase of certain drugs.
- ***Reimbursement of Pharmacies under Fee-for-Service Medicaid:*** Proposes various changes to fee-for-service reimbursement rates for pharmacies for generic, brand name, and non-prescription drugs, and increases the dispensing fee to \$10 for generic and brand name drugs.
- ***Copayments:*** Proposes a \$1.00 beneficiary copayment on nonprescription drugs and modifies the brand name copayments. Copayments do not apply to MLTC plan members.
- ***Prior Authorization and Prescriber Prevails:***
  - Proposes once again to eliminate the ability of a prescribing professional to override the preferred drug program under fee-for-service Medicaid and obtain coverage of a prescription drug that is not on the preferred drug list. The prescribing professional would continue to have discretion to override the preferred drug program with respect to atypical antipsychotics and antidepressants.
  - Proposes again to repeal the requirement that Medicaid managed care plans cover non-formulary anti-retroviral, anti-rejection, seizure, epilepsy, endocrine drugs, hematologic and immunologic therapeutic classes, upon a demonstration by the prescriber that the drug is medically necessary and warranted. Adds antidepressants to the existing requirement that plans cover non-formulary atypical antipsychotics, upon the prescriber's demonstration of medical necessity.
- ***Generic Drug Rebates:*** Reduces the price increase that triggers an additional rebate on generic drugs.

## **V. FINANCIAL EXPLOITATION OF VULNERABLE ADULTS**

The Governor's Budget would authorize a bank to place a "hold" on the account of a vulnerable adult when there is reason to suspect financial exploitation. The account holder would retain access to account funds to meet ongoing housing, living, and emergency expenses. Banking institutions would be provided with immunity from civil, criminal, and administrative sanctions for good faith actions relating to application of these new provisions. In addition, the Department of Financial Services would be authorized to develop a financial exploitation certification program for banking institutions to strengthen training and education in financial exploitation.

## **VI. MISCELLANEOUS**

The Governor proposes a number of additional initiatives of interest to health care stakeholders, including the following:

- Provides \$240 million for financially-distressed hospitals to transition to value-based payment arrangements.
- Extends the Health Care Reform Act (HCRA) for three years through December 31, 2020. Does not specify in Public Health Law the amounts allocated to the various programs funded under HCRA, and instead references amounts appropriated via appropriations bills.
- Proposes reforms to the Early Intervention Program for children with disabilities under age three.
- Imposes new testing requirements on public water systems and private wells.

## **VII. GOOD GOVERNMENT**

The Executive Budget includes a number of proposals intended to promote transparency and integrity in governmental activities and fair elections:

- Closes the "LLC loophole" by imposing the same campaign contribution limits on limited liability companies as business corporations (\$5,000 annually).
- Requires members of the Legislature to seek an advisory opinion from the Legislative Ethics Commission regarding outside employment in order to avoid potential conflicts of interest. Expands membership of Legislative Ethics Commission to include representative of Office of Court Administration for purposes of reviewing applications for outside employment.
- Expands campaign finance disclosure requirements and imposes new campaign contribution limits.
- Prohibits campaign contributions by individuals or entities bidding on State contracts.
- Proposes a voluntary program of public funding of campaigns in exchange for more restrictive campaign contribution limits.
- Requires certain municipal officers to file financial disclosure forms.
- Proposes reform of the Freedom of Information Law (FOIL), including expanding FOIL requirements to the Legislature.
- Expands the role of State Inspector General to include oversight of SUNY and CUNY affiliated entities and investigation of State contractors.



- Creates new positions, including Chief Procurement Officer, Education Department Inspector General, and Inspector General for the Port Authority.
- Provides for opt-out voter registration for individuals conducting certain Department of Motor Vehicles transactions, such as applying for a driver's license.
- Authorizes early voting in primary, special and general elections.
- Proposes an amendment to the State Constitution, subject to voter approval, to limit outside income for legislators to 15 percent of their base salary.
- Proposes an amendment to the New York State Constitution, subject to voter approval, to allow New Yorkers to register and vote on the same day.
- Proposes to amend the New York State Constitution, subject to voter approval, to create four-year legislative terms for members of the Senate and the Assembly and impose eight-year term limits for legislative members and statewide elected officials.

## **VIII. NEXT STEPS**

LeadingAge NY will be testifying at the Health/Medicaid hearing on Feb. 16<sup>th</sup>. We also plan to provide testimony for the Housing budget hearing scheduled for Feb. 9<sup>th</sup>.

We are holding our Advocacy Day on Feb. 7<sup>th</sup> in Meeting Rooms 3 and 4 of the Empire State Plaza in Albany. We hope you will plan to attend. Click [here](#) to register and then call your lawmakers to schedule meetings with them. If they are not available that day, ask to meet with their top aide or to meet them "Off the Floor" of the legislative chamber. The day will begin with registration and breakfast at 8 a.m. and a legislative briefing at 9 a.m. Meetings with legislators should be scheduled between 10 a.m. and 5 p.m. We will be hosting a luncheon with guest legislative speakers between noon and 1 p.m., so please avoid scheduling meetings during that time.

Advocacy Day materials, including issue briefs, talking points, and other information, will be distributed prior to the event. Additionally, we will be hosting a conference call on Fri., Feb. 3<sup>rd</sup> at 10:30 a.m. to go over logistics and answer any questions. To join, please dial 1-888-585-9008 and enter the Code ("Conf. Room"): 821-898-111.

If you need assistance with scheduling legislative meetings, have difficulty with registration or need specific accommodations, please contact [Jeff Diamond](#) at 518-867-8821.