

April 2, 2020



Dear Members:

It has been a slow week of budget work, but we are finally reaching the conclusion of the State Fiscal Year (SFY) 2020-21 Budget Cycle. As of this afternoon, the Senate has passed all final budget bills and the Assembly still has four bills left to work on.

The Education, Labor, Housing and Family Assistance (ELFA) budget bill was released this morning and this year, among other miscellaneous provisions, it included the Health and Mental Hygiene (HMH) and Medicaid Redesign Team (MRT II) budget language.

Because many of our priority issues have been addressed in the ELFA bill and other budget bills that have already been passed in the Senate and Assembly, we are providing the following update to review Final Budget highlights and provisions as they relate to senior housing and long-term/post-acute care.

General Medicaid and Insurance Coverage

Medicaid Global Cap: The budget gives expanded authority to the Division of the Budget and DOH to implement Medicaid savings allocation adjustments if DOH Medicaid spending exceeds the global spending cap. These adjustments may be across-the-board or aimed at one or more specific sectors if they are driving the growth.

Effective Dates of MRT and Other Medicaid Provisions: Effective dates of many of the Medicaid provisions include a caveat that they may be delayed for up to 90 days after the conclusion of the Covid-19 emergency. We understand that this flexibility may be included in response to a debate among the executive and legislative branches over whether New York would still qualify for the enhanced federal Medicaid match enacted in response to the Covid-19 crisis if it enacted new limits in Medicaid eligibility and benefits and, if not, whether the State should forego the enhanced match in favor of enacting these structural changes in long-term care eligibility and benefits.

Regional Medicare-Medicaid Demonstration Programs: Authorizes the creation of one or more 5-year demonstration programs designed to improve health outcomes and reduce costs, using global capitation models to cover individuals enrolled in Medicare, Medicaid and health plans. Also authorizes a 5-year demonstration program beginning in January 2022 that includes safety net hospitals and health plans.

Insurance Provisions and Medicaid Managed Care Integrity:

- Final bill language increases penalties assessed on managed care plans, including MLTC plans, for cost report misstatements as well as late, incomplete or inaccurate encounter data submissions.
- Creates a voluntary self-disclosure program for Medicaid overpayments.
- Amends various Insurance Law provisions governing payments to hospitals, including prohibitions on retrospective COVID denials based on medical necessity. Limits liability for health care institutions and healthcare professionals that may result from treatment of individuals with COVID-19.
- Requires utilization review determinations for nursing home rehabilitation stays for individuals being discharged from the hospital to be made within one business day.

- Requires utilization review agents of health plans to make prior authorization determinations pertaining to inpatient rehabilitation services to be provided by a hospital or skilled nursing facility following an inpatient hospital stay within 1 business day of the receipt of the necessary information.
- Imposes a 15-day deadline for payment by managed care organizations of claims for which the insurer's payment obligation was initially unclear, once the insurer determines that payment is due.
- Requires the creation of a health care administrative simplification work group focused on claims submission and payment, provider credentialing, and insurance eligibility verification.
- Creates a new statute of limitations for actions on a medical debt by a hospital licensed under Article 28 of the Public Health Law (which would include nursing homes), requiring such actions to be commenced within 3 years of treatment.

Emergency or Disaster Treatment Protection Act: Protects health care facilities and professionals from liability that may result from good faith treatment of individuals with COVID-19 under circumstances associated with the emergency.

Nursing Homes

Distressed Nursing Home Funding: The budget agreement requires counties to fund or help fund a Distressed Provider Assistance Account that would provide funding to financially distressed hospitals and nursing homes. The total county contribution appears to be \$250 million supplemented by additional state funding. The timing and distribution methodology of the funding is not clear.

Nursing Home Capital Cut: Reduces nursing home (and hospital) capital reimbursement by five percent beginning April 1, 2020.

Intergovernmental Transfer Payments: Extends authority for Intergovernmental Transfer Payments (IGT) for public nursing homes for three years.

MLTC

Qualifying for MLTC, Personal Care Services and CDPAS

- For initial service authorizations on or after October 1, 2020, in order to receive personal care services or Consumer Directed Personal Assistance Services reimbursed by Medicaid (whether through managed long term care, another waiver, or as a state plan service), Medicaid beneficiaries must:
 - obtain a prescription for personal care services from an independent physician selected or approved by DOH;
 - be assessed by an independent assessor under contract with DOH to require at least limited assistance with physical maneuvering with more than 2 ADLs or, for individuals with dementia, at least supervision with more than one ADL. These determinations will be made using a validated assessment instrument approved by the DOH.
- Requires DOH to contract with an independent assessor no later than 10/1/2022 to "take over" assessments and reassessments from MLTC plans for determining need for personal care and eligibility for MLTC.

- Requires DOH to implement an evidence-based uniform task-based assessment tool, no later than 4/1/2021, to assist MCOs and LDSSs to make appropriate and individualized determinations for utilization of home care, including number of personal care services and CDPAP hours and how ADLs can be met through telehealth and other supports.
- Reduces the frequency of assessments to determine enrollment in MLTC plans from every 6 months to annually.

MLTC Moratorium and Growth Restraints:

- The bill specifies that the Department of Health is not required to enter into a contract with every certified MLTC plan.
- A moratorium is imposed, from 4/1/20 to 3/31/22, on the certification of new MLTC plans and MLTC requests to expand service areas or populations served. The moratorium does not apply to PACE programs or integrated plans, based on the need for such plans and the experience of the applicants. Applications submitted prior to January 1, 2020 are also exempt, as are applications to transfer ownership or control to an existing plan and applications that address a serious care delivery concern.
- The Department is directed to assess public need for MLTC plans not integrated with an affiliated Medicare plan and to conduct an orderly wind-down and elimination of such plans, within the timeframe of the expiration of the moratorium.
- The Department is directed to establish plan-specific caps on MLTC enrollment growth based on specified criteria. These caps will be enforced through a premium withhold of 3% of the base rate. This amount, or a portion of it, will be retained based on the plan's enrollment growth in excess of its enrollment cap. The enrollment cap does not apply to PACE programs and integrated duals plans.
- In implementing the moratorium and withhold, the Department is directed to use methodologies that seek to maximize continuity of care and minimize disruption of provider workforce and continue to support value-based contracts between MLTC and LHCSAs.

Medicaid Advantage Enrollment: Requires certain dually-eligible individuals enrolled in Medicare Special Need Plans to also enroll in Medicaid Advantage.

Auto-assignment Criteria for MLTC: These criteria have been modified to include promoting consistency with direct care workers recently serving the beneficiary. The bill also specifies that beneficiaries may receive services under fee-for-service Medicaid pending their enrollment in a MLTC plan.

Home Care

Community Services Lookback: Imposes a 30-month asset transfer lookback on community-based long term care services including home health care, personal care, assisted living and private duty nursing.

Wage Parity: Expands wage parity enforcement provisions to require all covered home care providers to file annual compliance statements verifying compliance with wage parity hours and expenses, including an independently audited financial statement; requires referrals of possible violations to the Department of Labor; establishes penalties for willful violations of the wage parity law; and, requires notification to home care aides of the benefit portion of the minimum rate of their total compensation under the wage parity law.

Social Determinants of Health: The budget withdraws \$4.3M in addressing Social Determinants of Health but includes funding for pilot programs for "medically tailored meals, respite care, and street medicine" for targeted Medicaid populations.

Residential Emergency Services to Offer Home Repairs to the Elderly Fund: Offers financial resources to assist senior citizen homeowners with the cost of addressing emergencies and code violations that pose a threat to their health and safety, or affecting the livability of their home. Provides assistance for the cost of making such critical repairs.

LHCSA RFP Process: Requires all Licensed Home Care Services Agencies to engage in an RFP process and contract with the Department to enroll as a Medicaid provider under state plan, waiver or managed care. Process is likely similar in nature to the recent FI contracting process. Awarding of contracts will require geographic distribution of LHCSAs to ensure access statewide, including in rural and underserved areas, demonstrated cultural and language competencies specific to the population of recipients and those of the available workforce, ability to provide timely assistance to recipients, experience serving individuals with disabilities, efficient and economic administration of LHCSA services, and demonstrated compliance with all applicable federal and state laws and regulations. State may allow continuous recruitment process and may reoffer contracts under the same terms as necessary on a statewide or regional basis.

Medicaid Transportation Broker: Mandates several new quality improvement standards for both the statewide broker and Medicaid transportation providers including auditing, oversight, process for handling of complaints and corrective actions, ensuring qualified and reputable providers, and implementing operational efficiencies. Carves out transportation from the MLTC benefit package for plans other than PACE while providing DOH the discretion under certain circumstances to include it in the benefit package of plans that integrate Medicare and Medicaid. It also includes language that gives ADHC providers the option to use the services of the State's transportation management broker.

Home Care Worker Identification Numbers: Article 36 home care workers and personal assistants serving in the Consumer Directed Personal Assistance Program are required to obtain individual unique identifier numbers from the state in consultation with the Medicaid inspector general. Any personal information submitted to obtain such ID shall remain confidential.

Private Duty Nursing: The budget establishes several care management programs, including a diabetes and chronic diseases self-management pilot program and a program for private duty nursing (PDN) services for medically fragile children. It establishes a provider directory of fee-for-service PDNs serving medically fragile children and individuals transitioning out of this type of care and provides an increase in reimbursement rate for PDN serving in this capacity.

ADHC

ADHC Transportation: For the first time in five years, the final budget includes language that gives ADHC providers the option to use the services of the State's transportation management broker (Medical Answering Services). The final budget carves transportation out of the MLTC benefit package and mandates several new quality improvement standards for both the broker and Medicaid transportation providers.

ACF/AL

EQUAL Funding: The final budget “redirects” the Enhancing the Quality of Adult Living (EQUAL) funds into two pools – one for operational/programmatic purposes, and the other for capital. Eligibility for both pools of money is subject to an allocation methodology that takes into account the financial status of the facility, resident needs, and the population of residents who receive supplemental security income, state supplemental payments, Medicaid (with respect to residents in an assisted living program), or safety net assistance.

Senior Housing

Resident Assistants: The budget does not include authorizing language or funding for the LeadingAge NY Resident Assistant proposal for affordable senior housing.

Housing Capital: The budget continues the State’s commitment to the \$125 million, 5-year affordable senior housing plan. 2020-21 will be the last Fiscal Year of this 5-year agreement.

Capital Projects

Prevailing Wage Expansion: The FY 2021 budget includes a prevailing wage component that would require the payment of a prevailing wage on certain “covered projects” that would take effect on January 1, 2022. Broadly, but subject to several exclusions, a “covered project” would include construction done under a contract paid for in whole or in part out of public funds when the amount of such public funds is at least 30% of the total construction project costs and where such project costs are over \$5 million. Two notable exclusions include:

1. affordable housing projects where no less than 25% of the residential units are affordable and subject to a regulatory agreement that will be in place for no less than fifteen years from the date of construction; and
2. projects funded with public money, credits, savings, or loans determined by the “public subsidy board” to be exempt from the prevailing wage requirement. The newly-created “public subsidy board” will be comprised of thirteen members who are appointed by the governor and will represent the New York State Senate and Assembly, the Empire State Development Corporation, the Division of Budget, and both employees and employers in the construction industry.

Health Care Transformation Grants: The budget reauthorizes the remaining \$225 million in Phase 3 Statewide Health Care Capital Transformation grant funds. Of this amount, \$45 million is earmarked for nursing homes; up to \$20 million for assisted living; and \$60 million for community-based services.

Next Steps

The Legislature will likely be finishing all budget work this evening and budget bills will then move to the Governor’s desk for signing. LeadingAge New York will continue to analyze all final budget language over the coming days and will distribute a comprehensive SFY 2020-21 Final Budget analysis by Tuesday evening.