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M E M O R A N D U M

TO: All Members

FROM: Advocacy and Public Policy Department

DATE: April 15, 2021

SUBJECT: **Final 2021-22 New York State Budget**

ROUTE TO: Administrator, Program Directors, Department Heads

ABSTRACT: Detailed summary of final 2021-22 State Budget provisions.

I. INTRODUCTION

The final budget for State Fiscal Year (SFY) 2021-22, effective for the period April 1, 2021 through March 31, 2022, includes significant investments to support recovery from the COVID-19 pandemic and home and community-based services (HCBS), as well as other major policy initiatives, including nursing home direct care spending ratios, legalization of adult recreational use of marijuana and mobile sports wagering.

This budget was done on the heels of some of the most challenging economic times the State has faced in recent history. Last year's budget, which was finalized just as the pandemic began, focused on cost containment and the reduction of Medicaid spending. Despite these measures, the Executive Budget projected a $5 billion budget gap in SFY 2020-21 and a $10 billion gap in SFY 2021-22. As a result, the Executive Budget released in January sought to close an estimated $15 billion deficit with across-the-board (ATB) cuts that would have been devastating if enacted.

LeadingAge NY mobilized our members around these critical issues and saw extraordinary engagement in advocacy efforts. We were successful in averting proposed cuts and securing new investments in long term care services. Our efforts led to the inclusion of over $1.6 billion for HCBS and over $64 million in new State-share Medicaid funding for nursing homes. We were also able to prevent several onerous and harmful proposals, while modifying others to mitigate the

impact on our membership. These outcomes demonstrate the effectiveness of the considerable sustained advocacy efforts of the LeadingAge NY membership. We have more work ahead, as some budget initiatives will be implemented through legislation or regulations to be adopted subsequent to the budget process. We will continue to keep members apprised of these developments and call upon you for your expertise and advocacy.

Overview

The enacted budget provides for an increase in All Funds spending of 9.7 percent over SFY 2020-21, relying on a combination of new federal funding and revenue-raising initiatives to avoid cuts and support additional investments. According to the Governor's press release, the budget deploys the first $5.5 billion of the $12.6 billion provided for in the federal American Rescue Plan Act.[1] Additional initiatives raising new revenue include a personal income tax surcharge on high earners through Tax Year 2027, changes in corporate franchise taxes, mobile sports wagering and the legalization of adult-use recreational marijuana.

The budget has a focus on continued COVID-19 relief and mitigation efforts, including bolstering diagnostic capacity, outreach to communities disproportionately affected by the pandemic, continued COVID-19 response and vaccine distribution and development of the New York Public Health Corps.

Below is a summary of the various initiatives that are of interest to the LeadingAge NY membership.

II. CROSS-SECTOR HEALTH CARE INITIATIVES

COVID-19 Response and Recovery

The final budget introduces a variety of measures to promote COVID-19 vaccination and appropriates significant sums to COVID-19 response and recovery, including:

- ***Paid Leave for COVID-19 Vaccination:*** See the "WORKFORCE AND EMPLOYMENT" section below.
- ***COVID-19 Vaccination and Testing:*** The final budget continues to support existing testing sites as well as the creation of a network of rapid testing locations designed to assist in reopening the economy. It also supports the statewide vaccination program to ensure the fair and equitable distribution of the vaccine to nearly 20 million New Yorkers at no cost, with a special focus on underserved and vulnerable populations.
- ***New York Public Health Corps:*** The final budget supports the New York Public Health Corps program to support COVID-19 vaccination and pandemic response operations and future public health crises. It seeks to recruit 1,000 fellows to participate in the program.
- ***Special Emergency Funds:*** The final budget appropriates $25.01 billion, including $14 billion from the federal American Rescue Plan, for unanticipated or emergency expenditures for disaster recovery and public health emergencies, including for education, testing and tracing, vaccination, rental assistance, child care support and stabilization

[1] Federal support also includes $10.8 billion for local governments.

funding, heating and energy assistance and Federal Emergency Management Agency (FEMA) public or direct assistance payments. Among other items, up to $2 billion of this funding may be used for public health and medical assistance, and up to $5.9 billion may be used for FEMA public assistance. Among other items, the budget allocates the following amounts from this appropriation:

  - ***Crisis Intervention Programs:*** Appropriates $10 million for social service crisis intervention programs and providers disproportionately impacted by the COVID-19 pandemic.
  - ***COVID-19 Vaccine Confidence Initiatives:*** Appropriates $15 million for public education, communication efforts and outreach to communities disproportionately impacted by the COVID-19 pandemic and communities with vaccine hesitancy. Funds may be disbursed without a competitive process.

- ***New York Medical Supplies Act:*** The final budget accepts the Executive's proposal to require State agencies and public authorities to purchase personal protective equipment (PPE) and medical supply items made in whole or substantial part in the United States for contracts over $50,000. State agencies may determine that this provision is not in public interest if it increases the cost of contract by an unreasonable amount, if there is not sufficient supply of U.S.-made equipment or if ordering outside of the U.S. is necessary to avoid delayed delivery of critical supplies.

Restoration of Across-the-Board Medicaid Cut

The final budget agreement does not include the new 1 percent ATB Medicaid cut proposed in the Executive Budget. This cut would have reduced payments by an estimated $188 million annually in SFY 2021-22 and SFY 2022-23. With the American Rescue Plan providing $12.6 billion in federal funding and an enhanced federal Medicaid match continuing until the end of the calendar year, most of the newly proposed Medicaid cuts, including the 1 percent ATB, were restored.

It is important to note, however, that the 1.5 percent ATB reduction to provider Medicaid payments enacted last year continues and impacts Medicaid fee-for-service (FFS) payments to nursing homes, adult day health care (ADHC) programs, home care agencies, personal care providers and assisted living programs (ALPs).

Medicaid Global Spending Cap

While both houses of the Legislature signaled an interest in abolishing or updating the State's Medicaid Global Cap, the final budget agreement extends the Cap, as well as the State's "superpower" authority to make spending reductions if the Cap is breached, through March 31, 2023. 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 10-year rolling average increase in the Medical Consumer Price Index (CPI). That methodology allows for continued growth within the Cap at a rate of 2.9 percent, resulting in projected State-share Medicaid spending subject to the Cap of $20.57 billion, an increase of $579 million from the prior year. The budget also changes the frequency of Global Cap spending reports that DOH is required to prepare from monthly to quarterly.

Minimum Wage Funding

The SFY 2021-22 budget reportedly includes nearly $2 billion in funding to continue supporting the direct cost of minimum wage increases for Medicaid-funded services provided by home care agencies, nursing homes, ALPs, hospices, hospitals and other providers reimbursed through DOH. This includes funding to reconcile any identified underpayments in prior years. DOH surveys providers to reconcile minimum wage funding with actual minimum wage expenses.

This is the fifth year of a multi-year phase-in of the requirements enacted in April 2016 as part of the State Minimum Wage Act. Effective Dec. 31, 2021, the minimum wage will increase to $15.00 for Westchester and Long Island. New York City (NYC) employers are already required to pay $15.00.

Until 2021, the minimum wage in the rest of the state had been increasing annually in $0.70 increments and is currently $12.50 per hour. Annual increases effective each Dec. 31st will continue until the rate reaches $15.00. Starting this year, the annual increase applicable to the rest of the state will be determined and published by the Commissioner of Labor on or before Oct. 1st. It will be based on percentage increases determined by the Director of the Division of the Budget (DOB), based on economic indices, including the CPI.

Medicaid Trend Factor

The budget agreement extends for two more years, through March 31, 2023, the elimination of positive Medicaid inflation factors for providers including hospitals, nursing homes (other than pediatric units), ADHC programs, home care and personal care providers and ALPs. The budget also extends several other Medicaid cuts that are subject to periodic reauthorization such as the cap on certified home health agency (CHHA) administrative and general costs reimbursement (see individual service line summaries below).

Medicaid Payment Lag

The budget agreement accepts the proposal to return all non-distressed Medicaid providers to the two-week Medicaid payment lag, generating $150 million in All Funds savings.

DSRIP Waiver

The budget extends, through April 1, 2022, the Commissioner of Health's authority to waive regulatory requirements to allow providers involved in Delivery System Reform Incentive Payment (DSRIP) Program projects to avoid duplicative requirements and to permit the scaling and replication of promising DSRIP practices.

Transportation Management in Medicaid Managed Care

The final budget modifies the Executive Budget proposal to extend for six years provisions authorizing DOH to contract with Medicaid transportation vendors on behalf of local social services districts to achieve Medicaid cost savings and the authority to contract with one or more transportation managers to manage Medicaid transportation services.

Income Disregard for Housing

The final budget expands the Medicaid eligibility income disregard for housing costs to allow nursing home and adult care facility (ACF) residents who are seeking a discharge to the community to qualify for the disregard if they are not yet enrolled in a Managed Long Term Care (MLTC) plan, but are required to enroll, have initiated the enrollment process and are not considered an "institutionalized spouse" for purposes of Medicaid eligibility. This change was made to ensure that these individuals could access the housing disregard even if their plan enrollment was not effectuated at the time of their discharge. This provision requires approval of a waiver amendment by the Centers for Medicare and Medicaid Services (CMS).

Vital Access Provider Program

The enacted budget includes $132 million in funding for the Vital Access Provider (VAP) program. 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. Applicants must demonstrate that funding would protect or enhance access, quality or health delivery and/or improve cost-effectiveness. VAP funds provide operational support and are not to support capital costs. Nursing homes and home care agencies, along with hospitals and clinics, are among the provider types eligible to apply for VAP funding.

Access to Capital

The final budget accepts the Executive's proposal to maintain the Statewide Health Care Facility Transformation Program while rejecting proposals to expand the Dormitory Authority of the State of New York's (DASNY) lending authority.

- ***Statewide Health Care Facility Transformation Program:*** Reappropriates $424.5 million to support capital projects, debt retirement, working capital and other non-capital projects to facilitate health care transformation and expand access to health care services. Phase III of this program was funded in SFY 2018-19 with $525 million. The following year, the budget authorized the use of up to $300 million in Phase III funds to support unsuccessful applications submitted under Phase II. The State has not yet released a Request for Applications (RFA) for the remaining $225 million in Phase III funds. The following allocation of funds remains in place:
    - At least $60 million for community-based health care providers, which include home care agencies, hospices and other provider types.
    - At least $45 million for nursing homes.
    - Up to $20 million of the funds not otherwise earmarked for community-based providers or nursing homes may be allocated to the solicitation process for additional ALP capacity.
    - Up to $5 million for regional perinatal centers or other health care providers for telehealth.
    - ALPs and ACFs are considered eligible applicants for funding not specifically earmarked in the above categories.

- ***Bond Cap for Medical Facility Improvements:*** Rejects the proposed increase in the DASNY bond cap for health care facility construction projects.
- ***DASNY Lending, Design and Construction Services:*** Rejects the expansion of DASNY's authority to make loans and provide design and construction services to not-for-profit corporations and school districts.

Health Information Technology Infrastructure

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

- ***SHIN-NY Support:*** Appropriates $30 million for the Statewide Health Information Network for New York (SHIN-NY), an electronic health information highway to permit the sharing of health information among health care providers across the state. The New York eHealth Collaborative administers the funding for the SHIN-NY and Qualified Entities.
- ***Claims Database:*** Appropriates $10 million in funding for the All Payer Claims Database, which serves 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.

Medical Respite Pilot

The final budget authorizes the establishment of certified medical respite programs to provide temporary room and board and health care and support services to patients who are homeless or at risk of homelessness and who have a qualifying health condition, but do not require hospital care.

All-Payer Global Capitation Regional Demonstration

The final budget expands the geographic scope of this demonstration program to include at least one program in the Western, Central, Southern Tier or Capital Regions. This program provides for global capitation using a value-based model to pay providers for services delivered under Medicare, Medicaid and commercial health insurance plans.

Certificate of Public Advantage

The budget extends, through Dec. 31, 2024, the authority of the Commissioner of Health to issue certificates of public advantage to promote collaborative and integrative health care arrangements by providing State action immunity from antitrust enforcement.

Telehealth

- ***Medicaid Coverage Changes:*** The final budget makes permanent several changes to Medicaid telehealth coverage that began as a result of the pandemic. The legislation amends the definitions of "distant site" and "originating site" to largely remove location-based limitations on Medicaid coverage for telehealth services. "Distant site" is now defined as any site within the United States at which a telehealth provider is located while delivering telehealth services. "Originating site" now means any site at which an individual is located when telehealth services are delivered. New providers able to deliver Medicaid telehealth services include hospice; care managers employed by or under contract to a health home program, patient-centered medical home, Care Coordination Organization (CCO) and voluntary foster care agency; certified peer recovery advocates; credentialed peer providers; and Office of Mental Health (OMH)-certified peers. These provisions will be deemed to have been in force as of April 1, 2021.
- ***Providers Not Licensed in New York:*** The final budget rejects the Governor's proposal to codify a COVID-19 Executive Order that permits providers who are not licensed in New York to provide telehealth services in the state.

Physician Licensure and Discipline

The budget rejects a series of proposals that were aimed at strengthening the physician licensure and professional discipline processes, including a proposal that would have expanded the reporting obligations of nursing homes and other facilities.

III. WORKFORCE AND EMPLOYMENT

The final budget includes the following provisions affecting the health care workforce and employers:

- ***Workforce Recruitment and Retention Funding:*** The final budget rejects the Executive's proposal to reduce workforce recruitment and retention (WRR) funding by $45 million annually. See the "Home Care and Hospice Services" section below for more details.
- ***Paid Leave for COVID-19 Vaccination:*** This Executive Budget proposal was enacted outside of the budget through separate legislation (A.3354-B (Fall)/S.2588-A (Gounardes)), signed into law on March 12, 2021 and effective immediately. It requires all public and private employers to provide up to four hours of paid leave, at the employee's regular rate of pay, for up to two COVID-19 vaccinations for each employee. Employers are prohibited from taking retaliatory actions against any employee who utilizes this leave. This requirement expires on Dec. 31, 2022.
- ***Nurse Practitioner Modernization Act:*** The final budget extends the Nurse Practitioner Modernization Act for one year, through June 30, 2022. The Act authorizes nurse practitioners with more than 3,600 hours of work experience to forego written practice agreements and written practice protocols with physicians, as long as they document collaborative relationships with physicians or hospitals. This extension took effect April 1, 2021.
- ***BSN in 10 Priority Admission:*** The State University of New York (SUNY) and City University of New York (CUNY) will implement priority admission to nursing programs to

enable the 40,000 nurses and nursing candidates to obtain Bachelor of Science in Nursing (BSN) credentials and maintain licensure.

- ***Criminal History Record Checks:*** The final budget includes $3 million for criminal history record checks (CHRCs) for non-licensed long term care employees, including employees of nursing homes, CHHAs, long term home health care programs (LTHHCPs), AIDS home care providers, health homes and licensed home care services agencies (LHCSAs). An additional $1.3 million is appropriated for CHRCs for ACF employees.
- ***Part-Time Work for Unemployed Individuals:*** The final budget rejects the Executive's proposal to change the calculation for Unemployment Insurance (UI) benefits paid to claimants who work part-time (PT) while they seek full-time employment.
- ***Expand Child Care Affordability:*** The final budget expands affordability of subsidized child care by limiting the co-payment of a family receiving child care services to 10 percent of their income above the Federal Poverty Level (FPL). This provision is effective immediately and will expire April 1, 2024.
- ***Excluded Workers:*** The budget includes a $2.1 billion program to support workers who have suffered income loss due to COVID-19 but who are ineligible for UI or related federal benefits due to their immigration status or other factors. Such workers must be low-income and provide sufficient documentation to establish work-related eligibility and residency in the state.

IV. MANAGED CARE, LONG TERM CARE AND SENIOR SERVICES PROPOSALS

Managed Long Term Care

With the restoration of the MLTC Quality Pool funding to the previous year's level, new SFY 2021-22 budget provisions impacting MLTC plans are few. This is in stark contrast to last year, when plans were targeted by numerous Medicaid Redesign Team (MRT) II provisions enacted by the SFY 2020-21 budget. These MRT provisions aimed to restrain enrollment growth by tightening eligibility requirements for the program, imposed independent assessment and physician review processes, capped enrollment and imposed a moratorium on expansion of non-integrated MLTC plans that included a requirement for DOH to assess the public need for such plans. While some of the provisions, including those that withhold 4.5 percent of premiums, have been implemented, others have been delayed by the public health emergency. The extent of the rate impact of some of last year's initiatives is not yet clear.

More clear is the impact of the COVID-19-related rate adjustments that reduced MLTC reimbursement retroactive to April 2020 by $440 million. These were implemented at the end of SFY 2020-21 based on the State actuary's analysis of member service utilization patterns. In addition, plan premiums have remained at the bottom of the actuarial range, the lowest reimbursement legally permitted, since January 2020.

MLTC provisions are described below. Please see the "CROSS-SECTOR HEALTH CARE INITIATIVES" section above for provisions that apply to multiple plan and provider types (e.g., Global Cap).

Quality Pool

The enacted budget rejects the proposal for the State to save $51.75 million by eliminating the MLTC Quality Pool. Funding is continued at the same level as last year. Last year's budget reduced the pool by 25 percent and instituted a two-year lag.

Recalculation of 2017-18 MLR

The final budget includes the administrative provision that requires MLTC plans to recalculate the 2017-18 Medical Loss Ratio (MLR) to reflect retroactive rate adjustments. While impact will vary by plan, the provision is expected to generate gross savings of $44.7 million in SFY 2021-22.

COVID-19 Adjustment

In addition to the COVID-19 adjustment made to April 2020 MLTC plan rates, the enacted budget anticipates a cut to 2021-22 rates based on projected reductions in service utilization due to the pandemic. The adjustment impacts Partially Capitated and Medicaid Advantage Plus (MAP) plans and is based on an analysis by the State's contracted actuary, Deloitte, of 2020 to 2019 data. It projects a graduated return of service utilization to pre-pandemic levels and incorporates a risk corridor mechanism in case the projections are inaccurate. The reduction is expected to provide a gross savings of $40.01 million in SFY 2021-22.

NHTD/TBI Waiver Carve-In Delay

The budget agreement delays the carve-in of the Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) waivers into Medicaid managed care for an additional four years. Transition of the waivers to managed care will not begin earlier than January 2026.

CFCO Delay

The State's Medicaid spending plan reflects a savings for next year (SFY 2022-23) related to Community First Choice Option (CFCO) services. Last year's budget reflected a savings for SFY 2021-22 related to continued implementation delay.

CDPAS Fiscal Intermediaries

The enacted budget requires the State to gather information from Consumer Directed Personal Assistance Program (CDPAP) fiscal intermediaries (FIs) and to authorize additional FIs based on set criteria. See "Home Care and Hospice Services" section below.

Workforce Recruitment and Retention Funding

The final budget rejects the proposal to reduce home care and personal care WRR funding by 25 percent. See "Home Care and Hospice Services" section below.

Income Disregard for Housing

The final budget expands the Medicaid eligibility income disregard for housing costs to allow nursing home and ACF residents who are seeking a discharge to the community to qualify for the disregard, even if they are not yet enrolled in an MLTC plan. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Crisis Stabilization Centers

The final budget authorizes the licensure of crisis stabilization centers (CSCs) under the Mental Hygiene Law to provide urgent services to people experiencing, or at risk of, a mental health or substance abuse crisis. The budget legislation mandates insurance coverage of CSCs and prohibits the imposition of prior authorization requirements. It also adds services provided by CSCs to the list of covered benefits available to Medicaid recipients. MAP plans will likely be required to cover these services under the expanded behavioral health benefits. It is unclear whether Programs of All-Inclusive Care for the Elderly (PACE) will also be required to include this benefit. These coverage mandates will apply to policies issued or renewed on and after Jan. 1, 2022.

Nursing Homes

The final budget agreement provides some additional funding for nursing home staffing, avoids further ATB Medicaid cuts, rejects some of the more onerous provisions included in the 30-day amendments to the Executive Budget proposal and continues the Distressed Provider Assistance pool enacted last year to use sales tax revenues to raise $500 million over the course of two years to help support financially distressed hospitals and nursing homes. It also imposes minimum direct care spending requirements on nursing homes while capping profits. Although marking a troubling precedent, the overall impact of the minimum spending provisions on public and non-profit nursing homes is fairly minimal due to robust spending on staffing and patient care.

Individual budget provisions are summarized below, followed by Executive Budget proposals that were excluded from the final budget. Please note that several of the Governor's "reform" proposals that were not included in the final budget may be enacted outside of the budget process. Issues that impact multiple provider types are covered above in the "CROSS-SECTOR HEALTH CARE INITIATIVES" section of this memo.

The following provisions were included in the final budget:

Funding for Nursing Home Staffing

The final budget includes $64 million in State-share Medicaid funding over two years for nursing homes to increase resident-facing staffing services provided by registered nurses (RNs), licensed practical nurses (LPNs) and aides. Homes that do not meet the newly established 70/40 percent spending thresholds (see below) would not be eligible to receive funding. The language anticipates that funding eligibility criteria will be established in forthcoming legislation.

Nursing Home Minimum Spending

The enacted budget includes new requirements that nursing homes spend at least 70 percent of operating revenue on direct resident care, of which at least 40 percent must be spent on resident-facing staffing. It also caps profits at 5 percent. These requirements are applicable to spending on and after Jan. 1, 2022.

For purposes of calculating the 70/40 percent thresholds:

"Revenue" is defined as "total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident's occupancy of the residential health care facility, resident care, and the operation of the residential health care facility" as reported on annual Medicaid cost reports. The average incremental increase in Medicaid capital reimbursement over the previous three years is subtracted from revenue.

"Direct resident care" is defined to include most expenses reported in Non-Revenue Support, Ancillary and Program Services categories on the Medicaid cost report other than administrative, fiscal and capital-related costs. The language specifies that "administrative costs (other than nurse administration), capital costs, debt service, taxes (other than sales taxes or payroll taxes), capital depreciation, rent and leases, and fiscal services" are not counted as direct resident care spending. In addition, spending reported in the security, grounds, utilization review and medical records cost centers is also excluded.

"Resident-facing staffing costs" are defined to include those reported in Ancillary and Program Services categories of the Medicaid cost report (i.e., nursing, therapy, medical services). Contract nursing costs are reduced by 15 percent when the calculations are performed.

The 5 percent profit cap is applied by limiting any surplus of operating revenue over operating and non-operating expenses to no more than 5 percent of expenses. Revenue and expenses are as reported on the Medicaid cost report before any extraordinary gain, unless specifically excluded by the new section of law or the regulations required to implement it. The law does exclude from expenses any related party transaction or compensation, to the extent that the value of such transaction is greater than fair market value, and the payment of compensation for employees who are not actively engaged in or providing services at the facility.

Providers with surplus operating revenue exceeding 5 percent of expenses and those that fail to meet the minimum spending thresholds must remit the overage and/or the difference between the minimum spending requirement and the actual amount of spending to the State by Nov. 1st in the year following the year in which the expenses are incurred. The funding is dedicated to the Nursing Home Quality Initiative (NHQI).

The legislation excludes continuing care retirement communities (CCRCs) and facilities authorized to primarily care for designated specialty populations, such as children, people requiring behavioral interventions or neurodegenerative services or individuals with HIV/AIDS. DOH is granted the authority to waive the requirements if a provider demonstrates that it experienced unexpected or exceptional circumstances and may exclude extraordinary revenue or expenses precipitated by a natural disaster or other circumstances set forth in regulations.

The Department is required to update cost reports if needed to collect the information specified above, to seek any necessary federal approvals or waivers and to promulgate regulations to implement the provisions.

Trend Factor Elimination and Extension of Medicaid Global Cap

The enacted budget extends the Global Cap provisions and the elimination of the Medicaid trend factor for an additional two years. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Distressed Nursing Home Funding

The final budget does not alter the Distressed Provider Assistance Program enacted in last year's budget. The program is aimed at supporting financially distressed nursing homes and hospitals and is funded through sales tax revenues from counties and NYC at $250 million annually. The program is authorized for two years. Funding distribution is at the discretion of DOH.

Cash Receipts Assessment

The enacted budget extends the reimbursable 6 percent cash receipts assessment for two years, through March 31, 2023. The total assessment remains 6.8 percent, as authorization for the 0.8 percent portion does not require extension at this time.

Transformation Grants and Vital Access Provider Funding

The final budget includes funding for Statewide Health Care Facility Transformation Program grants and the VAP program, as proposed in the Executive Budget. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Medicaid Payment Lag

The enacted budget accepts the proposal to return all non-distressed Medicaid providers to the two-week Medicaid payment lag. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Medically Fragile Children/Young Adults

The final budget authorizes and dedicates funding for two demonstration programs for nursing homes providing pediatric services to construct or repurpose a facility to operate as a young adult residential facility for individuals between 18 and 35 years of age with medical fragility. Individuals over the age of 21 who have lived in an eligible pediatric nursing home for at least 30 consecutive days can remain in the facility until the age of 35 or until the young adult residential facility is operational, whichever is sooner. DOH will establish young adult Medicaid reimbursement rates for these demonstrations. The demonstration program is authorized for a period of two years.

Case Mix

The State's spending plan appears to reflect savings related to Medicaid rate case mix adjustments for both SFY 2021-22 and SFY 2022-23. The State's effort to change the case mix adjustment methodology in 2019 to rely on all Medicaid assessments filed during a specified timeframe was blocked by a court ruling. Since that time, DOH has published, but not adopted, regulations that would effectuate the methodology change going forward. At this time, the Department calculates case mix updates based on an unannounced "picture date" methodology, which has generated significant savings. We will let members know when we are able to clarify whether the final Medicaid spending plan incorporates case mix savings, their magnitude and how they were calculated.

The following proposals in the Executive Budget were rejected and excluded from the final budget:

Across-the-Board Cut

The budget agreement does not include the proposal to reduce Medicaid provider payments by an additional 1 percent. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Quality Pool

The enacted budget rejects the proposal, reflected in the Executive Budget Briefing Book, to increase and modify the existing NHQI to emphasize quality based on staffing practices. However, funds remitted to the State pursuant to minimum spending requirements and profit cap provisions included in the final budget are dedicated to the NHQI.

Contract Staff

The enacted budget rejects the Executive Budget proposal to require DOH to review and approve any contracted staffing arrangement between nursing homes and staffing agencies that provide or arrange for direct care staff. The provision would have also limited Medicaid reimbursement of contract staffing to fair market value. However, the minimum spending requirements included in the final budget discount contract nursing staff by 15 percent when the calculations are performed.

E-Prescribing Waivers

The final budget rejects the Executive's proposal to eliminate most exemptions from the e-prescribing requirement. DOH has issued a blanket waiver of the e-prescribing mandate annually for physicians issuing prescriptions for nursing home residents. Had this proposal been accepted, it is unclear whether this waiver would have been extended. See "PHARMACY" section below.

Medical Indemnity Fund

The final budget rejects a proposal to include nursing home costs as qualifying costs under the Medical Indemnity Fund program for birth-related neurological injuries.

Nursing Home Reforms

The following provisions proposed in the 30-day amendments to the Executive Budget were not included in the final budget. Please note that some of these may be included in stand-alone legislation advanced outside of the budget process.

- ***Penalties:*** The final budget does not include provisions to increase maximum penalties for violations of the Public Health Law (PHL) from $2,000 to $10,000 per violation, from $10,000 to $25,000 for violations that result in serious physical harm and from $5,000 to $15,000 for repeat violations. However, similar legislation has passed the Assembly and is pending in the Senate.
- ***CON Applications:*** The final budget does not include provisions requiring that residential facility Certificate of Need (CON) applications include information pertaining to staffing, the source of staffing and staff skill mix.
- ***Independent Quality Monitor:*** The final budget does not include provisions mandating that a nursing home that receives more than one infection control deficiency in two consecutive inspections contract with a quality improvement organization or DOH-selected independent quality monitor to assess and resolve the facility's infection control deficiencies.
- ***Emergency Receiver:*** The final budget does not include provisions authorizing DOH to appoint an emergency receiver if the Commissioner determines that public health or safety is in imminent danger or that conditions or practices exist that pose imminent danger to residents or patients of the facility.
- ***Executive/Management Salary Cap:*** The final budget does not impose a cap of $250,000 per year on management salaries, nor does it cap executive and managerial salaries at 15 percent of total expenses.
- ***Rate Posting:*** The final budget does not include the proposal to require nursing homes to post annually updated maximum rates charged to non-governmental payers on their website.
- ***Detailed Disclosures:*** The final budget does not include a requirement that nursing homes post on their website a list of owners, landlords and contracts for goods and services paid by Medicaid or Medicare funding.

Home Care and Hospice Services

As noted above, the SFY 2021-22 budget rejects the significant ATB Medicaid cuts, WRR cuts and penalties for violation of the PHL by health care providers proposed by the Governor in the Executive Budget. The final budget includes an additional $1.629 billion in federal Medicaid funds for home care, which is likely to be targeted at worker compensation. These funds, described in more detail below, appear to be a substitute for the increased minimum wage and benefits for home care aides proposed in the Senate's one-house budget.

The final budget also includes several programmatic initiatives affecting HCBS providers. Notably, it expands the scope of telehealth services covered by Medicaid and the number of CDPAP FIs. Programmatic initiatives affecting home care agencies and the people they serve include:

FMAP Appropriation for HCBS

The final budget appropriates a broad $1.629 billion to DOH from the 10 percent increase in HCBS Federal Medical Assistance Percentage (FMAP) matching funds recently authorized in the federal American Rescue Plan. The appropriation authorizes suballocation from DOH to OMH, the Office of Addiction Services and Supports (OASAS), the Office for People with Developmental Disabilities (OPWDD) and the Office of Children and Family Services (OCFS). It is our understanding that the funds are intended to be used for home care worker compensation. However, the budget language for these funds remains vague and is left to the discretion of State agency commissioners, who are authorized to expend the dollars through non-competitive contracts or grants.

As this funding is allocated, LeadingAge NY will advocate for dedicated funding for HCBS providers and their workers, including increases in home care wage compensation, workforce development programs and other resources to bolster this sector and the services that HCBS providers and their workers provide.

Fiscal Intermediary Reform

The final budget includes amendments to the FI contracting process to require DOH to survey information from all qualified FIs in order to make additional contract awards. This initiative is in response to the recent selection of 65 FIs to serve the CDPAP program and concerns in the field about the ability of this limited number of organizations to offer sufficient capacity and proximity to participants in CDPAP.

Specifically, the budget language requires DOH to survey qualified FI applicants to determine whether the FI:

- Is a not-for-profit;
- Was in operation prior to Jan. 1, 2012;
- Provides HCBS to individuals with developmental disabilities;
- Has historically provided FI services to racial and ethnic minority residents or new Americans in such consumers' primary language; and
- Is verified as a minority or women-owned business enterprise.

To be considered for an additional award, applicants must respond to the survey within 30 days.

Following receipt of the survey, DOH is directed to make additional awards, to the extent necessary, based on the following criteria:

- Make awards to one or two additional applicants that are located in each county with a population of more than 200,000 but less than 500,000;
- Make awards to one or two additional applicants that are located in each county with a population of 500,000 or more;

- Make awards to at least two additional applicants that are either not-for-profit organizations or have provided FI services prior to Jan. 1, 2012 and that are currently authorized to deliver State plan or waiver supports to individuals with developmental disabilities;
- Make awards to at least two additional applicants that are either not-for-profit organizations or have provided FI services prior to Jan. 1, 2012 and that serve racial and ethnic minority residents, religious minority residents or new Americans, as evidenced by information and materials provided to consumers in the consumers' primary language;
- Make awards to at least two additional applicants that have been verified as a minority or women-owned business enterprise.

Significantly, the language expressly precludes DOH from re-scoring the offers based on the survey responses and instead directs that the awards be made based on either the next highest-scoring applicant or who meets the criteria cited above. The amendments also clarify that the requirements related to FI closure also apply to an FI that is acquired by, merges with, sells assets to or engages in a similar type of transaction with an FI that was awarded a contract under the FI RFO process.

Telehealth Reforms

The final budget amends the definitions of "distant site" and "originating site" to largely remove these limitations on telehealth services. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Human Services COLA

The final budget includes $46.2 million to provide a 1 percent cost of living adjustment (COLA) to not-for-profits licensed, certified or otherwise authorized by OPWDD, OMH and OASAS as well as $5.6 million for a 1 percent COLA increase for other human services agencies, including the State Office for the Agency (SOFA), Office of Temporary and Disability Assistance (OTDA) and OCFS.

Quality Pool

The enacted budget rejects the proposal for the State to save $51.75 million by eliminating the MLTC Quality Pool. See "Managed Long Term Care" section above.

COVID-19 Adjustment

In addition to the COVID-19 adjustment made to April 2020 MLTC plan rates, the enacted budget anticipates a cut to 2021-22 rates based on projected reductions in service utilization due to the pandemic. See "Managed Long Term Care" section above.

Other HCBS initiatives in the enacted budget include:

- ***Workforce Recruitment and Retention:*** Funding for personal care services (PCS) workers, CHHAs, LTHHCPs, AIDS home care programs, hospice and MLTC plans is level-funded.

The final budget rejects the Executive's proposal to reduce WRR funding for health care workers by up to 25 percent, or $45 million annually.

- ***Trend Factor Elimination:*** See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above. The enacted budget extends elimination of the trend factor for CHHAs, LTHHCPs and PCS through the 2023 calendar year.
- ***Statewide Health Care Facility Transformation Program Funding:*** See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.
- ***Minimum Wage Funding:*** The budget continues to fund increases in the minimum wage associated with Medicaid-covered services, including funding to reconcile any identified underpayments in prior years. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.
- ***Bad Debt and Charity Care for CHHAs:*** The final budget accepts the proposal to extend authorization for CHHAs to receive allowances for bad debt and charity care for two years, through June 30, 2023. Current eligibility for such funds is limited to voluntary non-profit, private propriety and publicly sponsored non-hospital-based CHHAs. The budget level-funds this at $1.7 million.
- ***CHHA and LTHHCP Cap on Administrative and General Costs:*** The final budget accepts the Executive's proposal to extend the cap on Medicaid reimbursement for CHHA administrative and general costs through March 31, 2023.
- ***NHTD and TBI Waiver Programs:*** The final budget delays the transition of the NHTD and TBI waiver programs to managed care for an additional four years. The programs had been slated to be carved into managed care on Jan. 1, 2022 but now will not be transitioned before Jan. 1, 2026.
- ***TBI Waiver Program:*** Services and expenses related to the TBI waiver program are level-funded at $11.5 million.
- ***NHTD Waiver Housing Subsidies:*** The final budget includes level-funding of $1.842 million for housing subsidies through the NHTD waiver program.
- ***Criminal History Record Checks:*** The final budget includes $3 million for CHRCs for non-licensed long term care employees, including employees of nursing homes, CHHAs, LTHHCPs, AIDS home care providers, health homes and LHCSAs. An additional $1.3 million is appropriated for CHRCs for ACF employees.
- ***Nurse-Family Partnership:*** The final budget rejects cuts to the Nurse-Family Partnership Program. It restores base funding to the $3 million level. It also adds $1 million provided by the Legislature.
- ***Home Health Aide Registry:*** The registry is level-funded at $1.8 million.
- ***Income Disregard for Housing:*** See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.
- ***Transportation Management in Medicaid Managed Care:*** The final budget modifies the Executive's proposal to extend provisions for six years authorizing DOH to contract with Medicaid transportation vendors on behalf of local social services districts to achieve Medicaid cost savings and the authority to contract with one or more transportation managers to manage Medicaid transportation services.

The enacted budget does ***not*** include:

- ***Monetary Penalties for PHL Violations:*** The final budget rejects the Executive's proposal to increase the civil monetary penalties for a violation of the PHL. Separate legislation on this issue is pending in the Legislature, but does not include Article 36 providers.
- ***Across-the-Board Medicaid Cuts:*** The final budget rejects the 1 percent ATB cuts in Medicaid payments, including to home care agencies. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.
- ***Fair Pay for Home Care Act:*** The final budget rejects the Senate proposal to mandate providers to pay a specific minimum wage for home care workers. The proposal would have required payment of home care aides at 106 percent of the state minimum wage by April 1st and 112 percent by Oct. 1st. It would have funded increased costs incurred for Medicaid services but provided no funding to support increased costs associated with services covered by Medicare, private pay or other payer sources.
- ***Home Care Competency Exams:*** The final budget rejects the Senate's proposal to require DOH to maintain a schedule setting forth when DOH will offer competency exams to qualified home care services workers residing out of state in order to fulfill any shortage of home care services workers.

Other Aging Services Initiatives and Funding

The final budget provides an All Funds total of $279.8 million for aging services in SFY 2021-22, $20 million more in funding compared to the prior year's budget. The following budget provisions relate to aging services programs administered by SOFA 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.

Specific proposals affecting aging services include:

- ***Expanded In-Home Services for the Elderly Program:*** The final budget provides $65 million for the Expanded In-Home Services for the Elderly Program (EISEP). This funding supports non-medical, in-home services; case management; non-institutional respite care; and ancillary services for functionally impaired older adults. The State hopes to increase delivery of personal care to aging New Yorkers through EISEP rather than relying on more costly Medicaid services. The appropriation provides $15 million to be interchanged with any other general fund appropriation within the SOFA budget to address unmet needs of the elderly. The budget also provides another $8 million for services to be disbursed based on waiting lists for services requested.
- ***Community Services for the Elderly:*** The enacted budget level-funds $29.8 million for the Community Services for the Elderly (CSE) program. It continues to exempt from county-share requirements the $3.5 million added to CSE over the past several fiscal years. In addition, the final budget provides $1.1 million in discrete transportation funding to CSE to provide localities with the flexibility to direct resources where they are needed most.
- ***Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs:*** Level-funding is provided at $2,027,500 for each of the two models and another $2 million

for each category as enacted in last year's final budget. The budget also provides a supplemental allocation for existing contracts for nursing services at $1 million.

- ***Holocaust Survivors Initiative:*** The final budget provides $1 million for case management services for Holocaust survivors statewide. Services may include mental health services, trauma-informed care, crisis prevention, legal services, entitlement counseling and more, including training and support for caregivers and home health aides working with survivors and end-of-life care including hospice and ethical wills.
- ***Alzheimer's Caregiver Supports:*** The final budget provides $50 million for care and support services for individuals living with Alzheimer's disease and other dementias, including additional respite and caregiver support services programs.
- ***NY Connects:*** The final budget level-funds $20.7 million for the NY Connects program, which provides online resources and entry points to HCBS across the state.
- ***Wellness in Nutrition Program:*** The final budget funds the Wellness in Nutrition (WIN) program at $28.2 million, approximately $800,000 more than proposed and enacted last year. Formerly known as the Supplemental Nutrition Assistance Program, WIN provides home-delivered meals, some congregate meals and other nutrition-related services to eligible frail elderly, including residents of senior housing facilities.
- ***Social Adult Day Care:*** The final budget provides level-funding of $1.072 million for State grants for social adult day care (SADC) programs.
- ***Congregate Services Initiative:*** The final budget level-funds the Congregate Services Initiative (CSI) 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 ahead and create neighborhoods that reflect the evolving needs and preferences of all of their residents, including their aging population.
- ***Long Term Care Ombudsman Program:*** The enacted budget level-funds this program at $1.2 million.
- ***Respite Services for the Elderly:*** This grant program is level-funded at $656,000.
- ***Elder Abuse Investigations:*** The final budget includes $500,000 to expand Enhanced Multidisciplinary Teams (EMDTs) to investigate financial exploitation of the elderly.
- ***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 NYC as well as Nassau, Steuben and Erie counties.

Adult Day Health Care

Following a year of advocacy and an effective public relations campaign, DOH issued guidance for reopening medical model ADHC programs on March 25, 2021. The guidance can be found here. The following budget proposals are also of interest to ADHC providers:

- ***Social Adult Day Care Funding:*** Level-funds SADC support at $1.072 million, with preferences given to existing grantees.

- ***Telehealth and Medicaid Across-the-Board Cut:*** See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Adult Care Facilities and Assisted Living

In addition to some of the overarching provisions covered earlier in this summary, discussed below are proposals that directly impact ACFs and assisted living. Overall, our advocacy was effective in restoring cuts to these programs and fighting off onerous provisions.

ACF Quality Funding

The final budget rejects the Executive Budget proposal to eliminate the Enhancing the Quality of Adult Living (EQUAL) Program. It restores the program and funds it at last year's levels of $3.26 million in capital grants and $3.26 million in operational/programmatic funding. EQUAL funding is designated to support quality of life initiatives for residents of ACFs who are recipients of Supplemental Security Income (SSI), State Supplemental Program (SSP) benefits, Medicaid (with respect to residents in an ALP) or safety-net assistance.

Enriched Housing Subsidy

The final budget rejects the Executive Budget proposal to eliminate the Enriched Housing Subsidy and restores it 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.

Capital Funding

While the budget does not include new capital funding, it reappropriates the remaining available funding for Phase III of the Statewide Health Care Facility Transformation Program. ALPs and ACFs were newly named as eligible applicants for that round, which will be available for capital projects, debt retirement, working capital and other non-capital projects that facilitate health care transformation and preserve or expand access to health care services. Up to $20 million of the funds not otherwise earmarked for community-based providers or nursing homes may be allocated to the solicitation process for additional ALP capacity; we are awaiting awards for the RFA previously issued for ALP expansion and capital associated with those projects. No RFA for the remaining funding has been released, however, and no deadline was set in the budget language for its release. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

SSI/SSP Increases

Despite the ongoing advocacy efforts of LeadingAge NY and the membership, as well as a pending lawsuit, an increase in the SSP for ACF residents was not included in the final budget. Language is once again included authorizing a pass-through of the federal COLA. The federal COLA, if any, is applied to the federal portion of the benefit on Jan. 1st of each year.

COVID-19 Relief

Despite our considerable advocacy efforts, we do not see any specific COVID-19 relief funding for ACF and assisted living providers. While the budget does include American Rescue Plan funds from the 10 percent FMAP increase for HCBS, there are limited details regarding this funding. It appears that the funds would flow through Medicaid rates and therefore may be an opportunity for ALPs. Thus, we are advocating that ALPs have access to any additional provider funding that comes from this initiative.

Criminal History Record Checks

The final budget accepts the Executive proposal to maintain funding at $1.3 million to fund services and expenses related to CHRCs for ACFs. LeadingAge NY is working to confirm that last year's CHRC funding is also reappropriated, given the delay in payment for CHRC submissions.

Income Disregard for Housing and Medicaid Eligibility

The final budget expands the income disregard for housing purposes for individuals receiving long-term nursing home or adult home services who are discharged to the community. Individuals are eligible for this disregard, effective Jan. 1, 2022, if they are eligible or required to enroll, are enrolled or *have initiated the process* of enrolling in a managed care plan and do not qualify as institutionalized spouses.

The following proposals were rejected and ***not*** included in the enacted budget:

- ***Civil Penalties:*** The final budget ***rejects*** the Executive's proposals to:
    - increase the civil monetary penalty from up to $1,000 per day to up to $10,000 per day;
    - eliminate the ability to rectify certain violations and preclude a penalty; and
    - increase the potential civil penalty from up to $1,000 per day to up to $10,000 per day against any facility which does not possess a valid operating certificate issued by DOH and is an ACF subject to the provisions of the article and regulations of the Department.

  Legislation on this issue is under consideration in both houses of the Legislature. Click here for more information on that bill and our advocacy.
- ***ACF Temporary Operator:*** The final budget rejects the Executive's proposal to lower the standard for appointing a temporary operator in ACFs. The Executive's proposal would have removed the requirement that the violations justifying the appointment *seriously* endanger the life, health or safety of a resident. The final budget maintains the existing standard to allow for a temporary operator to be appointed for violations that endanger the life, health or safety of a resident.

Assisted Living Program

See the "CROSS-SECTOR HEALTH CARE INITIATIVES" section above for more information about Medicaid restorations.

- ***One Percent Reduction:*** The final budget rejects the Executive Budget proposal for a 1 percent ATB reduction to ALP Medicaid payments and those of other Medicaid providers.
- ***Trend Factor Elimination:*** The budget provides no positive trend factor for the ALP Medicaid rate once again, through March 31, 2023.
- ***Minimum Wage:*** The budget reportedly includes nearly $2 billion to support the direct cost of the SFY 2021-22 minimum wage increases for health care workers that provide Medicaid-reimbursed services. This includes funding to reconcile any identified underpayments in prior years.

Special Needs Assisted Living Residences

We have confirmed with DOH that the Special Needs Assisted Living Residence (SNALR) Voucher Program for Persons with Dementia is continuing in SFY 2021-22 for all *current* participants. The Department is evaluating whether the program will be able to accept new applicants and will notify us of any change. The program closed to new participants in June 2020 due to budget constraints.

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. The final budget includes:

- ***Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:*** $60.5 million is allocated 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. This is an increase from last year's funding level of $60 million.
- ***Mental Health Transitions:*** Up to $7 million is appropriated to the Research Foundation for Mental Hygiene, in contract with OMH, 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.

- ***Adult Home Advocacy Program:*** The final budget rejects the Executive Budget proposal to eliminate this program. The final budget restores level-funding at $170,000, allocated to the Justice Center. 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 on Long Island.
- ***Adult Home Resident Council:*** The final budget rejects the Executive Budget proposal to eliminate the Adult Home Resident Council Support Project, historically operated by Family Service League on Long Island. Level-funding at $60,000 is restored.
- ***Adult Home Quality Enhancement Account:*** The final budget accepts the Executive proposal to fund $500,000 for State operations related to services and expenses to promote programs to improve the quality of care for residents of adult homes. This is level-funded from last year.
- ***Assisted Living Residence Quality Oversight Account:*** The final budget rejects cuts to funding for State operations for services and expenses related to the oversight and licensing activities for assisted living facilities, restoring level-funding at $2.1 million.
- ***Coalition of Institutionalized Aged and Disabled:*** The final budget accepts the Executive Budget proposal for $75,000 for the Coalition of Institutionalized Aged and Disabled (CIAD). An additional $250,000 is appropriated for additional expenses, reflecting an increase of $100,000 from last year. CIAD advocates for residents of adult homes in NYC.

Senior Housing

The SFY 2021-22 Homes and Community Renewal (HCR) budget does not renew the State's multi-year, $2.5 billion capital component of the Affordable Housing and Homelessness Plan; however, it does continue funding to support full implementation of the plan through reappropriations. Among other initiatives, the five-year housing plan included $125 million in capital for affordable housing targeted to low-income seniors, and remaining funds for affordable senior housing are reappropriated in the final budget. While the Affordable Housing and Homelessness Plan is not renewed in full, the final budget does commit to another year of supportive housing through the Empire State Supportive Housing Initiative (ESSHI) with a $250 million investment toward the creation of 20,000 units over 15 years.

Among the initiatives not included in the final budget agreement are:

- ***Resident Assistants:*** Authorizing language or funding for the LeadingAge NY Resident Assistant proposal.

Continuing Capital Allocations

The SFY 2021-22 HCR Capital Plan includes the following funding for programs as part of the continued $20 billion, multi-year investment in affordable and supportive housing and related services:

- ***Access to Home Program:*** $1 million to provide funding for home adaptations for individuals with disabilities;
- ***Affordable Home Ownership Development Program:*** $51 million to construct or renovate homes for low- and moderate-income individuals and families;
- ***Homes for Working Families Program:*** $14 million to combine State funds with other available public and private sector moneys, federal Low-Income Housing Tax Credit proceeds and non-State-supported bond funds to construct affordable rental housing for low- and moderate-income households;
- ***Housing Opportunities for the Elderly Program:*** $1.4 million to provide grants to low-income elderly homeowners for emergency home repairs;
- ***Low-Income Housing Trust Fund Program:*** $44.2 million to provide grants for the construction or renovation of low- or moderate-income single and multi-family housing projects;
- ***New York Main Street Program:*** $4.2 million to provide assistance to communities for the revitalization of historic downtowns, mixed-use neighborhood commercial districts and village centers;
- ***Manufactured Home Advantage Program:*** $5 million to fund loans and grants for the acquisition, demolition or replacement and/or repair of mobile or manufactured homes and/or mobile or manufactured home parks; and
- ***Public Housing Modernization Program:*** $6.4 million to subsidize repairs at State-supervised public housing projects across the state.

The final budget allocates $325 million in capital funding for public housing authorities to address critical maintenance projects, including weatherization, heating, elevator maintenance and lead remediation. $200 million of this funding is allocated to the New York City Housing Authority, and $125 million is allocated to public housing throughout the rest of the state.

The final budget also utilizes excess reserves from the Mortgage Insurance Fund to support the Neighborhood Preservation Program ($12.8 million), the Rural Preservation Program ($5.4 million) and the Homeless Housing and Assistance Corporation ($45.2 million for several homeless housing programs, including the Solutions to End Homelessness Program (STEHP), the New York State Supportive Housing Program and the Operational Support for AIDS Housing Program, and $65.6 million to reimburse NYC for expenditures for adult shelters).

Other Housing Initiatives

COVID-19 Emergency Rental Assistance Program of 2021

The final budget includes funding for the COVID-19 Emergency Rental Assistance Program of 2021 (ERAP). This program utilizes $2.3 billion in funding from federal stimulus packages and

$100 million of State money and will be run by OTDA. Funds are available to cover rent and utility payments, but households may only receive utility payments if they have not received a corresponding benefit from the Home Energy Assistance Program (HEAP). Rental assistance may be used to cover arrears going back to March 13, 2020 and/or for three months of prospective rent. Only rent-burdened households (where 30 percent or more of gross monthly income goes toward rent) qualify for prospective rent payments. Rental assistance payments will be made directly to the landlord, and utility payments will be made directly to the utility company.

Tenants are eligible for assistance if they meet the following requirements:

- Have a household income at or below 80 percent of the area median income (AMI);
- Have qualified for unemployment or experienced a reduction in household income, incurred significant costs or experienced other financial hardship due, directly or indirectly, to the COVID-19 outbreak; and
- Have a demonstrated risk of experiencing housing instability and homelessness.

ERAP payments will be available to tenants regardless of their immigration status, and the program allows for self-attestation regarding eligibility.

For the first 30 days of the program, prioritization will be given to individuals with lower incomes and those who fall into specified priority groups. The priority groups include individuals who are currently unemployed and have been unemployed for 90 days, tenants of mobile homes with arrears, members of vulnerable populations (including, but not limited to, victims of domestic violence, survivors of human trafficking and veterans), households in communities disproportionately affected by COVID-19 and households who reside in buildings with less than 20 units. Tenants in federal or State-funded subsidized housing where rent is limited by income are deprioritized and will only become eligible if funds remain after all other eligible populations receive assistance.

Adaptive Reuse Affordable Housing Program

The final HCR budget includes $100 million to create the “Adaptive Reuse Affordable Housing Program.” This funding would support the conversion of commercial properties and hotels in NYC to permanent affordable housing. Program language regarding the use of this funding is expected.

State Low-Income Housing Credits

The final budget extends Low-Income Housing Credits for five years, at $8 million per year.

Codification of Sales Tax Exemptions for HDFCs

The final budget codifies the eligibility of not-for-profit Housing Development Fund Corporations (HDFCs) for a sales tax exemption to support the development of affordable housing.

V. PHARMACY

The final budget rejects a number of proposals intended to reduce prescription drug costs under Medicaid and commercial insurance. It also delays the implementation of the Medicaid managed care pharmacy carve-out and associated 340B pharmacy reimbursement changes.

- ***E-Prescribing:*** Rejects the proposal to eliminate exemptions from the e-prescribing mandate. For the past few years, DOH has issued a blanket waiver of the e-prescribing mandate annually for physicians issuing prescriptions for nursing home residents. Had this proposal been accepted, it is unclear whether this waiver would have been extended.
- ***Over-the-Counter Prescription Coverage:*** Rejects a proposal to allow the Commissioner of Health to reduce the over-the-counter medications covered by Medicaid without notice and public comment.
- ***Prescriber Prevails:*** Rejects the proposal to eliminate the existing "prescriber prevails" policy under Medicaid managed care and FFS (i.e., the policy that allows a prescriber to override denials of coverage of non-preferred drugs under the FFS program and denials of coverage of certain non-formulary drugs by managed care plans).
- ***Pharmacy Benefit Managers:*** Rejects the proposal to register and regulate pharmacy benefit managers.
- ***Pharmacist Scope of Practice:*** Rejects a proposed expansion of the scope of practice of pharmacists that would have authorized them to direct limited service laboratories and order and administer diagnostic tests and would have expanded the types of vaccines that they are authorized to administer to adults.
- ***Collaborative Drug Therapy Management:*** Rejects the proposal to expand the role of pharmacists and nurse practitioners in collaborative drug therapy management programs.
- ***Medicaid Managed Care Pharmacy Carve-Out:*** Delays the pharmacy carve-out from the Medicaid managed care benefit package for one year until April 1, 2023.
- ***340B Medicaid Reimbursement:*** Delays adjustments in Medicaid reimbursement for drugs eligible for pricing under the federal 340B prescription drug program based on actual acquisition costs and professional dispensing fee for two years until April 1, 2025.
- ***Report on Drug Dispensing Fees Under Medicaid:*** Requires the Commissioner of Health to provide the legislative leadership with a report by Dec. 31, 2021 describing the laws and procedures that govern the calculation and payment of prescription drug dispensing fees to retail pharmacies by the Medicaid program, both within the managed care and FFS programs.

VI. MARIJUANA LEGALIZATION AND REGULATION

The Marihuana Regulation and Taxation Act (MRTA) was passed by the Legislature and signed into law by the Governor. The MRTA creates an adult-use cannabis program for people aged 21 and over and expands the existing medical cannabis and cannabinoid (CBD) hemp programs.

The MRTA establishes the Office of Cannabis Management (OCM) within the Division of Alcoholic Beverage Control as well as a five-member Cannabis Control Board. The OCM is charged with overseeing the new adult-use cannabis program in addition to the medical cannabis and CBD hemp programs. The powers of this new office include the establishment of cultivation

and processing standards, the licensure of all business entities in the production and distribution chain, the inspection and enforcement of program standards and the promulgation of regulations.

Under the MRTA, the OCM will supervise the continued expansion of the medical cannabis program and ensure patient access and product affordability as well as encourage further medical cannabis research opportunities. The MRTA also expands the list of medical conditions that would allow an individual to access medical cannabis and permits home cultivation of medical cannabis for patients.

The MRTA establishes a social and economic equity plan and contains other social justice goals to encourage members of communities who have been disproportionately impacted by the policies of cannabis prohibition to participate in the new industry. The MRTA also includes a goal of 50 percent of licenses being issued to social equity applicants in the adult-use program.

The MRTA imposes a tetrahydrocannabinol (THC)-based tax in addition to a 13 percent tax on retail sales (9 percent of the tax goes to the State, and 4 percent is allocated to localities). Revenues from the sale of adult-use and medical cannabis will be deposited in the New York State Cannabis Revenue Fund to cover administration of the adult-use, medical and CBD hemp programs. Remaining revenue will go to the State Lottery Fund for Education (40 percent), the Drug Treatment and Public Education Fund (20 percent) and the Community Grants Reinvestment Fund (40 percent).

The MRTA includes provisions prohibiting landlords from refusing to rent to or from penalizing a tenant based on conduct permitted by State cannabis laws, subject to certain exceptions, including the possible loss of monetary or licensing-related benefits under federal law or regulations if the landlord allows cannabis use. If a property has a smoke-free policy in place, it is not required to permit the smoking of cannabis products on its premises, provided that no such restriction may be construed to limit the certified medical use of cannabis.

Under the MRTA, an employer may not refuse to hire an individual or otherwise discriminate against an employee because of the lawful use of cannabis that occurs outside of an employee's work hours and off site. It also permits employers to establish workplace policies, on notice to employees, prohibiting the use or possession of cannabis in the workplace in accordance with the Labor Law and allows employers to take adverse action against employees who are under the influence of cannabis in the workplace.