

Dear Members:

Yesterday, Governor Cuomo presented his FY 2020 budget plan, titled [2019 Justice Agenda: The Time is Now](#). The proposed \$175.1 billion budget, which covers the period April 1, 2019 – March 31, 2020, closes an estimated \$3.1 billion deficit while holding the State spending increase to under 2 percent and increasing State Medicaid spending by \$568 million.

The budget bills and legislative memoranda are posted on the [Division of the Budget's \(DOB\) FY 2020 Executive Budget webpage](#). Below is an initial summary of budget provisions affecting long term care, senior services, and housing providers. LeadingAge New York is closely analyzing the budget and seeking further clarity on various provisions and will be providing members with a detailed summary by early next week.

General Measures

- **Infrastructure:** Add a five-year, \$150 billion program to invest in transportation, educational, health care, environmental, and community facilities, and implement NYC congestion pricing to fund MTA.
- **Property Tax Cap:** Make permanent the 2 percent Property Tax Cap, first enacted in 2011.
- **Cannabis:** Legalize and regulate adult use of recreational marijuana, becoming fully operational by 2021 and eventually generating an estimated \$300 million in annual State tax revenues.
- **Tobacco Control Policy:** Raise the minimum age to purchase cigarettes from 18 to 21, prohibit sale of tobacco products in all pharmacies, increase regulation of e-cigarettes and vapor products.
- **Green New Deal:** Create a new Climate Action Council to move the state to a carbon neutral economy by 2040 and expand existing wind and solar programs.
- **Bottle Deposits:** Expand current deposit requirements to include sports drink, energy drink, fruit and vegetable beverage, ready-to-drink tea and coffee, and wellness beverage bottles.
- **Plastic Bags:** Ban single-use plastic bags provided to customers.
- **Election Reforms:** Allow voting by mail and early voting, institute same-day and automatic voter registration, provide time off to vote, close the "LLC loophole," and ban corporate contributions.
- **DREAM Act:** Provide undocumented higher education students with access to the Excelsior Scholarship, the Tuition Assistance Program, and other scholarship programs.

Workforce

- **Minimum Wage:** Include \$1.1 billion to support the cost of the FY 2020 minimum wage increases for Medicaid health care services, including fund to reconcile underpayments in prior years.
- **Prevailing Wage:** Require projects built with public subsidies to pay prevailing wage, essentially meaning developers and contractors would use union workers.
- **Equal Rights Amendment:** Protect against discrimination based on gender in the State Constitution.
- **Equal Pay for Equal Work:** Address the gender gap by requiring equal pay for substantially similar work in both the public and private sectors and banning questions on salary history.
- **Employer-Provided Child Care Credit:** Create a new State tax credit equal to the federal credit for employers who provide child and dependent care facilities to their employees.

Health Care, LTC, and Senior Services

- **Affordable Care Act (ACA):** Include key provisions of the ACA in State law, including banning insurance limitations for preexisting conditions and requiring insurance policies to cover essential benefits.
- **Single-Payer Healthcare:** Set up a commission of “independent” health policy and insurance experts to recommend options for universal access to affordable healthcare by Dec. 1, 2019. The group would discuss strengthening insurance markets, expanding access, and innovating reimbursement.
- **Adult Care Facilities/Assisted Living:**
 - The Enhancing the Quality of Adult Living (EQUAL) quality program for ACFs is level-funded at \$6.5 million.
 - The Enriched Housing subsidy is level-funded at \$380,000.
 - The trend factor for the Assisted Living Program (ALP) Medicaid rate is zero.
 - The Governor’s Briefing Book, citing a need to ensure higher quality and oversight of safety in nursing homes and adult care facilities, states that the Governor will propose legislation to enhance the quality and safety of nursing homes and protect nursing home residents. The bill will give the Department of Health (DOH) the authority to place an independent quality monitor in poorly performing nursing homes, will enhance transparency and strengthen oversight over nursing homes and adult care facilities, and will impose more stringent penalties for violations.
 - An authorization of the pass-through of any federal cost of living adjustment (COLA) for the Supplemental Security Income (SSI) benefit. This simply allows the State to increase the SSI rate in January if the federal portion of the benefit receives a COLA. Unfortunately, the Executive Budget does not include any increase in the State supplement of the SSI Congregate Care Level 3 rate for adult care facilities.
 - Previous legislation authorizing temporary operators of adult homes is made permanent.
- **Nursing Home Case Mix:** The Governor proposes to make further changes to how nursing home Medicaid rates are adjusted for case mix. This administrative proposal would generate \$123 million in State savings, suggesting a provider impact of \$246 million.
- **Nursing Home Staffing:** The Briefing Book indicates that DOH will conduct a study that will engage industry stakeholders and other experts to evaluate the impact of staffing on patient safety and the quality of healthcare delivery. The study will analyze the range of potential fiscal impacts of various patient safety and staffing enhancement strategies.
- **Quality Monitor for Poorly Performing Nursing Homes:** While not included in the budget language, the Briefing Book states that the Governor will propose legislation that will authorize DOH to place a quality monitor in poorly performing homes and enhance transparency and strengthen oversight over nursing homes and adult care facilities.
- **MLTC Transportation:** As in previous years, the Executive Budget proposes to carve transportation out of the MLTC benefit package to require MLTC plans other than PACE programs to use the State’s transportation manager to arrange and provide non-emergency medical transportation.
- **Managed Care Oversight:** The Executive Budget proposes several Medicaid managed care program integrity provisions, including:

- Permitting the Office of the Medicaid Inspector General (OMIG) to review managed care and MLTC plan program integrity obligations with authorization to recover up to 2 percent of Medicaid premiums associated with the period under review;
- Clarifying that all payments made by managed care and MLTC plans are deemed to be Medicaid payments for purposes of recouping payments made to providers;
- Authorizing OMIG to recover from providers and subcontractors any Medicaid overpayments that were made to them by a managed care or MLTC plan, specifying that OMIG may require the plan to make the recovery on behalf of the State with the overpayment amount due to the State within six months of notice;
- Establishing that a managed care compliance program that meets federal standards is deemed to meet State compliance requirements as long as the program adequately addresses Medicaid risk areas and compliance issues;
- Authorizing additional penalties for late, incomplete, or inaccurate encounter submissions in cases involving fraud or abuse.
- **Statewide Health Care Facility Transformation Program Capital Funding:** The Executive Budget authorizes DOH to award up to \$300 million of the funds allocated for Phase 3 of the Statewide Health Care Facility Transformation Program to unfunded projects that were submitted under the Phase 2 application process. The funds transferred to Phase 2 projects would be subject to the Phase 3 allocation requirements (i.e., \$60 million for community-based health care providers, \$45 million for nursing homes, and up to \$20 million for assisted living programs). Awards would be made by May 1, 2019.
- **Spousal Refusal:** The Executive Budget attempts, once again, to limit the ability of a Medicaid applicant to be determined eligible without counting the income and assets of the applicant's spouse. Under this proposal, the spouse's income and assets would be counted unless the spouse refuses to support the applicant *and* either the spouse is absent from the applicant's home, or the applicant assigns spousal support to the social services district or DOH.
- **Medicaid Payments for Dual Eligibles:**
 - Limits Medicaid payments for Medicare Part B deductibles to the amount that Medicaid would pay for the service, if the beneficiary were solely covered by Medicaid.
 - Caps Medicaid payments of Part B coinsurance for ambulance and psychologist services provided to dual eligibles at the Medicaid rate minus the Part B payment.
- **DSRIP Regulatory Waiver Expansion:** The Executive Budget authorizes DOH, the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Office for People with Developmental Disabilities (OPWDD) to waive regulatory requirements to enable providers involved in DSRIP projects, or the "replication and scaling" of promising DSRIP practices, to avoid duplicative requirements and promote efficiencies. Regulations that pertain to patient safety may not be waived.
- **Duplicative Licensure Requirements for Health Care Facilities:** The Executive Budget expands authority of outpatient clinics to provide services otherwise licensed by multiple agencies, without obtaining separate licenses from more than one agency, provided that the clinic complies with integrated services regulations. This proposal would extend this authority to facilities licensed by OPWDD. Facilities licensed by DOH, OMH, and OASAS already have this authority.
- **Pharmacy:**
 - Increases Medicaid co-payments to \$1.00 from 50 cents for non-prescription drugs.
 - Eliminates prescriber prevails in both Medicaid managed care and fee-for-service for all classes of drugs. Under this proposal, the prescriber would no longer be able to override

a denial of coverage by a managed care plan or the fee-for-service program for a medication.

- Requires registration and regulation of pharmacy benefit managers.
- Expands DOH's authority to negotiate rebates with pharmaceutical manufacturers.
- **Consolidation of Fiscal Intermediaries:** The Executive Budget repeals current requirements for Fiscal Intermediaries to receive authorization from DOH and limitations on advertising by Fiscal Intermediaries. Beginning Jan. 1, 2020, entities authorized to provide fiscal intermediary services would be limited to those that have a contract with DOH pursuant to an application process and entities that were Fiscal Intermediaries with a continuous history of providing fiscal intermediary services beginning on or before Jan. 1, 2012. This proposal would foster systematic efficiencies through the consolidation of such services.
- **Personal Care Management:** This administrative action will generate \$75 million in State share savings through better managing utilization of personal care.
- **Certified Home Health Agency (CHHA) Episodic Payments:** The Governor proposes to extend episodic rates of payment for CHHA services that are based on a 60-day episode of care through 2024. Episodic payments replaced traditional CHHA Medicaid FFS reimbursement. The episodic payment system has been in effect since April 1, 2012.
- **Home Care Provider IDs:** This provision requires home care workers to obtain an individual National Provider Identifier (NPI) from the National Plan and Provider Enumeration System.
- **Electronic Visit Verification:** The Executive Budget provides a \$10 million investment, in addition to federal funding, to support the implementation of a federally required system to verify when home care services occur to reduce inappropriate billing of in-home Medicaid services and to eliminate fraud, waste, and abuse in the Medicaid program.
- **Bad Debt and Charity Care for CHHAs:** The Executive Budget proposes to extend authorization for CHHAs to receive allowances for bad debt and charity care for five years, from 2019 to 2024. Current eligibility for such funds is limited to voluntary non-profit, private propriety, and publicly sponsored non-hospital based CHHAs.
- **CHHA Cap on Administrative and General Costs:** The Executive Budget proposes to extend the cap on reimbursement for CHHA administrative and general costs through 2024.
- **Home Health Aide Registry:** Level-funded at \$1,800,000.
- **Expanded In-Home Services for the Elderly Program (EISEP):** The Executive Budget proposes an additional \$15 million investment in the Expanded In-Home Services for the Elderly Program (EISEP), which supports non-medical, in-home services; case management; non-institutional respite care; and ancillary services for functionally impaired older adults.
- **Creation of Optional Private Pay Model in the State Office for the Aging:** The Executive Budget authorizes the State Office for the Aging (SOFA) to implement a private pay program option to expand access to SOFA programs to those above 400 percent of the federal poverty line who choose to purchase these services using private funding. Counties would have the discretion to opt into the program. This would allow counties to expand access to services currently offered by SOFA and funded with State and local dollars to seniors at no cost to the State or county via a private pay program for people with incomes at or above 400 percent of the federal poverty line.
- **Evidence-Based Prevention and Support Services of the National Diabetes Prevention Program:** The Executive Budget allows evidence-based prevention and support services of the National Diabetes Prevention Program to be offered to existing Medicaid members in non-clinical, community-based organizations.

- ***NY Connects:*** Proposed funding is \$41.5 million, a few million less than last year's final budget amount.
- ***Community Services for the Elderly (CSE):*** Level-funded at \$28.9 million, the same amount enacted in last year's final budget.
- ***Criminal History Record Checks:*** Level-funded at \$3 million.

Housing Measures

The Executive Budget continues the \$125 million investment to develop or rehabilitate affordable senior housing as part of the \$2.5 billion in reappropriations that are part of the State's five-year Affordable and Homelessness Housing Plan. The Executive Budget would use \$12 million in reserves from the Mortgage Insurance Fund to support the Neighborhood and Rural Preservation Programs and \$21 million from the General Fund to support the Rural Rental Assistance Program, which provides rental assistance to low-income rural tenants. \$5 million would also be allocated for the Manufactured Home Advantage Program for the acquisition, demolition, replacement, and/or repair of mobile or manufactured homes.

The Executive Budget proposes to apply for a waiver to leverage federal funding for certain supportive housing services currently funded with State-only dollars, including: 1) housing transition services; 2) tenancy support services; and 3) housing-related collaborative activities.

Next Steps

LeadingAge New York will be sharing a more comprehensive analysis of the Executive Budget by early next week. In addition, with the release of the [Joint Legislative Hearing Schedule](#) yesterday afternoon, we will begin preparing testimony for the Housing hearing on Mon., Feb. 4th and the Health/Medicaid hearing on Tues., Feb. 5th.

It is now time to get our budget advocacy efforts in full swing! Over the coming weeks, LeadingAge NY will be developing letters and other advocacy initiatives on the issues we want to see addressed in the final budget. There is much at stake with a looming \$3.1 billion budget gap, so your advocacy will be essential. We encourage you to [sign up for our two 2019 Advocacy Days](#), which will be held in Albany on Tues., Feb. 5th (in collaboration with the Adult Day Health Care Council and the Hospice and Palliative Care Association of New York State and covering nursing home, home care, hospice, ADHC, and MLTC issues) and Tues., March 5th (covering housing, ACF/AL, aging services program, and NORC issues).

Please feel free to contact us if you have questions or need assistance.