

April 6, 2021

As the SFY 2021-22 budget process comes to a close over the next day or two, we are pleased to report that your advocacy efforts have been successful in achieving the restoration of proposed cuts in funding and avoiding the harsh punitive measures proposed in the Governor's budget. In addition, although the final appropriation bill is not yet in print at the time of this writing, we understand that it will include over \$1.6 billion for home and community-based services and over \$64 million in new state share Medicaid funding for nursing homes.

The process of finalizing the State Fiscal Year (SFY) 2021-22 Budget has been the slowest of the last several years, with only three of the nine typical budget bills in print as of March 31st. Last week, the Legislature agreed upon and passed their Debt Service budget bill on time to ensure that the State does not default on any outstanding payments. Then, on Saturday evening we saw two additional bills of interest go to print – the Health and Medicaid (HMH) and the Public Protection and General Government (PPGG) bills.

After taking a brief break over the holiday weekend, lawmakers continued negotiations over several outstanding budget bills all day yesterday. Early this morning we saw the Education, Labor, Housing and Family Assistance (ELFA) and the Capital Projects budget bills finally go to print. As of this afternoon, we are still awaiting publication of a few key budget bills: Revenue, Aid to Localities, and State Operations. It is possible that one of these remaining bills will turn into a “big ugly”, carrying a mix of complicated budget actions.

Today, the Senate and Assembly are poised to pass the three budget bills, HMH, TED and PPGG and may pass Capital Projects, ELFA and the other remaining bills. The Aid to Localities bill, which is not yet in print, is a key component of the budget as it will include the appropriations for Medicaid and other programs that support our members' services. Nevertheless, because many of our priority issues have been addressed in the HMH, ELFA and Capital Projects bills, we are providing the following update to review some of the key final budget highlights and provisions as they relate to senior housing and long-term/post-acute care. We will also be providing a more comprehensive final budget analysis after all budget bills are passed and signed by the governor.

General Medicaid

Medicaid and Across-the-Board Cuts: Indications are that the final agreement increases funding sufficiently to eliminate and restore the Medicaid cuts proposed in the Executive budget, specifically rejecting the 1 percent across the board Medicaid cut. However, we have yet to see the relevant appropriations bills in print to confirm this action.

Medicaid Global Spending Cap: The final Budget extends the Global Cap through FY 2022-2023 and reporting requirements will now be required on a quarterly basis (changed from a monthly basis).

Medicaid Trend Factor: The final Budget accepts the Executive's proposal to extend for two more years, through March 31, 2023, the elimination of positive Medicaid inflation factors for providers including nursing homes (other than pediatric units), Adult Day Health Care (ADHC) programs, home care and personal care providers and Assisted Living Programs (ALPs).

Medicaid Eligibility: Effective January 1, 2022, the budget expands the income disregard for housing purposes for certain individuals receiving long-term nursing home or adult home services who are discharged to the community and are required to enroll in a managed care plan.

Cross-Sector Provisions

Health Care Facility Transformation Grants: The final Budget reappropriates unspent funds from prior years to support the continuation of this program that funds capital and non-capital grants to facilitate health care transformation. The appropriation does not modify the allocation of funds among different health care sectors.

Civil Monetary Penalties: The final Budget rejects the Executive's proposals to significantly increase the civil monetary penalties for a violations for adult care facilities (ACFs), nursing homes and home care agencies. That being said, legislation on this issue is under consideration in both houses of the Legislature for nursing homes and ACFs, but has not yet been passed in either House.

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. PPE is defined as equipment worn to minimize exposure to medical hazards, such as gloves, masks, face shields, eye protection, respirators and disposable coverings. The head of state agencies or departments can 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.

Nursing Homes

Nursing Home Staffing Funding: We understand that the Aid to Localities bill will include \$64 million in state share funding for nursing homes to increase resident facing staffing services provided by RNs, 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 additional eligibility criteria to be established.

Financially Distressed Facility Funding: The Budget agreement includes the Distressed Provider Assistance Program established by last year's State Budget to make \$250 million in funding available for financially distressed hospitals and nursing homes annually.

Direct Care Spending Ratios for Nursing Homes: Mimicking stand-alone bills passed earlier by each house, the budget agreement includes provisions specifying that nursing homes must spend a minimum of 70 percent of revenue on "direct resident care", of which 40 percent must be spent on "resident-facing staffing". Direct resident care is defined to include most expenses other than administrative, fiscal and capital-related costs. 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 agreement also caps profit at 5 percent. Homes will be required to remit income above the 5 percent cap and/or any amount needed to achieve the 70/40 percent minimum spending requirement to the Department of Health to be used for the Nursing Home Quality Initiative. The legislation exempts CCRCs and specialty facilities and grants the Commissioner the authority to issue waivers for unexpected or exceptional circumstances. The provisions will start with cost year 2022 and require DOH to issue regulations.

Executive Pay Cap: The final Budget rejects the Executive's proposal to establish a cap on the salary for any executive or managerial position which does not involve direct resident care to an amount limited by regulation based on the number of beds at a facility, provided that the salary cannot exceed \$250,000 annually.

Medically Fragile Children/Young Adults: The final Budget includes a new Part MM authorizing the establishment of demonstration programs for two eligible pediatric nursing homes, 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 residential facility is operational, whichever is sooner. The Department of Health will establish Medicaid reimbursement rates for young adults in pediatric nursing homes or in young adult facilities taking into account the pediatric rate methodology with an increase or decrease adjustment to account for these individuals' distinct needs. The statutory authorization for the demonstration program is for a period of two (2) years.

Cash Receipts Assessment: The final Budget accepts the Executive's proposal to extend the reimbursable 6 percent cash receipts assessment for two years through March 31, 2023. The total assessment would remain 6.8 percent; authorization for the 0.8 percent portion does not require extension at this time.

E-Prescribing: 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.

Managed Care/MLTC

Quality Pool: Although pending confirmation, indications are that the final agreement restores the MLTC quality pool to last year's funding level.

Pharmacy Carve-Out: The final Budget delays the implementation of removing the pharmacy benefit from managed care benefit package to the pharmacy benefit under the fee-for-service program for one year until April 1, 2023.

NHTD and TBI Waiver Program: The final Budget delays the transition of the Nursing Home Transition and Diversion (NHTD) and Traumatic brain Injury (TBI) programs to managed care for an additional four years. The programs had been slated to be carved into managed care on January 1, 2022, but now will not be transitioned before January 1, 2026.

Transportation Management in Medicaid Managed Care: The final Budget modifies the Executive's proposal to extend for 6 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.

Home Care

HCBS 10% FMAP Funding: We understand that the Aid to Localities bill will include \$1.63 billion in federal funds to support home and community-based services using funds made available through the federal American Rescue Plan Act of 2021. The appropriation authorizes suballocations and transfers to other state agencies, including OMH, OCFS, OASAS, and OPWDD. It is unclear at this time how these funds will be disbursed.

WRR Funding: The final Budget rejects the Executive's proposal to reduce Workforce Retraining and Retention (WRR) funding for health care workers by up to 25%, or \$45 million annually.

Telehealth: The final Budget makes permanent several changes to Medicaid telehealth coverage that began as a result of the pandemic. The legislation removes all limitations on the location of the telehealth provider and patient under Medicaid. The Budget amends the definitions of "distant site" and "originating site" to largely remove 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 care managers employed by or under contract to a health home program, patient centered medical home, Care Coordination Organization (CCO), and hospice. The budget bill rejected 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. These provisions will be deemed to have been in force as of April 1, 2021.

Fiscal Intermediary Reform: The final Budget includes amendments to the Fiscal Intermediary (FI) contracting process to require the Department of Health ("DOH") to survey information from all qualified FIs in order to make additional contract awards based on geographic distribution and the following applicant criteria: NFP status, operation prior to January 1, 2012, service to individuals with intellectual or developmental disabilities, service to minority populations, or status as a verified Minority and Women-Owned Business.

Fair Pay for Home Care: The final Budget rejects the Senate's proposal to require payment for home care aides to be no less than 112% of the applicable minimum wage or other applicable wage.

ACF/AL

EQUAL Funding: The final Budget rejects the Executive's proposal to eliminate EQUAL operational funding and statutory authorization by repealing § 461-s of the Social Services Law, and restores \$6.53 million for the program.

Enriched Housing Subsidy: The final Budget rejects the Executive's proposal to eliminate the Enriched Housing Program ("EHP") and restores funding at last year's level of \$380,000.

SSI Increase for Congregate Care Level 3 Rate for ACF Residents: The final Budget contains the traditional statutory authority to pass-through any Federal COLA that becomes effective on or after January 1, 2022.

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 legislation maintains the existing standard.

Senior Housing

Five-Year Affordable Housing Capital Plan: The final Budget includes reallocations of the funding provided in the original Five-Year Affordable Housing Capital Plan but does not include capital allocations for a new Five Year Capital Plan.

COVID-19 Emergency Rental Assistance Program: The final Budget includes a COVID-19 Emergency Rental Assistance Program that is federally funded through the American Rescue Plan Act of 2021 and is targeted to individuals and families with a household income at or below 80% of the area median income who demonstrate a risk of experiencing homelessness or housing instability.

Other

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

Next Steps

The Legislature will likely be finishing all budget work by the end of this week. LeadingAge New York will continue to analyze all final budget language as it becomes available over the coming days and will distribute a comprehensive SFY 2021-22 Final Budget analysis following the completed budget's passage.

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