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M E M O R A N D U M

TO:	All Members
FROM:	Advocacy and Public Policy Department
DATE:	March 17, 2017
SUBJECT:	**Assembly and Senate Responses to the Governor's Proposed 2017-18 Executive Budget**
ROUTE TO:	Administrator, Program Directors, Department Heads

ABSTRACT: Detailed summary of the one-house responses to the 2017-18 Executive Budget provisions.

I. INTRODUCTION

On March 13, 2017, the Assembly and Senate released their one-house budget plans in response to Governor Cuomo's $152.3 billion Executive Budget Proposal for State Fiscal Year (SFY) 2017-18.

The Assembly proposal, per a press release from Speaker Carl Heastie and Ways and Means Committee Chair Herman D. Farrell Jr., delivers critical revenue to support changes to the criminal justice system, funding for students, assistance for struggling families, and resources for seniors. It includes an additional $45 million to create a living wage for direct care workers and earmarks $700 million in capital funding for the state's health care providers and community-based providers. Additionally, the Assembly proposes a plan for the investment of $2.5 billion in funding that was dedicated for supportive and affordable housing development in last year's enacted budget, including $125 million for senior housing.

The Senate plan, per a statement from Majority Leader John Flanagan and Finance Committee Chair Catharine Young, "controls spending, protects taxpayers, invests in clean water and safe roads, and provides unprecedented opportunities for students." Among the provisions impacting seniors and aging services providers are the addition of $5 million for the Community Services for the Elderly Program (CSE), the restoration of $3.35 million for the New York Connects program, the addition of $10 million to fund a statewide central register of elder abuse and maltreatment, and $951,000 for Naturally Occurring Retirement Communities (NORCS) and/or Neighborhood NORCs. The Senate also includes $45 million for direct care workers and earmarks $800 million in capital funding for the state's health care providers.

We are very pleased that all our key priorities have been reflected in the one-house bills. This is a testament to the hard work of our members, our staff, and our lobbyists, Hinman Straub. Strong advocacy makes a difference. Thank you for all that you have done to make sure your legislators are informed. The following is a summary of the Assembly and Senate responses to the health, Medicaid, and housing proposals advanced by the Governor.

II. CROSS-SECTOR HEALTH CARE INITIATIVES

The following proposals impact multiple types of Medicaid providers and managed care plans, and should be reviewed by all readers.

Medicaid Global Spending Cap

The Executive Budget continues the Medicaid Global Spending Cap ("Global Cap"), including the State's "superpower" authority to make spending reductions if the Global Cap is breached, for two additional years. The Governor further proposed to authorize the Director of the Budget to adjust projected Medicaid expenditures under the Global Cap to take into account any changes made by the federal government to the availability of federal financial participation in Medicaid or to Medicaid eligibility criteria.

The Senate and Assembly budget bills rejected the extension of the Global Cap beyond the current fiscal year, and the proposed language giving the Budget Director authority to make adjustments based on federal changes. The Senate added language requiring the Legislature to approve any savings allocation plan resulting from a breach of the cap.

NYC Medicaid Cost Sharing

The Governor proposed to reduce State Medicaid cost sharing to New York City by $50 million, if the City fails to enter into a joint savings allocation plan with DOH to increase allowable federal claims for preschool and school supportive health by $100 million.

The Senate bill includes the Executive Budget proposal; the Assembly rejects the measure.

Capital Funding

The Governor proposes to create a second round of the Statewide Health Care Facility Transformation Program that was initiated in the SFY 2016-17 budget. Administered jointly by DOH and the Dormitory Authority of the State of New York (DASNY), the program would be funded at $500 million and financed through a combination of DASNY bonds and State budget capital funding. Of the total funding, $50 million would be allocated to Montefiore Medical Center, and at least $30 million allocated to community-based health care providers.

The Senate budget includes an additional $300 million for the program, for a total of $800 million. Other than the $50 million set aside for Montefiore, the Senate reserves judgement on allocations by region or provider type. The Assembly increases funding for Essential Health Care Providers by $200 million for a total of $700 million; $125 million is identified for community-based health care providers.

Consolidation of Public Health Programs

The Executive Budget proposed to consolidate 39 public health appropriations totaling $122.9 million into four pools, and reduce funding for each pool by 20 percent or $24.6 million. Affected programs include: (1) worker retraining ($11.45 million); (2) Nursing Home Transition and Diversion (NHTD) waiver housing subsidy ($2.4 million); and (3) enriched housing subsidy ($475,000).

The Senate and Assembly reject this proposal, restoring $24.6 million and discrete appropriations for these programs.

Health Care Regulation Modernization Team

The Executive Budget proposed to create a Health Care Regulation Modernization Team to providing guidance on a "fundamental restructuring" of the statutes, regulations and policies that govern the licensure and oversight of health care facilities and home care, to align them with delivery system reforms. The group would have up to 25 voting members appointed by the Governor and Legislature, begins its work July 1, 2017 and make recommendations to the governor by December 31, 2017.

The Senate modifies the proposal to include 12 rather than 25 voting members, and to revise the group's charge to include reviewing the applicability of need methodologies; uniform training for surveillance staff; communication of changes in policies; and accountability mechanisms for surveyors. The Assembly rejects the proposal entirely.

Spousal Refusal

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

The Senate and Assembly bills exclude this provision and restore the associated $10 million cut.

Mandated Recycling of Organic Waste

Beginning Jan. 1, 2021, this proposal would require certain high volume generators of food waste including hospitals, health care facilities, manufacturers, supermarkets, large restaurants and higher educational institutions to recycle food waste. A “high volume generator” is one that produces an annual average of two tons per week or more of excess food and food scraps at a single location. Under the proposed requirements, such businesses would need to divert excess edible food and food scraps to food banks, animal feed operations, composting facilities, anaerobic digesters, or other organics recycling facilities. No specific provision is made for Medicaid reimbursement of any associated costs.

The Senate rejects the proposal in its entirety, but the Assembly modifies the proposal to exclude “hospitals” from the covered entities while retaining “health care facilities” in the definition of included providers.

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

Managed Care

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

MLTC Provisions

- ***MLTC Eligibility:*** Authorizes DOH to raise the clinical eligibility requirements for enrollment in MLTC plans to permit only those who require a nursing home level of care to enroll. Beneficiaries enrolled in a plan as of Oct. 1, 2017 would be able to maintain their enrollment. Also specifies in statute that to be eligible for MLTC enrollment an individual must need 120 continual days of long term care from the date of enrollment. This proposal would take effect on Oct. 1, 2017. A similar provision was proposed in last year’s budget but rejected by the Legislature. The State’s spending plan assumes a $5.5 million savings in SFY 2017-18 from this proposal, increasing to $15.2 million in SFY 2018-19.

  Both the Senate and Assembly one-house budget bills reject the requirement and restore the associated funding.

- ***MLTC Transportation Carve-Out:*** Eliminates transportation from the MLTC benefit package and delegates responsibility for managing Medicaid transportation for MLTC members to the State’s transportation management contractor(s) on a fee-for-service basis. This proposal would take effect on Oct. 1, 2017. While this requirement exists for mainstream Medicaid managed care, it was proposed and rejected in both of the previous two State budget cycles for MLTC. The State has attributed a $7.95 million all funds savings to this action in SFY 2017-18, growing to $15.9 million in SFY 2018-19.

  Both the Senate and Assembly one-house budget bills would reject this proposal thereby keeping transportation in the MLTC benefit package and restoring the associated funding. LeadingAge NY has been advocating for this action.

- ***MLTC Marketing Ban:*** An administrative provision that prohibits MLTC plans from engaging in marketing activities. The goal seems to be to limit the rate of enrollment growth. The State has attributed a $6 million all funds savings to this action in SFY 2017-18, growing to $24 million in SFY 2018-19.

  No specific language is included in either legislative one-house budget bill that would block this administrative proposal.

- ***Implementation of a "Plan Fining Mechanism" by DLTC:*** We are seeking additional information on the fines and mechanisms being contemplated by this administrative provision that would become effective on Dec. 1, 2017. The State has attributed a $2 million all funds savings to this action in SFY 2017-18, and $2.5 million in SFY 2018-19.

  No specific language is included in either legislative one-house budget bill that would block this administrative proposal.

- ***Reduction of MLTC Quality Bonus:*** This administrative provision reduces MLTC quality payments by $30 million from $150 to $120 million. Because the quality payments do not represent additional funds but are funded through a premium withhold, the provision likely represents a $30 million funding cut (i.e., the State will withhold $150 million in premiums but only pay out $120 million in quality payments). The State has attributed an annual $30 million all funds savings to this action in SFY 2017-18 and SFY 2018-19.

  No specific language is included in either legislative one-house budget bill that would entirely block this administrative proposal, although the Senate proposal described below would limit the Department's authority to implement administrative rate reductions, including reductions in quality pool distributions.

- ***Managed Care Rate Adequacy:*** The Senate bill authorizes DOH to apply positive rate adjustments to MLTC plans that experience increased costs due to geographic reasons, as needed to ensure capacity and quality. It also requires that DOH consider positive rate adjustments to address critical plan costs and ensure quality care. The Assembly would require that rates paid to managed care plans reflect the costs associated with wage and labor laws and regulations and be actuarially sound.

  LeadingAge NY has been advocating for MLTC rate adequacy.

- ***Limitation to Administrative Rate Reductions:*** The Senate bill prohibits DOH from administratively reducing rates for a managed care program type if any plan of that program type reports medical and administrative expenses that exceed the premium or if any plan of that type reports a Medical Loss Ratio exceeding ninety percent. The Assembly requires DOH to provide written notice to the legislature 30 days before implementing or adjusting a managed care rate, component of the rate or add-on. The notice must include the policy rationale as well as plan and provider specific impacts related to the action. It also requires DOH to report managed care rate detail to the legislature on a quarterly basis.

LeadingAge NY has been advocating for limits to administrative rate reductions.

- ***High Cost Population Rate Cells:*** The Senate requires DOH to establish managed care high-need rate cells for: nursing home residents; members in the community who require 12 or more hours of care or support or who receive daily, 24-hour live-in services; individuals eligible to enroll in specialized behavioral health plans (HARPs) who remain in mainstream Medicaid plans; other individuals identified by DOH as requiring high care needs. It specifies that rate cell submission to CMS must be made by June 30, 2017 and extends the nursing home benchmark rate to March 31, 2019 if CMS approval for a nursing home rate cell is not received by Dec. 31, 2107. The Assembly includes similar rate cell requirements, except it does not specify a rate cell submission date and does not include a discrete HARP rate cell. The Assembly extends the nursing home benchmark rate through Dec. 31, 2022 without linking it to CMS approval of a rate cell.

  LeadingAge NY has been advocating for a nursing home rate cell.

- ***Assessment Instrument:*** The Senate requires DOH to utilize statistically validated assessment tools which consider items such as primary and secondary diagnoses of cognitive impairment and mental illness. The Assembly instructs DOH, in consultation with stakeholders, to evaluate existing assessment tools and develop additional tools to assist in determining the amount, nature and manner of service and care needs.

  LeadingAge NY has been advocating for a risk model that appropriately reflects MLTC members' care needs.

- ***Provider Rates:*** Both the Senate and Assembly require MLTC plans to distribute home care workforce recruitment and retention funds in their entirety using a reasonable methodology, as supplements to reimbursement rates; to notify each agency of the amount of funds distributed; and to report the distribution methodology to DOH. Both Houses also require DOH to report the distribution of funds, by plan and provider, to the legislature. The Assembly further requires that managed care contracts with long term care providers ensure that rates are sufficient to support the recruitment, hiring, training and retention of a qualified workforce and comply with wage and labor laws and regulations. It requires plans and providers to report how they comply with this provision as part of the cost report process.

  LeadingAge NY has been advocating that any payment provisions be accompanied by requirements that rates paid by the state to plans be adequate.

- ***NHTD/TBI Transition to Managed Care:*** The Senate provides that services under the traumatic brain injury and nursing home transition and diversion waivers, as they existed in January 2015, shall not be provided through managed care programs.

  LeadingAge NY has been advocating for maintaining the waivers outside of managed care.

- ***CDPAS Oversight:*** Both the Senate and Assembly requires certification and regulation of fiscal intermediaries operating under the Consumer Directed Personal Assistant Program. The Assembly incorporates CDPAS workers into wage parity. *See HCBS section for more detail.*

Nursing Homes

- ***Elimination of Bed Hold:*** Eliminates bed hold payments to all nursing home providers, including pediatric units and homes, by deleting the section of Public Health law that authorizes such payments. While materials accompanying the budget state that the requirement that a nursing home hold a bed for a resident who temporarily leaves the nursing home will be preserved, we are seeking more information on whether DOH is contemplating a change to the current requirements in the nursing home code [10 NYCRR 415.3(h)(3)] that a home make the first available bed available to a returning resident consistent with its bed hold policy. Additionally, the budget language requires that an across-the-board reduction for all nursing homes – other than pediatric facilities – be made to achieve an annual savings of $18 million. This would replace the existing bed hold-related, $18 million across-the-board cut that is currently reflected in nursing home Medicaid rates. Both provisions would become effective on April 1, 2017. The State has attributed an annual $22 million all funds savings to these actions in SFY 2017-18 and SFY 2018-19.

  Both the Senate and Assembly one-house budget bills would undo the proposed bed hold elimination and restore the associated funding, which is $22 million all-funds. LeadingAge NY has been advocating for this action.

- ***Trend Factor Elimination:*** Extends for three years, through March 31, 2020, the provision that no trend factor adjustment greater than 0 percent be made to Medicaid rates for Medicaid providers, including nursing homes (except for pediatric nursing homes).

  The Senate and Assembly one-house budget bills would extend the trend factor elimination by only one year through March 31, 2018.

- ***IGT Extender:*** Extends for three years, through March 2020, the State's authority to make Intergovernmental Transfer (IGT) payments of up to $500 million per year to county nursing homes.

  The Senate and Assembly one-house budget bills include the Executive Budget proposal.

- ***6 Percent Cash Receipts Assessment Extender***: Extends for three years, through March 2020, the authority for the six percent reimbursable cash receipts assessment. The additional 0.8 percent non-reimbursable assessment is authorized by a different section of law that continues to be in effect.

  The Senate one-house budget bill would extend the assessment by two years through March 31, 2019, while the Assembly bill includes the Executive Budget proposal.

- ***Prior Cost Containment Extenders***: Extends for three years, through March 2020, prior year trend factor cuts and Medicare maximization provisions that require periodic extensions.

  The Senate one-house budget bill would extend these measures by only one year through March 31, 2018, while the Assembly bill includes the Executive Budget proposal.

- ***Benchmark Rate Requirement:*** Under current policy, Medicaid managed care plans are required to pay nursing homes at least the Medicaid benchmark (fee-for-service) rate until Feb. 2018 (NYC); April 2018 (LI and Westchester) and July 2018 (rest of State). The Senate extends the NH benchmark requirement through March 31, 2019 but only if CMS does not approve of a separate nursing home rate cell for MLTC rates. The Assembly continues the requirement that managed care plans pay the nursing home benchmark rate through Dec. 31, 2022.

- ***One-Percent Rate Add-on:*** The Senate budget bill adds a requirement that DOH must pay nursing homes the state share of the one percent add-on to the rates that is pending with CMS. The add-on, when fully implemented, is intended to compensate facilities for one-half of the value of the 0.8 percent assessment that was imposed as an alternative to the now repealed 2 percent across-the-board cut. This provision does not appear in the Assembly bill.

- ***Out-of-State Placements:*** The Senate bill adds a requirement for DOH to study and report to the Legislature by June 1, 2017 on the need for and feasibility of repatriation of complex-needs patients placed in out-of-state facilities and funded through Medicaid. This provision does not appear in the Assembly bill.

Home Care and Hospice Services

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

The Senate and Assembly one-house bills modify the Governor's proposed language and include new language on the Consumer Directed Personal Assistance Services (CDPAS) program and assessment tools. They also expand last year's Hospital-Home Care-Physician Collaboration Program to include community paramedicine. The Senate carves out the NHTD and TBI waivers from managed care indefinitely.

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

- ***Hospice-Related Services:*** The proposed budget includes a proposal suggesting that Medicaid would discontinue payments for hospice-related services otherwise covered by Medicare. We are awaiting further clarification on this proposal, which would take effect 6/1/17 and result in $4.4 million in State savings on an annual basis.

  The Senate modifies the language to require Medicare to be the primary payer for hospice services, by adding that coverage does not result in a rate or reimbursement reduction to the health care plan or provider. This is omitted from the Assembly bill.

- ***Extending Elimination of Trend Factors:*** Continues the elimination of mandatory trend factors in provider reimbursement for three years through March 31, 2020 for CHHAs, LTHHCPs, AIDS home care programs, and personal care provider services.

  The Senate and Assembly one-house budget bills would extend the trend factor elimination by only one year through March 31, 2018.

- ***CHHA and LTHHCP Administrative and General Caps***: Continues, through March 31, 2020, the existing caps on CHHA and LTHHCP reimbursable administrative and general costs, which limits reimbursement to the statewide averages.

  The Assembly accepts this proposal while the Senate bill would extend it through March 31, 2019.

- ***CHHA Episodic Payments****:* Last year's final budget extended the authority for CHHA episodic rates of payment for sixty-day episodes of care until March 31, 2019. The episodic payment methodology does not apply to services provided to children under eighteen years of age and other discrete groups.

  This provision, included in last year's budget remains unchanged.

- ***Consumer Directed Personal Assistance Program (CDPAP) - Fiscal Intermediary (FI):*** The Assembly and Senate add language that outlines what a Fiscal Intermediary (FI) is and is not responsible for, adds that no entity can provide FI services without a certification from the Commissioner. It does specify that an organization authorized under Article 44 of the PHL cannot become a FI. The FI applicant will be charged $1,000 for the application and if certified, the certification period is for five years.

- ***Consumer Directed Personal Assistance Program (CDPAP) – Wage Parity:*** The Assembly and Senate add language that would require personal assistants working under CDPAS to be included under the Wage Parity law.

- ***Assessments:***
  Both houses add language that a determination of the amount, nature and manner of providing long term care assistance that the assessment tool used, the Department of Health along with a representative of stakeholders providing long term care, shall evaluate existing assessment tools and develop additional assessment tools to be used *to assist* in determining the amount, nature and manner of services and care needs.

LeadingAge NY will be seeking additional clarification on the “assessment tools” and whether this is related to the ongoing issue with the UAS-NY and cognitive impairment or rate adequacy with certain patients who score differently because of behavior or mental health issues.

- ***Community Paramedicine:***
  The Senate includes language that would expand the last year’s Hospital-Home Care-Physician Collaboration Program. The language now includes emergency medical services (EMS) in the collaboration program. EMS would be allowed to provide services by paid or volunteer emergency medical technicians in circumstances beyond typical EMS, this may include working collaboratively with at-risk individuals to prevent emergencies in the community, avoidable ER visits, and avoidable hospital re-admissions.

- ***Traumatic Brain Injury (TBI) and the Nursing Home Transition and Diversion (NHTD) Medicaid waivers:***
  The Senate has added language that services provided to TBI or NHTD participants shall not be provided through a manage care plan and shall continue to be provided outside of managed care indefinitely.

Home Care Appropriations

The Executive Budget reflects the following funding amounts:

- ***Personal Care Worker Recruitment and Retention (R&R):*** The proposed budget level-funds $272 million for New York City and $22.4 million for other areas of the State for Medicaid adjustments supporting R&R of workers with direct patient care responsibility.

  The Assembly and Senate allocate the same amount.

- ***Health Care Worker R&R:*** The Executive budget is again proposing level-funding at $100 million to support Medicaid rate increases for CHHAs, LTHHCPs, AIDS home care programs, hospice programs and MLTC plans for R&R of health care workers.

  The Assembly and Senate allocate the same amount. The Senate keeps the language the same through March 2020. See Managed Care Section on new language to support R & R.

- ***CHHA Bad Debt and Charity Care:*** The proposed budget includes level funding of up to $1.7 million for eligible publicly-sponsored CHHAs that demonstrate losses from a disproportionate share of bad debt and charity care.

  The Assembly extends CHHA Bad Debt and Charity Care until June 2020. The Senate extends CHHA Bad Debt and Charity Care until June 2019.

- ***Traumatic Brain Injury (TBI) program**:* Services and expenses related to TBI would be level-funded at $12.4 million.

The Assembly and Senate allocate the same amount.

- ***NHTD Waiver Housing Subsidy:*** The NHTD housing subsidy, which is normally fully funded at $2.4 million, is included in a group of public health programs that would be consolidated and reduced by 20 percent. See "Consolidation of Public Health Programs" in Section II of this memo for more information.

  The Senate restores the discrete funding of the housing subsidy at $2.3 million.

- ***Home Care Registry****:* The Executive Budget is proposing to level fund the home care registry at $1.8 million.

  The Assembly and Senate allocate the same amount.

- ***Criminal History Record Checks (CHRC):*** The proposed budget level-funds CHRCs for non-licensed long-term care employees including employees of CHHAs, LTHHCPs, AIDS home care providers, licensed home care service agencies (LHCSAs) and nursing homes at $3 million.

  The Assembly and Senate allocate the same amount.

Other Aging Services Initiatives and Funding

The FY 2017-18 Executive Budget recommends $235.5 million for aging services, representing an overall cut of approximately five percent from last year's funding level of $247 million. **The Assembly increases the overall budget to $247 million and the Senate increases it to $257 million. In the one-house budget bills there was new language added for several new programs and increased funding for Community Services for the Elderly (CSE) and the Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs programs.** The following proposals pertain to aging services administered by the New York State Office of Aging (NYSOFA) and DOH, most of which are designed to help elders remain in their communities:

- ***Elder Abuse:*** The Senate added language on elder abuse reporting and developing a Statewide Central Register of Elder Abuse and Maltreatment Reports. The Commissioner shall establish a program for the development of a multidisciplinary investigative team or teams for investigating reports of suspected elder abuse or mistreatment. The Senate has appropriated $10 million for services and expenses related to a statewide registry.

- ***Increase Community Services for the Elderly:*** The proposed budget allocates $30.1 million in total to the Community Services for the Elderly (CSE) Program for SFY 2017-18, continuing the $1 million increase provided last year. In addition, the proposed budget provides $1.1 million in discrete transportation funding to CSE to provide localities the flexibility to direct resources where they are needed most. It also removes the exemption on the county share of the $3.5 million in funding that has been added to CSE over the past two fiscal years.

The Assembly provides $2 million in increased support for CSE and waives the associated county match requirement for this additional funding. It further waives the county match and maintenance of effort requirements for at least $5.5 million of the amount appropriated by the Executive Budget for CSE program funding, except that the waiver cannot apply to base year expenditures. The Assembly also rejects the consolidation of $1.12 million in transportation funding into the CSE program and restores the discrete appropriation for transportation. The Senate provides $5 million in increased support for CSE. While it does not explicitly waive the county match, it specifies that reimbursement to counties from these funds must exceed a 75 percent state share. It also directs the distribution of $3.5 million of the amount appropriated in the Executive Budget to reimburse counties for expenditures in excess of the 75 percent state share. The Senate further rejects the consolidation of the transportation funding and restores the discrete $1.12 million appropriation for transportation.

- ***Continue Alzheimer's Caregiver Supports***: The proposed budget continues the $25 million investment in care and support services for individuals living with Alzheimer's disease and other dementias, and their caregivers. This initiative provides support through investments in regional contracts for caregiver support organizations, funding for Centers of Excellence that specialize in treating this disease, and funding for the Alzheimer's Community Assistance Program, which is implemented through local chapters of the Coalition of Alzheimer's Associations.

  The Assembly and Senate continue the $25 million allocation ($50 million total, $25 million in 2016-17 and $25 million in 2017-18) for caregiver support services for persons with Alzheimer's and other dementias, including additional respite and expansion of the Department of Health caregiver support services programs.

- ***Discontinue Underutilized Cost of Living Adjustment (COLA):*** Funding was enacted in 2015 to provide a wage increase targeted to direct care workers and direct service providers. DOH and NYSOFA providers have not adopted this COLA as anticipated, citing the complexity of identifying the targeted workers.

  The Assembly restores funding for the human services COLA across multiple agencies; this includes restoring $1.6 million for aging programs. The Senate continues not applying a COLA from April 1, 2017 through March 31, 2018.

- ***Change with NY Connects:*** Shift support for NY Connects from the State's General Fund to the Federal Balancing Incentive Program grant. This will account for a State savings of $3.4 million annually. It is important to note this will not have any impact to existing services.

The Assembly provides discrete funding for the full value of the NY Connects program within the Medicaid program in the Department of Health to make sure that the funding will continue when federal funding expires. The Senate includes language on improvements to the long term care system for the point of entry initiates and allocates $3.35 million.

- ***Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs:*** Level-funding of $2,027,500 would be provided to each of the two models.

  The Assembly restores $700,000 and provides $1.3 million in new funding for NORC and N/NORCs. The Senate maintains the funding at $2,027,500 to each of the two models. They have also included $ 1 million additional state aid grants to NORCs and/or N/NORCs. The funding priority will be given to the renewal of existing contracts with NYSOFA.

- ***Wellness in Nutrition (WIN) program:*** Formerly known as Supplemental Nutrition Assistance Program (SNAP), WIN would be level-funded at $27.5 million. WIN funding is used to provide home-delivered meals, some congregate meals and other nutrition-related services to eligible frail elderly, including residents of senior housing facilities;

  The Assembly and Senate maintain the same level of funding.

- ***Expanded In-home Services for the Elderly Program (EISEP):*** EISEP is a community based long term care program that provides case management, non-medical in-home, non-institutional respite, and ancillary services needed by New Yorkers aged 60 and over. EISEP is proposed for level-funding of $50.1 million.

  The Assembly and Senate maintain the same level of funding.

- ***Congregate Services Initiative:*** The Executive Budget proposes to level-fund CSI at $403,000. This program provides information and assistance, referral, transportation, nutrition, socialization, education, counseling and caregiver support to persons in senior centers and other congregate settings.

  The Assembly and Senate maintain the same level of funding.

- ***Livable NY Initiative:*** The proposed budget level-funds this program at $122,500. The program is aimed at creating neighborhoods that consider the evolving needs and preferences of all their residents.

  The Assembly and Senate maintain the same level of funding.

- ***Title XX funding:*** The proposed budget maintains the same Title XX funding as last year, $66 million. A portion of this funding has gone to support senior centers and senior services in New York City, as well as Nassau, Steuben and Erie counties.

- ***Technical assistance/training for Area Agencies on Aging:*** The proposed budget includes the same amount as last year at $250,000 for the Association on Aging in New York State. This is to provide training, education and technical assistance to area agencies on aging and aging network contractors to help them adapt to changes in the health and long term care policy environment.

  The Assembly and Senate maintain the same level of funding.

- ***Transportation Pilot:*** The Senate has allocated $500,000 for services and expenses for a transportation pilot for individuals over 65 years old who can no longer drive safely, or those who are visually impaired of any age group.

  The Senate has allocated $500,000 for services and expenses for a transportation pilot for individuals over 65 years old who can no longer drive safely, or those who are visually impaired of any age group.

Adult Day Services

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

- ***Transportation for Method 1 Adult Day Health Care (ADHC) Programs:*** Administratively authorize DOH to contract with Medicaid transportation brokers (i.e., Medical Answering Services) to manage all transportation of ADHC registrants. This affects all ADHC programs that own their own vehicles or contract with vendors to transport registrants to and from programs (i.e., Method 1). The same proposal was successfully defeated in last year's budget.

  The Assembly and Senate rejected this administrative proposal and added clarifying language to specifically protect adult day health care programs that choose to manage transportation (Method 1).

- ***Social Adult Day Care (SADC) Funding:*** Level-fund SADC support at $1,072,000, with preferences given to existing grantees.

  The Assembly and Senate approved current funding level at $1,072,000.

Adult Care Facility and Assisted Living

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

ACFs

- ***Quality Funding:*** The Enhancing the Quality of Adult Living (EQUAL) program is funded at $6.5 million in the Executive budget proposal, the same amount as last year. As is the case with many other appropriations, the funding can be reduced if revenue and federal support is less than anticipated. EQUAL funding is available to adult homes and enriched housing programs that serve recipients of Supplemental Security Income (SSI) or Safety Net Assistance benefits, including ALPs and Assisted Living Residences (ALRs). It has been distributed based on a formula developed by DOH, based on the number of people in receipt of the aforementioned benefits, as well as the size of the facility.

  Both the Senate and the Assembly accept this proposal.

- ***SSI:*** The Executive budget proposal does *not* include an increase in SSI, aside from language authorizing a pass-through of the federal cost of living adjustment. The federal COLA, if any, is applied on Jan. 1 of each year.

  The Senate has included an increase to the state supplement to the Supplemental Security Income (SSI) rate for adult care facilities of $20 per day. The increase would be phased in over five years, beginning April 1, 2017. The Assembly budget summary indicates a phase-in support a $4 per day increase, we are still researching the details of this.

- ***Enriched Housing Subsidy:*** Historically, this program has been appropriated at $475,000, and paid $115 per month per SSI recipient to operators of not-for-profit certified enriched housing programs. In the Executive Budget, it is included in a group of public health programs that would be consolidated and reduced by 20 percent.

  Both the Senate and the Assembly reinstate the Enriched Housing Subsidy as a discrete program, as opposed to being pooled into a group of aggregate programs as proposed. The program is appropriated at last year's level of $475,000 in both proposals.

- ***Criminal History Record Check Funding:*** The proposal includes $1.3 million for services and expenses related to CHRCs for ACFs. This is the same funding level as last year.

  The Senate and the Assembly accept this proposal.

- ***Health Care Regulation Modernization Team:*** This is addressed elsewhere in this document.

Assisted Living Programs

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

  The Senate and Assembly eliminated the trend factor until March 31, 2018.

- ***ALP Expansion:*** The Senate includes language to create a process by which the Assisted Living Program (ALP) can be expanded through an application process in which the applicant can demonstrate need. The Department would consider the existing ALP resources in a community when examining need. Existing ALPs would have the opportunity to apply to expand their program using this process as well. We do not see similar language in the Assembly proposal; nor was this included in the Executive budget proposal.

Transitional Adult Homes and Related Issues

The below items may be of interest to ACF and assisted living providers that serve the mental health population. These programs have been funded at these levels for several years:

- ***Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:*** $38 million is in the Executive proposal 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.

  The Senate and the Assembly accept this proposal.

- ***Mental Health Transitions:*** Up to $7 million is appropriated in the Executive proposal to the Research Foundation for Mental Hygiene, in contract with the Office of Mental Health, for two demonstration programs. One program would be for a behavioral health care management program for people with serious mental illness. The other program would be for a mental health and health care coordination demonstration program for persons with mental illness who are discharged from impacted (transitional) adult homes in NYC. In addition, up to $15 million would be made available for grants to counties and NYC to provide medication and other services necessary to prescribe and administer medication.

  The Senate and the Assembly accept this proposal.

Other Issues of Interest to ACF/AL Providers

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

- ***Adult Home Advocacy Program:*** The Executive proposal allocates $170,000 to the Justice Center for this program, which, through contracted agencies, provides legal and non-legal advocacy services and training in residents' rights and self-advocacy to mentally disabled individuals residing in adult homes in NYC and Long Island.

  The Senate and the Assembly accept this proposal.

- ***Coalition for the Institutionalized Agenda and Disabled (CIAD):*** This organization, which advocates for residents of adult homes in NYC, is funded at $75,000 in the Executive proposal.

  The Senate and the Assembly accept this proposal.

- ***Adult Home Resident Council:*** The Adult Home Resident Council Support Project, historically operated by the Family Services League on Long Island, is funded at $60,000 in the Executive proposal.

  The Senate and the Assembly accept this proposal.

- ***Adult Home Quality Enhancement Account:*** The proposal includes $500,000 for State operations related to services and expenses to promote programs to improve the quality of care for residents in adult homes in the Executive proposal.

  We have not found this appropriation in the Senate or Assembly proposals.

- ***Assisted Living Residence Quality Oversight Account:*** The Executive budget proposal includes $2.1 million in funding for State operations for services and expenses related to the oversight of and licensing activities for assisted living facilities.

  The Senate and the Assembly accept the Governor's proposal.

Senior Housing

The Senate's version of the 2017-18 state budget includes language that would create the Affordable Senior Housing and Services Program, which would provide a dedicated source of capital for the development of affordable senior housing through NYS Homes and Community Renewal (HCR). It would also create a source of funding for "healthy aging services" that would provide developers and operators a secure source of funding for resident service coordinators.

This initiative was included in the Senate's budget after extensive advocacy by LeadingAge NY. Senior housing and supportive services has been a priority advocacy objective for LeadingAge NY for several years. Service coordinators have proven effective in reducing health care spending by helping residents to avoid premature entry into more costly nursing homes and inappropriate use of emergency departments for routine health care.

The language included in the budget matches a separate bill (S.5141) that was introduced last week by Senator Betty Little (R-Glens Falls), chair of the Senate Committee on Housing, Construction, and Community Development. An Assembly companion is expected to be introduced shortly. The new program language was proposed and drafted by LeadingAge NY and a coalition of senior housing organizations and advocates. The provision appears in section EE of the Senate's ELFA (Education, Labor and Family Assistance) Article VII language bill.

IV. PHARMACY

- ***Comprehensive Medication Management:*** The Governor proposes to expand the existing Collaborative Drug Therapy Management program currently authorized in Article 28 facilities.

  The Senate and Assembly both reject this proposal.

- ***Prior Authorization of Refills of Controlled Substances:*** The Governor proposes to authorize DOH to require prior authorization of any refill of a controlled substance when more than a 7-day supply of the previously dispensed amount should remain, if the drugs had been used as directed.

  The Senate and Assembly both accept this proposal.

- ***Opioid Prescribing:*** The Governor proposes to make it an "unacceptable practice" in the Medicaid program to prescribe opioids in violation of applicable laws or contrary to recommendations issued by the Drug Utilization Review Board.

  The Senate modifies by adding due process language. The Assembly modifies by requiring that any sanctions be imposed pursuant to regulations.

- ***High Cost and Specialty Drug Reimbursement:*** The Governor proposes legislation to increase transparency of drug prices and rein in the costs of high priced drugs.

  The Senate modifies by limiting growth of drug expenditures that do not result in Medicaid savings. The Assembly modifies by requiring the Attorney General to certify any benchmark price established by the Drug Utilization Review Board and exempting pharmacies from any surcharge.

- ***Non-Medicaid Pharmacy Benefit Manager Regulations:*** The Governor proposes new registration, licensure, and disclosure requirements for pharmacy benefit managers (PBMs) that provide PBM services to health insurers, which may apply to PBM services delivered to Medicare Advantage Plans, PACE programs and duals plans.

  The Senate modifies this proposal by requiring pharmacy benefit managers to disclose the necessary information for health plans to determine a pharmacy benefit manager's compliance with contract terms. The Assembly modifies by adding language to establish the fiduciary duty of the PBM to the health plan, and provide that insurers cannot require an insured to use a mail order pharmacy if the local retail pharmacy agrees to the same reimbursement amount.

- ***Reimbursement of Pharmacies under Fee-for-Service Medicaid:*** The Governor proposes various changes to fee-for-service reimbursement rates for pharmacies for generic, brand name, and non-prescription drugs, and increases the dispensing fee to $10 for generic and brand name drugs.

  The Senate modifies by increasing the dispensing fee to twelve dollars. The Assembly modifies to require drugs to be reimbursed at wholesale acquisition cost when there is no NADAC available.

- ***Copayments:*** The Governor proposes a $1.00 beneficiary copayment on nonprescription drugs and modifies the brand name copayments. Copayments do not apply to MLTC plan members.

  The Senate accepts brand name prescription proposal and rejects non-prescription drug proposal. The Assembly accepts brand name prescription proposal and rejects non-prescription copayment proposal.

- ***Prior Authorization and Prescriber Prevails:*** The Governor proposes once again to:
  - eliminate the ability of a prescribing professional to override the preferred drug program under fee-for-service Medicaid and obtain coverage of a prescription drug that is not on the preferred drug list.
  - repeal the requirement that Medicaid managed care plans cover certain non-formulary drugs, upon prescriber decision that the drug is medically necessary and warranted.

  The Senate and Assembly both reject this proposal.

- ***Generic Drug Rebates:*** The Governor proposes to reduce the price increase that triggers an additional debate on generic drugs.

  The Senate rejects "without prejudice." The Assembly accepts this proposal.

V. FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

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

The Assembly rejects the Governor's proposal. The Senate rejects the Governor's proposal, but adds similar provisions to authorize banking institutions to deny a transaction to disburse moneys from a vulnerable adult's account. The Senate also adds $10 million to establish a statewide central registry of elder abuse and maltreatment and advances legislation to authorize multidisciplinary investigative teams to investigate reports of suspected elder abuse and maltreatment.

VI. MISCELLANEOUS

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

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

The Senate proposes language to increase the Long Term Care Insurance Tax Credit from 20 percent of premiums paid to 40 percent and expand the credit to include premiums paid toward a life insurance policy that has an accelerated death benefit rider. In its budget resolution, the Senate expressed support for "efforts to review and determine rate adequacy for providers throughout the state, including for unique providers such as hospice care residences."

VII. GOOD GOVERNMENT

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

- Closes the "LLC loophole" by imposing the same campaign contribution limits on limited liability companies as business corporations ($5,000 annually).
- Requires members of the Legislature to seek an advisory opinion from the Legislative Ethics Commission regarding outside employment in order to avoid potential conflicts of interest. Expands membership of Legislative Ethics Commission to include representative of Office of Court Administration for purposes of reviewing applications for outside employment.
- Expands campaign finance disclosure requirements and imposes new campaign contribution limits.
- Prohibits campaign contributions by individuals or entities bidding on State contracts.
- Proposes a voluntary program of public funding of campaigns in exchange for more restrictive campaign contribution limits.
- Requires certain municipal officers to file financial disclosure forms.
- Proposes reform of the Freedom of Information Law (FOIL), including expanding FOIL requirements to the Legislature.
- Expands the role of State Inspector General to include oversight of SUNY and CUNY affiliated entities and investigation of State contractors.
- Creates new positions, including Chief Procurement Officer, Education Department Inspector General, and Inspector General for the Port Authority.
- Provides for opt-out voter registration for individuals conducting certain Department of Motor Vehicles transactions, such as applying for a driver's license.
- Authorizes early voting in primary, special and general elections.
- Proposes an amendment to the State Constitution, subject to voter approval, to limit outside income for legislators to 15 percent of their base salary.
- Proposes an amendment to the New York State Constitution, subject to voter approval, to allow New Yorkers to register and vote on the same day.
- Proposes to amend the New York State Constitution, subject to voter approval, to create four-year legislative terms for members of the Senate and the Assembly and impose eight-year term limits for legislative members and statewide elected officials.

The Assembly did not propose amendments to the Governor's Good Government and Ethics Reform bill. It proposes legislation to promote greater transparency and accountability in economic development programs. The Senate did not propose amendments either; however, it indicated in its budget resolution that it would consider modifications to the bill and expressed support for meaningful procurement reform and

advanced legislation to promote greater accountability in economic development programs. The Senate opposes public funding of campaigns and extending the Freedom of Information Law to the legislative branch.

VIII. NEXT STEPS

With just two weeks left until the April 1st deadline, LeadingAge NY needs your help to ensure that seniors and aging services providers' concerns are adequately addressed in the final enacted budget. Please call your legislators and connect with them on social media to let them know how this year's proposals will impact your organization and those you serve.

If you have any questions about the 2017-18 Executive Budget or LeadingAge NY's advocacy initiatives, please contact the Advocacy and Public Policy team at 518-867-8383.