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MEMORANDUM

TO: All Members

FROM: Advocacy and Public Policy Department

DATE: January 23, 2019

SUBJECT: Governor's Proposed 2019-20 Executive Budget

ROUTE TO: Administrator, Program Directors, Department Heads

ABSTRACT: Detailed summary of 2019-20 Executive Budget provisions.

I. INTRODUCTION

On Tuesday, Jan. 15, 2019, Governor Cuomo released his State Fiscal Year 2020 (FY20) budget plan, titled [2019 Justice Agenda: The Time is Now](#). The proposed \$175.1 billion (\$175.1B) budget, which covers the period April 1, 2019 – March 31, 2020, closes an estimated \$3.1B deficit while holding the State spending increase to under 2 percent, increasing State Medicaid spending by \$568 million (\$568M) and school aid by \$1B. The actual budget bills and legislative memoranda are posted on the [Division of the Budget's \(DOB\) FY20 Executive Budget webpage](#).

The budget includes a series of proposals the Governor laid out in his [2019 State of the State presentation](#), including the following:

- **Infrastructure:** Add a five-year, \$150B program to invest in transportation, educational, health care, environmental and community facilities, and implement congestion pricing in New York City to provide transit funding to the Metropolitan Transportation Authority (further information below).
- **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 \$300M in annual State tax revenues (further information below).

- ***Tobacco Control Policy:*** Raise the minimum age to purchase cigarettes from 18 to 21, prohibit the sale of tobacco products in all pharmacies, and 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.
- ***Dream Act:*** Provide undocumented higher education students with access to the Excelsior Scholarship, the Tuition Assistance Program and other scholarship programs.

Last week, the Senate and Assembly passed a package of election reform measures proposed by the Governor intended to make voting in New York more accessible. These provisions and others are covered under the “GOOD GOVERNMENT AND ETHICS REFORM” section below.

Under the Executive Budget, State Medicaid spending on health care under the Global Cap is expected to total \$19.4B in FY20. Total State Medicaid spending, including spending outside of the Global Cap, is expected to increase by \$1.3B to \$21.7B in FY20.

The following is a summary of the health, Medicaid and housing proposals advanced by the Governor. Part II of the memo covers proposals affecting multiple service lines; Part III covers proposals relating to workforce and employment; Part IV describes service line-specific proposals; Part V covers pharmacy-related issues; Part VI covers legalization and regulation of marijuana; and Part VII covers good government and ethics reforms. As you will see, there are several issues of importance to the LeadingAge NY membership that will require advocacy efforts as we head into state budget deliberations. The memo concludes with more information on our advocacy participation needs from our members.

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. Budget proposals affecting specific service lines are summarized in Part IV below.

Commission on Universal Access to Health Care

Amid increased legislative interest in universal health care, the Executive Budget includes a proposal to establish a Commission on Universal Access to Health Care in New York State. The group is charged with developing options to achieve universal access to affordable health care and to issue a report to the Governor by Dec. 1, 2019. The Commission will be comprised of “independent” health policy and insurance experts appointed by the Department of Health (DOH) and the Department of Financial Services (DFS). The Commission must consult with the Legislature and stakeholders and hold at least one public meeting to allow the public to review and discuss options for achieving universal access.

Although it does not appear in the budget legislation, in his budget address the Governor indicated the Commission will consider the following matters:

- strengthening New York’s commercial insurance market;
- expanding programs to include populations that are currently ineligible for coverage;
- expanding programs to people who cannot afford coverage; and
- innovating reimbursement models to improve efficiency and generate savings to support expanded coverage.

Health Insurance Proposals

The Executive Budget includes several proposals aimed at expanding access to affordable, high-quality health insurance and expanding mandated health benefits. It proposes to codify in State law the major components of the federal Affordable Care Act (ACA), as well as to strengthen anti-discrimination, contraceptive access, and behavioral health parity provisions of the Insurance Law. Specifically, these proposals include:

- Codifying the following provisions of the ACA:
 - prohibition on preexisting condition exclusions;
 - requirements for essential health benefits, limits on cost-sharing, and actuarial value;
 - drug formulary requirements and formulary exception process;
 - coverage of designated preventive care and screening services without cost-sharing; and
 - guaranteed availability for large groups.
- Codifying the New York State of Health – the health plan marketplace established by Executive Order to implement the ACA and determine eligibility for health insurance affordability programs, certify Qualified Health Plans, standardize the benefits included in each tier of plans, and perform other functions to support to the purchase and sale of affordable health coverage.
- Incorporating into State statute prohibitions on discrimination in insurance on the basis of sex, sexual orientation, gender identity or expression, transgender status, marital status, and sexual stereotypes.
- Requiring certain Employee Welfare Funds to provide coverage through health insurers and for those insurers to comply with the Insurance Law.
- Requiring insurance coverage of medically-necessary fertility preservation and in vitro fertilization services.
- Requiring coverage of medically-necessary abortion and all FDA-approved contraceptive drugs, devices, and products, as well as voluntary sterilization procedures, without cost-sharing. This proposal is subject to an existing religious employer exemption for employers that have as their purpose the inculcation of religious values. Insurers are required to make available a rider offering these benefits to employees of these organizations.
- Imposing minimum coverage standards and restricting preauthorization and concurrent review of certain substance use disorder and mental health services.
- Prohibiting coverage limits on substance use disorder and mental health benefits that are more restrictive than the limits imposed on medical and surgical benefits.
- Requiring hospital emergency departments to implement treatment protocols for medication assisted treatment for opiate abuse and to check the prescription drug monitoring registry prior to dispensing controlled substances.

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, through March 31, 2021. The Global Cap places an overall limitation on State Medicaid expenditures made through DOH and limits growth in these expenditures to the ten-year rolling average increase in the Medical Consumer Price Index (CPI).

Based on the 3.0 percent average increase in the Medical CPI, projected Medicaid spending under the Global Cap would rise from \$18.9B in FY19 to \$19.4B in FY20, for an increase of \$568M. Global cap spending, together with State Medicaid spending adjustments for minimum wage increases, the local share growth takeover, and other programs, result in total projected State Medicaid spending of \$21.7B in FY20. Total combined Federal, State and local Medicaid spending is expected to be \$73.9B in FY20, an increase of \$1.3B from the FY19 level.

State Takeover of Medicaid Local Share Growth

For all social services districts except New York City, the Executive Budget continues the State’s commitment to bear the full cost of any growth in non-federal Medicaid expenditures. In other words, local social services districts, other than New York City, will continue to be exempt from sharing in the cost of any increases in Medicaid spending. According to DOB, local Medicaid savings from the State takeover will total \$3.7B in FY20.

Corrective Action Plan

The Executive Budget would continue authorization of a process whereby the State would manage significant reductions in federal aid during FY20 should they arise. Specifically, the legislation allows the Budget Director to prepare a plan for consideration by the Legislature if the federal government were to reduce Federal Financial Participation in Medicaid to the state by at least \$850M, or other forms of federal aid by a similar amount. Upon receipt of the plan, the Legislature would have 90 days to prepare its own corrective action plan, otherwise the plan submitted by the Budget Director would take effect automatically. There are early reports indicating that the Trump Administration may seek to alter the Medicaid funding formula, although there are likely to be questions about the need for Congressional authorization to do so.

Trend Factor

The budget language would extend through March 31, 2024 the provision that no trend factor adjustment greater than zero percent be made to Medicaid rates for nursing homes (except for pediatric nursing homes and units), adult day health care programs, home care agencies, clinics and other providers. The proposed budget also extends through March 31, 2024 prior years’ Medicaid trend factor cuts (applicable to 1996-97 and 2006) that require periodic reauthorization.

Medicare/Medicaid Part B Cost-Sharing

The budget would impose additional limitations on Medicaid reimbursement of Medicare Part B cost sharing amounts as follows:

- **Deductibles:** Limit the amount Medicaid would pay for Medicare Part B items and services to the amount that would be paid for non-dual eligible beneficiaries minus the amount paid by Medicare, thereby capping the reimbursement available for Part B deductibles.
- **Coinsurance:** Expand the existing cap on Medicaid payments of Medicare Part B co-insurance for dual-eligible beneficiaries to apply to coinsurance payments for ambulance services and psychologist services. The cap limits the amount that Medicaid pays for Part B coinsurance to the amount it would pay for non-dual eligible beneficiaries minus the amount paid by Medicare. Outpatient items and services provided by hospitals, nursing homes or clinics, and items and services provided by facilities licensed under the Mental Hygiene Law would continue to be exempt from the cap.

Capital Funding

The Governor proposes to allow DOH to award up to \$300M of the \$525M authorized for the Statewide Health Care Facility Transformation Program (SHCFTP) Phase III for applications previously submitted under Phase II.

SHCFTP Phase III funding totaling \$525M was authorized in the FY19 budget. Under the current authorization:

- At least \$60M is allocated to community-based health care providers, which includes home care agencies, hospices and other provider types.
- At least \$45M is allocated specifically to nursing homes.
- Up to \$20M of the funds not otherwise earmarked for community-based providers or nursing homes may be allocated to the new Assisted Living Program (ALP) solicitation process for new capacity.
- ALPs and adult care facilities are also added as eligible applicants for SHCFTP funding not specifically earmarked in the above three categories.

The SHCFTP Phase II request for applications (RFA) was released in January 2018 and applications were due March 2018; however, award announcements have not yet been made. The total funding available under Phase II was \$204M. According to the Executive Budget materials, this proposal would allow DOH to award up to \$300M of the Phase III funding to highly rated applications already submitted under Phase II that are not able to be accommodated by the overall Phase II funding. Under the proposal, the Phase II awards would be announced no later than May 1, 2019, and the set asides identified above for Phase III would not be affected. The proposal does not set any deadline for issuance of an RFA or award of funds under Phase III.

Minimum Wage Funding

The FY17 enacted budget authorized phased-in increases to the state's minimum wage. The FY20 Executive Budget includes \$1.1B of funding to support 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 is currently surveying providers to reconcile minimum wage funding with actual minimum wage expenses.

This is year 3 of the 6-year phase-in of the requirements enacted in April 2016 as part of the State Minimum Wage Act. Effective Dec. 31, 2019, the minimum wage will increase to \$15.00 for both large and small employers in New York City, \$13.00 for Westchester and Long Island, and \$11.80 for the rest of the state.

Vital Access Provider Funding

The proposed Budget would level-fund the Vital Access Provider (VAP) program at \$132M. 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. VAP funds provide operational support and are not to support capital costs. Nursing homes and home care agencies are among the provider types eligible to apply for VAP funding.

Medicaid Eligibility: Spousal Refusal

The Executive Budget again proposes to limit “spousal refusal” for Medicaid eligibility purposes, saving an estimated \$5.9M in State funds annually. Under current law, the income and assets of the spouse of a Medicaid applicant will not be counted if the spouse refuses to support the applicant *or* the spouse is “absent.” The budget proposal would allow an applicant to qualify for Medicaid without counting the income and assets of his/her community spouse, only if the community spouse refuses to make his/her income and/or assets available to the applicant *and*:

- the applicant assigns his/her right to receive support to the social services district and DOH, unless he/she is incapable of doing so or denying assistance would create an undue hardship; or
- the community spouse is absent from the home.

Health Information Technology Infrastructure

The Executive Budget proposes to continue the following investments in health information technology (HIT) that were initiated in the FY15 enacted budget:

- ***SHIN-NY Support:*** Appropriates \$30M to 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.
- ***Claims Database:*** Appropriates \$10M 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 \$10M in annual funding for HIT initiatives that target DOH’s technology needs.

III. WORKFORCE AND EMPLOYMENT

The Executive Budget includes provisions affecting the health care workforce and employers:

- **Employee day care:** Creates a new 25 percent refundable tax credit against employers' cost of providing employee day care services (capped at \$150,000 per employer)
- **Job Try-Outs:** Amends the Social Services Law to allow social services districts to place Public Assistance recipients in time-limited job try-outs;
- **Reduce Penalties for Unemployment Insurance Recipients:** Allows unemployment insurance claimants to be paid reduced benefit amounts when engaged in part-time employment while they seek full-time employment.
- **Prevailing Wage:** Governor Cuomo's budget message proposed that projects receiving State or local financial assistance would be subject to prevailing wage law, but that proposal was not included in the budget bills.
- **Wage Theft:** Increases criminal penalties for employers (any officers and agents of any corporation, partnership or LLC) who knowingly fail to pay wages owed.
- **Other Labor Law Violations:** Increase the criminal penalties for violations of other labor laws to align with other comparable criminal offenses.
- **Salary History:** Would prohibit employers from relying on, or inquiring about, an applicant's previous salary history as a factor in determining whether to offer employment or what salary to offer.
- **Harassment in the Workplace:** Would specify that "harassment" is not limited only to those actions that are "severe or pervasive;" place further restrictions on the use of non-disclosure agreements; and require the display of a sexual harassment prevention poster.
- **Accommodation for Breastfeeding:** Amends the Executive Law to clarify that lactation is a pregnancy-related condition entitled to reasonable accommodations in the workplace.
- **Time off to Vote:** Increases from 2 to 3 hours the amount of time off with pay that employees are allowed to take in order to vote at any election; repeals the requirement that such time off is dependent on employees' inability to vote during non-work hours.

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

Medicaid Managed Care

After significant cuts targeting managed care in last year's enacted state budget, this year's proposal has only a few new provisions that would impact MLTC. While provisions enacted last year will reduce MLTC funding for this year by more than \$200M (State and federal shares), new proposed savings total \$31.4M (State share) and target transportation and personal care services. Additionally, Office of the Medicaid Inspector General (OMIG) Medicaid integrity provisions are expected to yield \$4.1M in State savings, some potentially from MLTC, while third party audit recoveries from mainstream managed care will result in \$3.9M in State savings.

Other provisions in the proposed spending plan reflect a \$24.5M (State share) savings due to Community First Choice Option (CFCO) implementation delay, and a shift in spending to a federally-matched program to save \$29.6M in State funds and achieve \$18.7M in State savings by having the State, rather than local social services districts, process disenrollment from managed care when third party insurance exists. MLTC plans are also likely to be affected by a proposal that alters Consumer Directed Personal Assistance Services (CDPAS) Fiscal Intermediary reimbursement (see below).

Certain proposed managed care savings initiatives outlined below (e.g., management of personal care) would be carried out administratively, without legislation. In the absence of proposed

legislative language, limited information is currently available on these proposals. LeadingAge NY is seeking more detail on these initiatives.

Managed Care Program Integrity

A series of proposals clarifies the authority of OMIG in ensuring Medicaid managed care program integrity. These legislative changes would be effective April 1, 2019 and result in \$4.1M in State savings in FY20, increasing to \$8.7M in FY21. Provisions include:

- Permitting OMIG to review managed care and MLTC plans' compliance with program integrity obligations, authorizing recoveries of 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.

MLTC Provisions

- ***Manage MLTC Utilization of Personal Care:*** Seeks to amend current regulations with the goal of allowing MLTC plans to more effectively utilize personal care services. This proposal would be implemented administratively and be effective on April 1, 2019. It provides a State savings of \$25M this year and \$25M in FY21.
- ***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. Expressly excludes Programs of All-Inclusive Care for the Elderly (PACE) from the change to allow them to continue providing transportation directly. While this requirement exists for mainstream Medicaid managed care, it was proposed and rejected in previous budget cycles for MLTC. This proposal would take effect on Oct. 1, 2019 and provide savings of \$6.4M in FY20, doubling to \$12.9M in FY21.
- ***CFCO Implementation Delay:*** Recognizes a one-time State savings of \$24.5M related to the delay from January 2019 to July 2019 for implementing the second phase of CFCO services.
- ***MLTC Provision Extenders:*** Extends through April 1, 2024 provisions authorizing DOH to submit waivers to the Centers for Medicare and Medicaid Services (CMS) related to MLTC, outlining requirements for including additional populations or benefits into MLTC, setting out reporting requirements to the Legislature, and providing flexibility regarding timeframes for completing new member assessments.
- ***CDPAS Fiscal Intermediary Consolidation:*** See the "Home Care and Hospice Services" subsection below.

Mainstream Medicaid Managed Care Provisions

- **Third Party Recoveries:** Seeks to recover third party insurance payments identified in a State Comptroller's report. This administrative provision would be effective April 1, 2019 and result in all-funds savings of \$3.9M in the first year, increasing to \$13.9M in FY21.
- **State Processing of Disenrollments:** Shifts responsibility for processing disenrollment from Medicaid managed care from local social services districts to the State when third party health insurance is identified. This administrative proposal is effective April 1, 2019 and would result in State savings of \$18.7M in FY20 and \$18.7M in FY21.
- **Funding Shift from VAPAP to VBP QIP:** Shifts funding for Flushing, Queens hospitals from State-only VAPAP dollars to the federally matched VBP QIP program. This administrative proposal is effective April 1, 2019 and would result in State savings of \$29.6M in FY20 and \$29.6M in FY21.

Nursing Homes

The key provision in the Executive Budget aimed at nursing homes expects to achieve \$123M in annual State savings by altering the process used to adjust Medicaid rates for case-mix. It represents the single largest Medicaid savings in this year's proposed budget. In addition to this and to extenders of prior cost containment measures, the Executive Budget materials indicate that DOH will conduct a study on health facility staffing and introduce legislation to strengthen nursing home oversight.

- **Nursing Home Case-Mix:** An administrative proposal seeking to achieve significant savings by making changes to the process of adjusting nursing home Medicaid rates for resident acuity. The proposal appears to shift from predictable to unpredictable case-mix collection dates and potentially use of data mining or more than two collection dates in a year. In advancing the provision, DOH expresses concern about unwarrantedly inflated case-mix that may result from predictable picture dates. This proposal builds on a provision in last year's enacted state budget that reduced funding related to case-mix by \$15M. This administrative proposal would be effective April 1, 2019, and generate \$123M in annual State savings, suggesting a provider impact of \$246M.
- **Trend Factor Elimination:** See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above. Note that DOH has indicated that a 1.5 percent increase to nursing home operating rates would be added for the period from Nov. 1, 2018 through March 31, 2022. It would be funded through the Health Care Transformation Fund enacted in last year's state budget using managed care conversion dollars.
- **Cash Receipts Assessment Extender:** Extends for five years, through March 31, 2024, the 6 percent reimbursable cash receipts assessment (note that the total rate remains 6.8 percent with the 0.8 percent authorized indefinitely through separate statute).
- **Appeals Cap Extender:** Extends for five years, through March 31, 2024, the provision capping the annual amount of nursing home appeals DOH may process to \$80M.
- **Staffing Ratios:** Although not reflected in the budget language, the Budget 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 health care delivery. The study will analyze the range of potential fiscal impacts of various patient safety and staffing enhancement strategies.

- ***Quality Monitor for Poor Quality Nursing Homes:*** While not included in the budget language, in his State of the State address, the Governor indicated that he 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.
- ***Capital Funding and Vital Access Provider (VAP) Funding:*** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.

Home Care and Hospice Services

The Executive Budget continues implementation of Medicaid Redesign Team recommendations begun in FY12. Reforms are less pronounced than last year’s significant programmatic changes and corresponding rate cuts. This year there is an effort to consolidate Fiscal Intermediary providers and their costs, as well as other administrative measures to create efficiencies in personal care services. Readers may recall that several programmatic initiatives were proposed last year with savings attached but were not implemented or did not yield savings. This resulted in straightforward cuts in MLTC rates, rather than any prescribed changes in utilization. LeadingAge NY continues to advocate for limiting any cuts in managed care plan premiums to prevent plan and downstream provider losses.

Specific fiscal proposals affecting home care and hospice services include:

- ***Trend Factor Elimination:*** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.
- ***Certified Home Health Agency (CHHA) Episodic Payments:*** Extend episodic rates of payment for CHHA services that are based on sixty-day episodes of care through 2024. Episodic payments replaced traditional CHHA Medicaid fee-for-service reimbursement beginning April 1, 2012.
- ***Cap on Administrative and General Costs:*** The Executive Budget proposes to extend the cap on reimbursement for CHHA and Long Term Home Health Care Program administrative and general costs through 2024.
- ***Personal Care Worker Recruitment and Retention (R&R):*** The proposed budget would level-fund \$272M for New York City and \$22.4M for other areas of the state for Medicaid adjustments supporting R&R of workers with direct patient care responsibility.
- ***Health Care Worker R&R:*** Level funding of \$100M would be provided to support Medicaid rate increases for CHHAs, LTHHCPs, AIDS home care programs, hospice programs and MLTC plans for R&R of health care workers.
- ***CHHA Bad Debt and Charity Care:*** Level funding of up to \$1.7M would be authorized for eligible publicly-sponsored CHHAs that demonstrate losses from a disproportionate share of bad debt and charity care. The budget would also extend authorization for the CHHA bad debt and charity care program through 2024. Current eligibility for such funds is limited to voluntary non-profit, proprietary and publicly sponsored non-hospital based CHHAs
- ***Deferment of Cost of Living Adjustments (COLAs):*** The Executive Budget defers COLAs for all “human services providers” by one year to March 31, 2020. This includes NYSOFA, OCFS, OPWDD, OASAS and OMH programs. Projected savings are \$142M.

- **Traumatic Brain Injury (TBI) program:** Services and expenses related to TBI are funded at \$22.93M, twice the level of FY19. We are seeking clarity on the reasons for the increase.
- **Nursing Home Transition and Diversion (NHTD) Waiver Housing Subsidy:** The NHTD Waiver Housing Subsidy is funded at \$3.68M, twice the level of FY19. We are seeking clarity on the reasons for the increase.
- **Home Care Registry:** The registry would be level-funded at \$1.8M.
- **Criminal History Record Checks (CHRC):** The proposed budget level-funds CHRCs for non-licensed long term care employees, including employees of CHHAs, LTHHCs, AIDS home care providers, licensed home care services agencies (LHCSAs) and nursing homes at \$3M.
- **Elder Abuse Investigations.** The Executive Budget includes \$500,000 to expand Enhanced Multidisciplinary Teams (EMDTs) to investigate financial exploitation of the elderly. This funding will be used to draw down \$2M in Federal funding through the Office of Victim Services to maintain the EMDT program.
- **Medicaid Rural Transit Assistance:** This provision would eliminate \$4M in supplemental payments paid to 16 counties for non-emergency transportation in rural areas.

Programmatic Initiatives

- **Manage MLTC Utilization of Personal Care:** See “MLTC Provisions” subsection above.
- **Consolidation of Fiscal Intermediaries:** The proposed budget repeals current requirements for Fiscal Intermediaries (FIs) to be authorized by DOH and limitations on FI advertising but seeks to generate savings through FI authorization and payment changes. Beginning Jan. 1, 2020, authorization to provide FI services would be limited to:
 - entities that serve as FIs and operate as service centers for independent living
 - FIs with a continuous history of providing FI services beginning on or before January 1, 2012; and
 - entities that have an FI contract with DOH pursuant to an application process. The FI application process with DOH would not be subject to a procurement or competitive bidding process.

The budget summary states that there are currently over 500 FIs receiving differing levels of reimbursement for providing various administrative and payroll services to self-directing Medicaid recipients receiving personal care. The State seeks to establish a per member per month uniform FI rate, which would generate an estimated annual State savings of \$75M.

- **Electronic Visit Verification (EVV):** The Executive Budget provides \$10M (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 Medicaid fraud, waste, and abuse. States must require EVV use for all Medicaid-funded personal care services by Jan. 1, 2020 and home health services by Jan. 1, 2023, or face incremental federal Medicaid funding reductions of up to 1 percent unless the State has both made a “good faith effort” to comply and has encountered “unavoidable delays.”
- **NHTD and TBI Waiver Funding:** The proposed budget calls for the two programs to be managed and paid for under the Medicaid Global Spending Cap rather than through separate appropriations.

- **Home Care National Provider IDs:** This provision would require home care workers to obtain an individual national provider identification (NPI) number from the National Plan and Provider Enumeration System (NPES). It is unclear which provider types would be affected.
- **Capital Funding:** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.

Other Aging Services Initiatives and Funding

The Executive Budget recommends \$257.6M for aging services, an increase from last year’s total aging services funding of \$245.6M. The following proposals relate to aging services programs administered by the New York State Office for the Aging (NYSOFA) 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.

- **Expanded In-Home Services for the Elderly Program (EISEP):** The Executive Budget proposes an additional \$15M investment in EISEP, which supports non-medical, in-home services; case management; non-institutional respite care; and ancillary services for functionally impaired older adults. The total proposed allocation is \$65M. The State hopes to increase delivery of personal care to aging New Yorkers through EISEP rather than relying on more costly Medicaid services to these individuals.
- **Increase Community Services for the Elderly (CSE):** The proposed budget allocates \$27.4M in total to CSE for FY20. It continues the exemption on the county share of the \$3.5M in additional funding that has been added to CSE over the past several fiscal years. In addition, the proposed budget provides \$1.1M 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 of \$2,027,500 would be provided to each of the two models.
- **Continue Alzheimer’s Caregiver Supports:** The proposed budget continues to fund a two-year \$50M investment for 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
- **Deferment of Cost of Living Adjustments (COLAs):** The Executive Budget defers COLA for all “human services providers” by one year to March 31, 2020. This includes NYSOFA, OCFS, OPWDD, OASAS and OMH programs. Projected annual savings are \$142M.
- **NY Connects:** The Executive Budget provides \$41.5M to continue the NY Connects program.
- **Wellness in Nutrition (WIN) program:** WIN is level-funded at \$27.5M. Formerly known as the Supplemental Nutrition Assistance Program, this 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.
- **Congregate Services Initiative (CSI):** The Executive Budget would level-fund 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 proposed 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 their residents, including their aging population.
- ***Title XX Funding:*** The proposed budget maintains the same funding level as last year, \$66M. 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.
- ***Social Adult Day Care:*** The budget proposal continues to level-fund a grant program for social adult day care programs through NYSOFA at \$1.072M.
- ***Long Term Care Ombudsman Program*** –The Executive budget proposes level funding of this program at \$1.2M.
- ***Respite Services for the Elderly*** – This grant program is level-funded at \$656,000.

Programmatic Initiatives

- ***Creation of Optional Private Pay Model for Aging Services:*** The Executive Budget authorizes NYSOFA to implement a private pay program option to expand access to NYSOFA programs to those with income above 400 percent of the federal poverty level (FPL) who choose to purchase these services using private funding.

Participation in this new option would be at the discretion of the Area Agency on Aging (AAA) in each county. Clients receiving federally supported services would not be able to participate. No client would be required to pay for services they are currently receiving. Cost sharing would still be allowed in the CSE program for clients with incomes below 400 percent of the FPL. The AAAs could not use private payments to supplant State, federal or county funds.

- ***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 nonclinical, community-based organizations.

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

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 \$6.5M, the same amount as last year. 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 these benefits as well as the size of the facility.
- **SSI:** The proposal does *not* include an increase in the State portion of the SSI benefit for ACF residents, aside from language authorizing a pass-through of the federal cost of living adjustment (COLA). The federal COLA, if any, is applied on Jan. 1 of each year.
- **Enriched Housing Subsidy:** The enriched housing subsidy is funded at \$380,000, the same amount as last year. 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.
- **Criminal History Record Check Funding:** The proposal includes \$1.3M for services and expenses related to CHRCs for ACFs, the same funding level as last year. We are working to confirm that last year's CHRC funding is also reappropriated given the delay in payment for CHRC submissions in 2018.
- **Authorization of Temporary Operators of Adult Homes:** The proposal includes legislation to make the authorization for temporary operators of adult homes permanent. A temporary operator can be used when there are conditions that seriously endanger the life, health or safety of residents.
- **Oversight:** The Governor noted in the Budget Briefing book a need to ensure higher quality and oversight of safety in ACFs. It stated that the Governor will propose legislation that will enhance transparency and strengthen oversight over ACFs and will impose more stringent penalties for violations.
- **Capital Funding:** While there is not new capital funding proposed in this budget year, the proposal seeks to alter the capital funding authorized in last year's budget, for which applications are yet to be released. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Assisted Living Programs

- **Trend Factor Elimination:** The budget provides no trend factor for the ALP Medicaid rate once again. See "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.
- **Minimum Wage Funding:** The budget includes funding to help pay for the increase in minimum wage for Medicaid providers; see "CROSS-SECTOR HEALTH CARE INITIATIVES" section above.

Transitional Adult Homes and Related Issues

The below items may be of interest to ACF and assisted living providers that serve people with mental illness.

- ***Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:*** \$48M is proposed 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 prior years' funding level of \$38M.
- ***Mental Health Transitions:*** Up to \$7M is appropriated 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 adult homes in NYC. In addition, up to \$15M would be made available for grants to counties and NYC to provide medication and other services necessary to prescribe and administer medication.

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 the appropriations are at the same level as last year's funding.

- ***Adult Home Advocacy Program:*** This funding is allocated to the Justice Center at \$170,000. 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 Long Island.
- ***Coalition for the Institutionalized Agenda and Disabled (CIAD):*** This organization, which advocates for residents of adult homes in NYC, is funded at \$75,000.
- ***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.
- ***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.
- ***Assisted Living Residence Quality Oversight Account:*** The proposal includes \$2.1M in funding for State operations for services and expenses related to the oversight of and licensing activities for assisted living facilities.

Senior Housing

The FY20 Budget includes \$603.6M appropriated in FY17, FY18, and FY19 as part of the State's multi-year \$2.5B capital component of the Affordable Housing and Homelessness Plan. The FY20 budget also includes \$97.2M for the Division of Home and Community Renewal's base capital programs, \$72M for the Governor's Office of Storm Recovery for recovery and rebuilding efforts in areas impacted by natural disasters, and \$5M for the replacement and/or repair of mobile and manufactured homes in upstate regions.

Capital Allocations

The FY20 HCR Capital Plan recommends the following funding for programs as part of the continued \$20B, multi-year investment in affordable and supportive housing and related services:

- ***Low-Income Housing Trust Fund Program:*** \$44M to provide grants for the construction or renovation of low or moderate-income single and multi-family housing projects;
- ***Affordable Home Ownership Development Program:*** \$26M to construct or renovate homes for low and moderate-income individuals and families;
- ***Public Housing Modernization Program:*** \$6M to subsidize repairs at State-supervised public housing projects across the state;
- ***Homes for Working Families Program:*** \$14M to combine State funds with other available public and private sector moneys, Federal Low-Income 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:*** \$1M to provide grants to low-income elderly homeowners for emergency home repairs;
- ***Access to Home Program:*** \$1M to provide funding for home adaptations for individuals with disabilities; and
- ***New York Main Street Program:*** \$4M to provide assistance to communities for the revitalization of historic downtowns, mixed-use neighborhood commercial districts, and village centers.

The following programs are supported within the \$2.5B allocation for the Affordable Housing and Homeless Plan:

- ***Supportive Housing:*** \$950M for the construction of 6,000 supportive housing units throughout the state;
- ***New Construction:*** \$472M for new construction or adaptive reuse of rental housing for households earning between 60 and 130 percent of area median income (AMI);
- ***Senior Housing:*** \$125M for developing or rehabilitating affordable housing for low-income seniors, aged 60 and above;
- ***Rural and Urban Community Investment Fund (CIF):*** \$45M for mixed-use affordable housing developments that may include retail, commercial or community development components;
- ***Middle Income Housing:*** \$150M for new construction, adaptive reuse, or reconstruction of rental housing affordable to households that earn up to 130 percent of AMI;
- ***Affordable Housing Preservation:*** \$146M for substantial or moderate rehabilitation of affordable multi-family rental housing currently under a regulatory agreement with HCR or another State, Federal, or local housing agency;
- ***Mitchell-Lama Rehabilitation:*** \$75M to preserve and improve Mitchell-Lama properties throughout the state;
- ***Public Housing:*** \$125M for the rehabilitation and/or the demolition and replacement through new construction of public housing authority developments outside of New York City;
- ***Small Building Construction:*** \$63M for rehabilitation and/or the demolition and replacement through new construction of buildings of 5 to 40 units;
- ***Home Ownership:*** \$42M for promoting home ownership among families of low and moderate-income and stimulating the development, stabilization, and preservation of communities;
- ***Mobile and Manufactured Homes:*** \$13M for mobile and manufactured home programs;

- **Main Street Programs:** \$10M for stimulating reinvestment in properties located within mixed-use commercial districts located in urban, small town and rural areas of the state;
- **New York City Housing Authority (NYCHA):** \$200M for *State-approved* projects and improvements at housing developments owned or operated by NYCHA; and
- **New York City Affordable Housing:** \$100M for the preservation, restoration or creation of affordable housing units in New York City. All units must be affordable to households earning up to 60 percent of AMI.

The Executive Budget also utilizes \$44M in excess reserves from the Mortgage Insurance Fund to support the Neighborhood and Rural Preservation Programs (\$12M), the Rural Rental Assistance Program (\$23.6M) and several OTDA consolidated homeless programs (\$8.3M).

Other Initiatives

The FY20 budget would provide for the use of \$12M projected to be available in excess Mortgage Insurance Fund (MIF) reserves. These funds would be used for the Neighborhood and Rural Preservation Programs, which support community-based housing corporations across the state that provide various housing-related services for low- and moderate-income populations.

In his joint Budget Address and State of the State speech, Governor Cuomo mentioned a proposal supporting prevailing wages for construction projects with public subsidies, but it is unclear if any such proposal would impact affordable housing.

The Executive Budget also includes tenant protections which would:

- Amend the Human Rights Law to add lawful source of income as a protected class and prohibit housing discrimination on the basis of lawful source of income;
- Establish the “New York Security Deposit Act” to limit the amount of a security deposit that a landlord may charge a tenant to an amount or value not in excess of two months’ rent, including the first month’s rent.
- Support new regulations that provide necessary authority to State and municipal housing maintenance code enforcement agencies to include lead paint hazard control in existing enforcement activities and levy applicable fines.
- Lower the acceptable blood lead level from 15 pg/dl to 5 pg/dl to continue the State’s goal of eliminating sources of lead exposure before a child is injured. The FY20 budget proposal commits \$9.4M annually to DOH and local health departments to implement this initiative.

The FY20 budget also 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.

V. PHARMACY

The Executive Budget proposes several pharmacy initiatives estimated to save a total of \$88M (State share) in the Medicaid program in FY20. The budget continues the Elderly Pharmaceutical Insurance Program (EPIC) with an appropriation of \$121.4M. The pharmacy savings proposals include:

- ***Covered Over-the-Counter Drugs:*** Proposes to authorize DOH to *modify*, without a notice and comment period, the list of Medicaid-covered drugs that may be dispensed without a prescription. Under current law, the notice and comment period may be avoided only if DOH is adding to the list. This proposal, together with the copayment proposal below, is expected to produce \$12.3M in savings (State share) in FY20.
- ***Copayments:*** Proposes an increase in the beneficiary copayment for nonprescription drugs from \$0.50 to \$1.00.
- ***Prescriber Prevails:*** Proposes once again to eliminate the ability of a prescribing professional to override the Medicaid preferred drug program and obtain coverage of a prescription drug that is not on the preferred drug list. In addition, the Executive Budget would repeal the requirement that Medicaid managed care plans cover non-formulary drugs in the atypical anti-psychotic, anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic classes, upon a demonstration by the prescriber that the drug is medically necessary and warranted. As a result of these two proposals, “prescriber prevails” would be eliminated in both Medicaid fee-for-service and Medicaid managed care in all drug classes. This proposal is expected to produce \$18.7M in savings (State share) in SFY20.
- ***Pharmacy Benefit Manager (PBM) Oversight:***
 - Would prohibit “spread pricing” arrangements, whereby PBMs retain the excess between the amount they charge plans and the amount they pay to pharmacies. The proposal requires PBMs to pay to Medicaid managed care plans any amount charged by the PBM exceeding the amount paid to pharmacies, less an administrative fee. It would also require the PBM to pass to the plans any supplemental rebates or discounts it receives.
 - Requires registration and licensure by the Department of Financial Services of PBMs that contract with Medicaid managed care plans or commercial insurers to manage their pharmacy benefits.
- ***Medicaid Drug Spending Growth Cap:*** Extends for another year the cap on Medicaid spending on drugs and accelerates rebate negotiations and collections by applying cost-effectiveness thresholds, expanding the high cost drugs that may be referred to the Drug Utilization Review Board, and eliminating the availability of “credits” for rebates paid in connection with other drugs produced by a manufacturer.

VI. MARIJUANA LEGALIZATION AND REGULATION

The Executive Budget proposes a new chapter of State law, entitled the Cannabis Law, that sets forth extensive provisions governing the cultivation, processing, distribution, and possession of medical cannabis, “adult use” (recreational use) cannabis, hemp cannabis, and industrial hemp. The legislation includes provisions for licensure and registration of each entity involved in the cannabis, hemp cannabis, and industrial hemp production and distribution chain. The proposed legislation would repeal the medical marijuana [sic] provisions of the Public Health Law and transfer the statutory authority for and oversight of medical cannabis to the new Cannabis Law and the Office of Cannabis Management. The following is a high-level summary of some of the key provisions relevant to health care providers:

- ***Office of Cannabis Management:***
 - Creates a State Office of Cannabis Management (“the Office”) within the Division of Alcohol and Beverage Control to regulate and control the cultivation, processing,

- manufacture, wholesale, and retail production, distribution, transportation, and sale of cannabis, cannabis-related products, medical cannabis, and hemp cannabis.
 - Provides for civil and criminal penalties for violations of the law.
 - Requires the Office to conduct a public health campaign on the use of marijuana.
- ***Adult Use Cannabis:***
 - Provides for the licensure and regulation of cannabinoid growers and extractors, and cannabis cultivators, processors, cooperatives, distributors, retail dispensers, and on-site consumption vendors.
 - Prohibits the distribution of marijuana to any person under age 21, or visibly intoxicated, or habitually intoxicated.
 - Authorizes the Office to charge licensure and permit fees and renewal fees that will at a minimum cover the cost of administering the law.
 - Sets forth factors that may be considered in approving licenses, including the applicant's character and competence, ability to prevent diversion of product, impact of the site on parking and traffic, the number of licensees in the vicinity, and whether the applicant has entered into a labor peace agreement. Applicants that have 25 or more employees and have entered into a collective bargaining agreement or use union labor to construct their facilities are to be given priority.
 - Establishes a social equity program to encourage members of communities that have been disproportionately impacted by the criminalization of marijuana to participate in the new industry.
 - Creates a program to review and seal prior cannabis convictions and eliminate the collateral consequences of convictions.
- ***Medical Cannabis:***
 - Certification of Patients:
 - Authorizes certification of patients by qualified practitioners to use medical marijuana for the following serious conditions: cancer, HIV, AIDS, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical cannabis is an alternative to opioid use, substance use disorder, Alzheimer's, muscular dystrophy, dystonia, rheumatoid arthritis, autism, any condition authorized as part of a cannabis research license, and any other condition added by the Office. The practitioner must certify that the patient is likely to receive a therapeutic or palliative benefit from marijuana.
 - Authorizes practitioners to specify the form of cannabis and method of consumption recommended for the patient in the certification. They must check the Prescription Drug Monitoring registry prior to certifying a patient to determine the patient's history of controlled substance use.
 - Provides that the Office may set the price per dose of each form of medical cannabis.
 - Registry Identification Cards:
 - Requires certified patients and their designated caregivers to apply for registry identification cards once certified by a practitioner. The cards expire one year after issuance, unless the practitioner certifies that the patient has a terminal illness, in which case the card expires upon the patient's death. Practitioners may also provide for an earlier termination of the certification and expiration of the card.

- Designated Caregivers:
 - Certified patients may identify up to 5 designated caregivers in their registry applications.
 - When a certified patient is under age 18 or incapable of consent, a designated caregiver over age 18 may apply for the registry identification card. The designated caregiver must be:
 - A parent or legal guardian of the certified patient
 - A person designated by the parent or legal guardian
 - A designated caregiving facility
 - An appropriate person approved by the Office, if a parent or legal guardian is not appropriate or available.
 - An individual may be a designated caregiver for up to 5 certified patients and may possess the authorized supply for each of those patients.
- Designated Caregiver Facilities:
 - Hospitals, nursing homes, adult care facilities, and other residential facilities may register with the Office to serve as designated caregiver facilities. These registrations remain valid for 2 years.
 - Designated caregiver facilities may possess the authorized quantity for each certified patient within their care.
- Home Cultivation:
 - Certified patients and designated caregivers may apply to grow, possess, or transport up to 4 plants per certified patient with no more than 8 plants per household.
- Legal Possession:
 - The form and dosage possessed by the certified patient, designated caregiver, and designated caregiver facility must comply with the recommendations of the practitioner.
 - Certified patients may possess not more than a 60-day supply, but in the last 7 days of the of the 60-day cycle, may also possess the amount prescribed for the next 60 days.
 - Possession of medical marijuana is not legal if it is smoked or grown in a public place.
 - A person in possession of medical marijuana must also possess his or her registry identification card.
- Registered Organizations: Sets forth the criteria for approving the registration of organizations authorized to manufacture and distribute medical marijuana. The Office must approve at least 10 registered organizations that manufacture medical cannabis with no more than 4 dispensing sites owned and operated by each. Registered organizations must use an approved independent laboratory to test their medical cannabis.
- Cannabis Research License: The Office may issue cannabis research licenses to permit licensees to conduct research into the chemical potency and composition of cannabis, conduct clinical investigations of cannabis-derived drugs, to research the efficacy and safety of medical cannabis, and to conduct genomic or agricultural research.
- Legal Protections:
 - Certified medical marijuana patients are deemed to have a "disability" and are protected under the Human Rights Law, Civil Rights Law, and hate crimes sections

of the Penal Law. Notwithstanding the anti-discrimination protections, employers may prohibit employees from performing employment duties while impaired by a controlled substance. The proposal is not intended to require any action that would put an employer in direct violation of federal law or cause it to lose a federal contract or funding.

- Certified patients, designated caregivers, designated caregiver facilities, practitioners, registered organizations and cannabis researchers cannot be subject to arrest, prosecution, professional discipline, or denied any right or privilege as a result of any action that is lawful under the Cannabis Law.
- ***Employment Actions Based on Lawful Cannabis Use:***
 - Prohibits adverse employment actions based on conduct allowed under the Cannabis Law, unless the employer establishes that the lawful use of cannabis has impaired the employee's ability to perform the his or her job. An employee may be considered impaired when there are “specific articulable symptoms while working that decrease or lessen the employee's performance.”
 - Allows an employer to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours.
 - Does not require an employer to commit any act that would violate federal law, or that would result in the loss of a federal contract or federal funding.
- ***Prohibition on Discrimination by Schools and Landlords:*** Prohibits schools and landlords from refusing to enroll or leasing to or otherwise penalizing a person based on conduct authorized by the Cannabis Act, unless: failing to take such action would cause the school or landlord to lose federal funding or licensure; the institution has adopted a cannabis code of conduct based on a religious belief; or the action is a prohibition on smoking and the premises are registered on the smoke-free housing registry.
- ***Professional and Medical Record Keeping:*** Authorizes any professional provider of services in connection with a licensed business or permissible conduct under the Cannabis Act and any medical professional caring for a patient other than a certified patient to agree with the client or patient to maintain no record or a reduced level of record keeping.
- ***Justice Center:*** Requires incident management programs covered by the Justice Center to include provisions addressing safe storage, administration, and diversion prevention policies regarding controlled substances and medical marijuana.
- ***Tax Revenue:*** The Budget projects cannabis tax revenue of \$83M in FY21, \$85M in FY22, \$141M in FY23 and \$184M in FY24.

VII. GOOD GOVERNMENT AND ETHICS REFORM

The Governor’s budget package also includes a series of programmatic proposals related to public integrity and fair elections which would:

- Require candidates for statewide office and members of the State Legislature to provide past federal and State tax returns to the State Board of Elections for public disclosure;
- Reform the state’s campaign finance system by requiring disclosure of certain campaign contributions, reducing campaign contribution limits, and enacting a voluntary public campaign finance system;
- Require the State Board of Elections to develop an on-line portal for eligible voters to electronically register to vote;
- Implement automatic voter registration at certain government agencies;

- Amend the election law to give all employees time off to vote;
- Expand polling hours in upstate districts for primary elections;
- Prohibit campaign contributions from parties involved in State procurement;
- Allow voters to remain registered to vote as long as they remain a resident of New York;
- Prohibit lobbyists, political action committees, labor unions, and anyone registered as an independent expenditure committee, from making loans to candidates for office or other political committees;
- Authorize the use of electronic poll book;
- Amend Legislative Law for purposes of disclosing lobbyist filing of campaign contributions, solicitations of contributions, and political consulting reports;
- Preventing a political consultant from lobbying an elected official for whom they worked;
- Require covered entities to disclose monetary donations to the Joint Commission on Public Ethics (JCOPE), clarify the reporting requirements, relevant reporting period, and responsibilities of the recipient entities, set the role of the Executive Director of JCOPE in regard to exemptions to public disclosure of such monetary donations, and allow for future donations to be taken into consideration for exemption determinations;
- Lower the threshold expenses constituting a “reportable business relationship” and trigger new filing and disclosure requirements for a lobbyist;
- Impose additional civil and criminal penalties on lobbyists found to have violated the law;
- Increase the length, from 2 to 5 years, of the existing bar on former State officers or employees, members of the Legislature and executive chamber from appearing or lobbying before certain State entities, prohibit policy makers from lobbying or registering as a lobbyist during that timeframe, and subject only policy makers to these restrictions;
- Prohibit an employee of an elected official from volunteering for the campaign of that elected official;
- Establish financial disclosure requirements for certain local elected officials to promote transparency and decrease conflicts of interest at the local government level;
- Establish a code of conduct for lobbyists, clearly stating expected behaviors and standards;
- Establish a system of opt-out voter registration for qualified persons applying for a motor vehicle driver’s license, a driver’s license renewal, or an identification card issued by the DMV.

In addition to the above mentioned reforms, last week the Legislature acted on several measures proposed by the Governor that would make it easier for those who move to transfer their voter registration; consolidate state and federal primary elections into one day; allow for early voting; take steps to close the “LLC loophole” that currently allows for unlimited donations to be made through multiple limited liability corporations; and allow 16 and 17 year-olds to pre-register to vote.

VIII. NEXT STEPS

Following the Governor’s budget presentation, Senate Finance Committee Chair Liz Krueger and Assembly Ways and Means Committee Chair Helene Weinstein announced the [schedule for the Joint Legislative Budget Hearings](#). These hearings provide an opportunity for the Legislature to hear from State agency heads and the public about the impact of the Executive Budget proposal. LeadingAge NY plans to provide testimony for the Housing Budget Hearing on Mon., Feb. 4th and the Health/Medicaid Budget Hearing on Tues., Feb. 5th.

This year, LeadingAge NY is once again coordinating two separate [budget Advocacy Days](#). The first, focused exclusively on issues pertinent to nursing homes, home care, hospice, ADHC, and MLTC plans, is being held on Tues., Feb. 5th in collaboration with the Adult Day Health Care Council and the Hospice and Palliative Care Association of New York State. **If you have not done so already, [now is the time to register](#) and begin setting up meetings with your legislators.** Keep in mind that if your lawmakers are not available for a formal meeting on Advocacy Day, you can inquire about meeting with them “off the floor” (speaking with them briefly outside the Assembly or Senate Chamber) or speaking with their top staff. Alternatively, if you are not able to join us in Albany, you can always request to meet with them back in their district office. **LeadingAge NY can assist with scheduling if necessary and asks that those who do set up their own meetings email their schedules to Sarah Daly at sdaly@leadingageny.org and Jeff Diamond at jdiamond@leadingageny.org.**

Registration for our March 5th Advocacy Day, focusing on housing, ACF/AL, aging services program, and NORC issues, can be accessed [here](#).

Advocacy Day materials, including issue briefs, talking points, and other information, will be distributed prior to the events. In preparation for the Feb. 5th Advocacy Day, LeadingAge NY, the Adult Day Health Care Council, and the Hospice and Palliative Care Association of New York State will be hosting an attendee conference call on **Fri., Feb. 1st from 1:30 to 3 p.m.** We plan to go over our materials (which will be distributed prior to the call), review important logistics, and answer any questions that participants may have. To join, please dial 1-888-585-9008 and enter the Conference Room code: 983-850-547.