

Dear Members:

Following the [Assembly's](#) release on Monday evening, the Senate advanced their one-house budget bills late last night. We are pleased that nearly all of our priority issues have been included in the proposals in one way or another, which means they live to fight another day as the State moves toward a budget deal by the end of the month. Both houses began acting on their budget proposals today and have said they will begin the Joint Budget Conference Committee process as soon as tonight.

Below are the highlights of the Senate and Assembly one-house budget bills as they relate to senior housing and long-term/post-acute care.

#### **Health Care Capital Transformation Grants**

- The Assembly provides an additional \$100 million for Capital Transformation Grants, dedicating an additional \$35 million to community based providers and adding OPWDD Article 16 clinics as well as primary care providers to the list of eligible providers. Their proposal maintains the \$45 million for nursing homes and provides for *up to* \$20 million for ALPs.
- The Senate bill provides for \$500 million (an increase of \$75 million over the Governor's proposal) for Capital Transformation Grants. It includes hospice programs in the list of eligible providers. It dedicates \$70 million for community-based providers and provides for a minimum of \$25 million for assisted living programs and hospice programs; a minimum of \$25 million to home care agencies; and a minimum of \$60 million for nursing homes. It prioritizes home care and nursing home projects that involve electronic health record systems.

#### **Trend Factors**

- The Assembly provides \$230 million in State share support for a 2.1 percent trend factor for Medicaid providers, including hospital, nursing home, home care agencies and assisted living program providers. The Senate eliminates trend factors through March 31, 2019.

#### **Global Cap**

- The Assembly accepts the Governor's extension of the Medicaid Global Cap legislation through State fiscal year 2019-2020.
- The Senate modifies the Governor's Medicaid Global Cap proposal. It maintains the Global Cap through State fiscal year 2018-19, but does not extend it through 2020, requires legislative approval of any savings allocation plan, and modifies the growth rate.

#### **Workforce Retraining**

- The Senate bill expands the eligible organizations and purposes covered by the Workforce Retraining funding to include home care agencies and hospice programs engaged in collaborative programs with facilities for the purpose of cross-training and cross-utilization.
- The Assembly bill did not address this issue.

#### **Guardianship Demonstration**

- The Senate would establish a court-ordered guardianship demonstration program in Nassau County under which geriatric social workers and/or non-attorneys would be appointed as guardians to provide guardianship services to incapacitated adults who lack financial resources and appropriate family support. In addition, the program will study the costs and savings associated with providing such guardianship services and the individual's ability to maintain

independence in and connection to their community, the cost avoidance to the state medical assistance program, and other factors which examine the effectiveness of this program.

### **MLTC and Home Care**

- ***MLTC Carve-Out for Long-Stay Nursing Home Residents:***
  - The Assembly modifies the Executive Budget proposal to exclude permanently-placed nursing home residents from MLTC after six months of nursing home care. Instead, the Assembly excludes all permanently-placed nursing home residents from MLTC, except for those who are enrolled in an MLTC plan when admitted to the nursing home for permanent placement. These existing MLTC enrollees would remain enrolled for a period of 3 months, at which time their enrollment would be suspended for an additional 6 months in order to facilitate re-activation of enrollment in the event that they are discharged to the community within the 6-month suspension period.
  - The Senate modifies the Executive proposal to exclude permanently placed residents after three months of nursing home care and adds requirements for resident notification and for policies and procedures enduring compliance with the ADA and Olmstead Act. The Senate also excludes from MLTC individuals in a long term inpatient rehabilitation program for head injuries and those in a specialized program for residents requiring behavioral interventions.
  
- ***Require Minimum UAS Score of 9 and Continuous Need for Community-Based LTC to Qualify for MLTC Enrollment:*** Both the Senate and Assembly reject increasing the minimum score to 9. The Assembly retains while the Senate rejects the requirement of continuous need for 120 days of community-based long-term care.
  
- ***12-Month Lock-In of Plan Enrollment:*** The Senate rejects the Executive proposal while the Assembly provides for a 90-day window to switch plans without cause and allows for one more “without cause” transfer within the remainder of the “enrollment period.”
  
- ***Provider Marketing and Referral Ban:*** The Assembly rejects the Executive Budget proposal to restrict community-based long-term care provider-sponsored marketing activities and the proposal to prohibit continuity of care with a provider that refers a potential enrollee to an MLTC plan. The Senate prohibits LHCSA marketing until the review (described below) is completed.
  
- ***Limit Number of Network LHCSA Providers:***
  - The Assembly modifies the Executive Budget proposal to cap at 10 the number of Licensed Home Care Services Agencies (LHCSAs) with which an MLTC plan is permitted to contract. The Assembly bill:
    - Requires any cap on community-based long-term care contracts to be approved by the Public Health and Health Planning Council;
    - Imposes a one-year moratorium on new LHCSA approvals, with certain exceptions;
    - Requires any application to establish a new LHCSA to demonstrate public need for the new agency.
  - The Senate rejects the cap and modifies the Executive Budget proposal to require:

- DOH and the Public Health and Planning Council (PHPC) to conduct a review of LHCSA services and establish a transition plan that would incrementally reduce the maximum number of LHCSA contracts to 50 for downstate plans by 2020;
  - DOH and the PHPC to develop recommendations on incentives for LHCSA consolidation;
  - A moratorium on approving new LHCSAs serving Medicaid recipients until the review is complete.
- **Transportation:** The Assembly rejects the Executive Budget proposal to transfer management of adult day health care and MLTC transportation from such entities to the State's transportation management broker(s) while accepting Executive Budget language specifying that PACE plans continue to manage transportation for their participants. The Senate accepts the PACE language and provides non-PACE MLTC plans and ADHC programs the option to continue providing transportation directly or to use the State's broker.
- **Fraud and Abuse Provisions:** The Assembly bill accepts the Executive Budget's proposals to expand overpayment recoveries from managed care plans and providers; require managed care plans to promptly refer all cases of potential fraud, and to penalize plans that willfully fail to make such referrals; increase fines for violations of Medicaid rules and directives; and increase fines imposed on managed care plans that intentionally file false cost reports to up to \$100,000. The Assembly includes some additional due process language. The Senate modifies the proposal by reducing penalty amounts, requiring the state to share money recovered by a plan from a subcontractor with the plan, adding flexibility for the commissioner to reduce or eliminate penalties and requiring that contract between the state and plans specify how overpayments and recoveries will be handled.
- **Excess Contingent Reserves Recoupment:** Both the Senate and Assembly reject the Executive Budget proposal to authorize DOH to reduce the rates of not-for-profit Medicaid managed care plans, including MLTCs, that have accumulated contingent reserves in excess of the minimum amount required.
- **High Need Rate Cells:** Both the Senate and Assembly require the Department of Health (DOH) to seek CMS approval to establish separate rate cells for nursing home residents, MLTC members who require 24-hour home care, and other MLTC members who present with unusually intensive care needs. The Senate specifies such approval request be submitted to CMS by June 30, 2018.
- **Plan to Plan Transfers:** The Senate adds a requirement that DOH assure continuity of services and direct care providers when individuals are transferred involuntarily from one MLTC plan to another.
- **Minimum Wage Funding:** The Senate adds a provision specifying that minimum wage funding will not be subject to risk adjustment, requires that plans amend provider contracts to incorporate minimum wage funding changes 90 days prior to the effective date, and requires that minimum wage funds be provided as supplemental amounts to existing contract rates.
- **TBI/NHTD Waiver Carve-in:** See HCBS section below.

Neither the Senate nor the Assembly bills address other “administrative proposals” in the Executive Budget– the proposals to be executed without explicit legislation. MLTC proposals that were not addressed include the following:

- MLTC Administrative Rate Reduction
- MLTC Social Day Benefit Efficiencies
- Community-Based Service Utilization Requirement for Continued MLTC Enrollment

#### Nursing Homes

- **MLTC Carve-Out for Long-Stay Nursing Home Residents:** See above.
- **Low Quality Score Penalty:** The Senate rejects while the Assembly accepts the Executive Budget proposal to reduce Medicaid reimbursement by two percent for homes with low Nursing Home Quality Initiative (NHQI) scores.
- **Capital Rate Reduction:** Both the Senate and Assembly reject the Executive proposal to reduce capital rates for hospital and nursing homes by one percent, restoring \$13.4 million.
- **One Percent Rate Supplement:** Neither House appears to address this administrative proposal to stretch out the payment of the retroactive Medicaid rate supplement over the next four years.
- **Case-Mix Rationalization:** The Senate rejects while the Assembly bill does not address this administrative proposal to reduce Medicaid patient acuity adjustments by \$15 million annually.

#### ACF/AL

- **SSI Increase for Congregate Care Level 3 Rate for ACF Residents:** The Senate includes a \$4 per day increase in the SSI rate each year for five years, per our advocacy. The Assembly did not include any SSI increase in their budget proposal, nor did the Governor.
- **Enriched Housing Subsidy:** Both the Senate and the Assembly reject the Executive Budget proposal to move the Enriched Housing Subsidy into a pool of public health programs that would be cut, in aggregate, by 20 percent. Rather, they reinstate the subsidy as a discrete line item, level funded at \$380,000, per our advocacy.
- **ALP Expansion:** Both the Senate and the Assembly modify the Executive Budget proposal to expand the ALP, but in different ways; both reflecting our priorities:
  - The Senate proposal reflects our advocacy to create a permanent certificate of need process which, after 2022, would be on a per applicant basis. New ALP beds would be awarded based on demonstrated community need. Prior to 2022, the language authorizes 1000 beds in 2018 and 1000 beds in 2020. The language frames out considerations in determining need, which consider the existing ALPs in the counties, their occupancy over a twelve-month period, and the population they serve. The language also allows for existing ALPs to expand by nine or fewer beds through an expedited process.
  - The Assembly proposal includes the language in the Executive proposal, but then adds language allowing DOH to award beds, after April 1, 2020 to applicants that satisfactorily demonstrates to the public health and health planning council that there is public need in the area being served.
- **AL Alzheimer’s Voucher Program:** Both the Senate and the Assembly accept the Executive Budget proposal to create an assisted living voucher program for people with dementia.
- **EQUAL Funding:** Both the Senate and the Assembly accept the Executive Budget proposal to level fund EQUAL at \$6.5 million.

- **Health Care Capital Transformation Grants:** The Assembly and Senate identify ALPs as potential applicants. The Assembly maintains the \$45 million set-aside for ALPs. The Senate identifies a minimum of \$25 million to ALPs or hospices.

## Housing

- **Resident Service Assistant:** The Senate includes provides \$10 million in funding for the Resident Service Assistant Program. The Assembly budget does not include this proposal.
- **Deferral of Business Related Tax-Credit Claims:** Both the Assembly and the Senate reject the Executive's proposal to defer the use and refund of certain business tax related credits for three years.
- **Low Income Housing Credit Transferability:** Both the Assembly and the Senate would allow the transferability of low income housing tax credits under certain circumstances.
- **State Low Income Housing Tax Credit:** Both the Assembly and the Senate would bifurcate State low income housing tax credits from the federal low income housing tax credit.
- **Public Housing and the New York City Housing Authority:**
  - The Assembly provides \$275 million for public housing capital repairs and restoration across the state, with \$200 million of these funds allocated to the New York City Housing Authority (NYCHA). These funds would be made available for heating needs, weatherization, and other critical maintenance projects.
  - The Assembly would transfer \$50 million from the New York Power Authority to replace boilers in housing developments owned by the New York City Housing Authority.
  - The Assembly proposes design-build authority for the City of New York for certain projects including the New York City Housing Authority.
  - **Reporting and Monitoring Proposals:** Both the Assembly and the Senate propose reporting and monitoring requirements for NYCHA.
    - The Assembly would require NYCHA to annually report on its activities surrounding lead-based paint poisoning prevention to the New York City Department of Health and Mental Hygiene (DOHMH) and the New York City Department of Housing Preservation and Development (HPD), and to submit a plan to both agencies outlining its policies and procedures related to lead-based paint poisoning prevention.
    - The Senate would establish a New York City Housing Authority (NYCHA) repair certificate program under which the city planning commission would grant amendments to zoning resolutions which increase the allowable development in areas covered by a NYCHA repair certificate.
    - The Senate would authorize the New York City Council to oversee the activities of NYCHA.
    - The Senate would provide for the appointment of an independent monitor for NYCHA within Homes and Community Renewal and would provide for the powers and duties of such monitor.
    - The Senate would authorize and direct NYCHA to establish a system for the submission and receipt of complaints through the existing 311 hotline.
- **Mortgage Insurance Fund:**

- The Assembly and Senate both make changes to the Executive’s proposed allocation of Mortgage Insurance Fund (MIF) Reserves.
  - Both the Senate and the Assembly would increase funding for the Neighborhood Preservation Program and Rural Preservation Program with the Assembly funding the programs at a combined total of \$21 million, a \$9 million increase over the Executive proposal, and the Senate funding the Neighborhood Preservation Program at \$14,550,000 and the Rural Preservation Program at \$6,250,000, for a combined \$20,800,000.
  - Both the Assembly and the Senate would fund Access to Home at \$4 million, an increase of \$3 million over the Executive. The Assembly would provide \$3 million of this funding from the MIF reserves.
  - The Assembly would fund NORCs and NNORCs at \$2 million each.
  - The Senate would fund the “Residential Emergency Services to Offer Home Repairs to the Elderly” at \$3,600,000.
  - The Senate would fund the Homeless Housing and Assistance Corporation at \$6,522,000, a decrease of \$1,800,000 from the Executive proposal.
  
- **Residential Emergency Home Repairs for the Elderly:** The Senate would establish the “Residential Emergency Services to Offer Home Repairs to the Elderly Program” to assist senior citizen homeowners with the cost of addressing emergencies and code violations that pose a threat to their health and safety or affect the livability of their home by providing financial assistance for the cost of making repairs that may enable such homeowners to continue to live independently in their own homes. The Senate proposes funding the program at \$3,600,000 out of Mortgage Insurance Fund reserves.
  
- **Miscellaneous:**
  - The Senate would extend certain consumer protections for homeowners facing foreclosure to homeowners facing reverse mortgage foreclosure.
  - The Senate would establish a Community Development Revolving Loan Program for community development financial institutions to provide low interest loans or loan guarantees to a market that is underserved or in which it is otherwise difficult to obtain regular bank financing. Such loans or loan guarantees shall be made for purposes including, but not limited to, housing rehabilitation, home improvement, home improvement, and for not-for-profit community based organizations.
  - The Senate would establish a means by which some seniors could qualify for and receive a cap on their real property school tax rates.

#### Home and Community Based Services

- **NHTD and TBI Waiver Carve-In:** The Assembly delays the carve-in of NHTD and TBI waiver services into managed long term care until January 1, 2022. The Senate permanently carves the waiver out of managed care.
  
- **Community Paramedicine:** The Assembly bill rejects the Executive Budget proposal to authorize community paramedicine collaboratives. The Senate supports the program, but includes the language in existing public health law under the PHL 2805-X Hospital/Home Care/ Physician Collaborative program.

- **Telehealth:** Both the Senate and Assembly bill modify the Executive budget's proposal to expand the scope of authorized telehealth services by repealing existing law and prohibiting Medicaid from denying payment for services based on the fact that they are delivered via telehealth. The Senate also requires DOH to streamline regulation and policy to eliminate barriers to telehealth.
- **NORC/NNORC:** The Assembly provides appropriations of \$4 million to support the Naturally Occurring Retirement Communities (NORC) and Neighborhood NORC programs, which would allow SOFA to expend \$2 million in Mortgage Insurance Fund (MIF) funding which was allocated in SFY 2017-18 as well as a new \$2 million MIF allocation. The Senate bill mirrors the Governor's proposal.
- **Community Services for the Elderly (CSE):** The Assembly and Senate budgets both restore \$500,000 in funding for CSE, for a total of \$29.4 million and waives associated local match requirements.
- **NY Statewide Senior Action Council:** The Assembly restores \$32,000 in funding for the New York Statewide Senior Action Council. The Senate bill mirrors the Governor's proposal to fund the Council at \$354,000.
- **NY Connects:** Both the Assembly and Senate provide a restoration of \$3.35 million to the NY Connects program, to support allocations previously provided by the Office for the Aging.
- **Wage Parity for TBI Waiver:** The Assembly includes language to include home care workers providing services to the TBI waiver population in the wage parity statute. This provision is not in the Senate Budget.
- **Study of HCBS Access in Rural Areas:** The Assembly and Senate both accept the Executive proposal to authorize the Commissioner of Health to conduct a study on home and communities based services (HCBS) in rural areas and to increase Medicaid rates in such areas.
- **Rural Transportation:** Both the Assembly and Senate reject the Executive Budget proposal to eliminate supplemental payments for rural transportation, restoring \$4 million.
- **Public Health Priority Initiative:** The Senate would implement a Public Health Priority Initiative to facilitate and support the role of home care agencies in the health care continuum for addressing public health priorities in New York, including palliative care, falls, sepsis, asthma, health care disparities, medication management, cardiovascular health, and opioid overuse/misuse, and potential cost-savings and health improvement.

## Hospice

- **Hospice Residence Rates:** Both the Senate and Assembly proposals codify in law an increase in hospice residence rates, requiring Medicaid payments equal to 94 percent of the weighted average Medicaid rate paid to nursing homes. It also establishes a managed care benchmark rate for hospice residences for five years.
- **Opioid Surcharge:** The Assembly modifies the Executive Budget proposal impose an opioid surcharge by increasing the tax rate from two cents to 2.5 cents per morphine milligram equivalent. In addition, the Assembly excludes hospice facilities and pharmacies from the tax. The Senate denies the Executive proposal and instead advances proposals for a drug take back

program, sets restrictions on treating minors with opioids, creates an opioid alternative pilot project, requires strict labeling, and mirrors the Governor's requirement for a written treatment plan for those receiving opioids.

### **Continuing Care Retirement Communities**

- **Cybersecurity Exclusion for CCRCs:** The Senate bill included language to exempt CCRCs from the from the Department of Financial Services cybersecurity regulations. The Assembly bill did not include this exemption.

### **Prescription Drugs and Opiates**

- The Assembly bill accepts the Executive Budget proposal to impose certain conditions Medicaid coverage of opioids for pain that persists more than 3 months or past the time of normal tissue healing, except for patients who have cancer or are receiving hospice or palliative care.
- The Senate bill contains a similar provision and extends these conditions to commercial health insurers. It contains additional provisions aimed at curbing improper prescribing and use of opioids, including:
  - Requiring drug manufacturers to establish “drug take-back programs” and chain pharmacies to provide for safe collection of drugs;
  - Conditions on prescribing opiates for minors;
  - Limiting the initial prescription of an opiate to a 3-day supply;

### **Next Steps**

Time is running out to contact your lawmakers now that the Senate and Assembly have registered their priorities and with budget committees convening shortly to begin negotiating a final budget. [It is imperative that they hear from you](#) as negotiations start to pick up! As a reminder, we will be issuing a call to action on Friday asking members to call their legislators, thank them (where appropriate) for what they got included in the one-house proposals, and let them know how critical it is to have these initiatives included in the final budget:

1. [Capital Funding for the LTPAC Sector](#)
2. [Support ACF and Assisted Living Providers that Serve Low-Income Seniors](#)
3. [MLTC Rate Adequacy, LHCSA Contract Limits, and Provider Marketing/Referral Bans](#)
4. [Support High-Quality Nursing Home Care for Vulnerable New Yorkers](#)
5. [Affordable Independent Senior Housing Assistance Program](#)