

February 16, 2024

Dear LeadingAge NY Members:

Last night, the Executive released the 30-day amendments (“30-days”) to the State Fiscal Year (SFY) 2024-2025 Executive Budget Proposal. The [amendments](#) provide some additional details and proposals representative of the Governor’s intentions for this year’s budget. Unfortunately, the details revealed by the 30-days offer additional reason for concern for members of LeadingAge New York, the long-term care (LTC) continuum, and the people we serve. The Executive appears to be leaning in to proposed cuts to our sector, and has not offered any amendment to provide additional funds.

Below is a high-level summary of the 30-day amendments and changes to the Executive Budget impacting LeadingAge NY Members as we understand them so far. As you review this document, we encourage members to also review our [Comprehensive Executive Budget Summary](#) which was published earlier this month and goes into great detail about the Governor’s proposal.

Finally, please also take a moment to review the [Next Steps](#) section of this update and join us in advocating for the funding needs of LTC providers and the people you serve. ***Your voice and involvement in budget advocacy this year will be critical if we wish to see the Legislature provide INVESTMENTS in LTC rather than CUTS!***

Unallocated Medicaid Cuts

The unallocated Medicaid cut targeted at long-term care spending appears to have been reduced by \$100M (state share). However, the amounts appropriated for Medicaid have not been increased by \$100M. This suggests that the \$100M was not restored, but rather has been achieved through a specific budget action. We will let members know as soon as we have more information on this action.

Nursing Home Case Mix Freeze

The 30-day amendments clarify the proposal in the Executive Budget to freeze nursing home Medicaid case mix. The amendments specify that the state would NOT update the Jan. 2024 Medicaid rate for case mix prior to applying the freeze, despite having the data to do so. This means that DOH would continue using the case mix reflected in the July 2023 rates to reimburse providers until a new case mix methodology is implemented. Note that this differs from the policy that DOH had previously announced to providers indicating that the freeze would begin when RUG-III data were no longer available.

Managed Long Term Care (MLTC)

The 30-day amendments include the following changes to the budget legislation applicable to managed long term care plans:

- Excludes from the MLTC program, by April 1, 2025, any plan that provides FI or licensed home care services agency (LHCSA) services, or controls, is controlled by, or is under common control with, an entity that provides FI or LHCSA services (see below).
- Adds language to reinforce that the managed care procurement is exempt from competitive bidding requirements of State Finance Law and Economic Development Law.
- Adds provisions related to transitioning coverage to plans selected through the competitive procurement, including:
 - Requiring existing plans to submit an intention to complete a proposal within 60 days of the publication of the Request for Proposals (RFP).
 - Requiring the termination of services and operations of plans that fail to submit an intent to complete a proposal or that are not awarded a contract upon the direction of the Commissioner.
 - Requiring the continuation of coverage for the period determined necessary by the Commissioner to achieve safe transfer of participants.
- Modifies liquidated damages provisions by:
 - Allowing liquidated damages based on a failure to furnish necessary or required services or items; and
 - Modifying the process for disputing the imposition of liquidated damages.

Fiscal Intermediaries for Consumer-Directed Personal Assistance Services (CDPAS)

The 30-day amendments propose significant changes to the CDPAS program, including substituting an FI authorization process for the RFO process and requiring consumers to be able to self-direct. The amendments also potentially expand the scope of FI services. Specifically, the amendments:

- Authorize fiscal intermediaries (FIs) to contract with accountable care organizations (ACOs) and integrated delivery systems (IDSs), in addition to local departments of social services and managed care organizations. These contracts would presumably be limited to personal assistance services delivered to Medicaid beneficiaries in need of long-term care services; however, the intent of this provision and the manner in which ACOs and IDSs could be paid by Medicaid for personal assistance services are not clear.
- Remove the FI's responsibility to assist the consumers with their responsibilities, such as recruiting and supervising the personal assistant.

- Effective as of April 1, 2024, eliminate the “request for offer” process to select FIs for contracts with the Department of Health (DOH), and add an FI authorization process based on standards and processes to be established by the Commissioner. The standards may include compliance with marketing and labor practices, cost reporting, and electronic visit verification requirements.
- Authorize the Commissioner to determine the maximum number of FIs that a local social services district, managed care organization, ACO or IDS may have under contract.
- Authorize the Commissioner to waive Medicaid payment regulations and promulgate emergency regulations that include “minimum selection criteria and training requirements for personal assistants, the FI authorization process, access standards and caps on the number of FIs that entities may have under contract.”
- Effective Oct. 1, 2024, authorize the Commissioner to promulgate regulations that impose limits on the number of hours of work for personal assistants.
- Effective Oct. 1, 2024, eliminate the ability of a CDPAS consumer to have a designated representative or relative make choices on the consumer’s behalf; thereby requiring consumers served in the CDPAS program to be self-directing.

Fiscal Intermediaries, Licensed Home Care Services Agencies (LHCSAs), and Managed Care Plans:

The 30-day amendment propose to eliminate common ownership and control relationships among managed care plans, FIs, and LHCSAs, as follows:

- Prohibit enrollment and re-enrollment in the Medicaid program of any LHCSA, on and after April 1, 2024, if the LHCSA provides FI services, is owned by, owns, or is under common ownership with, an FI.
- Prohibit issuance of a certificate of authority to any managed care organization or MLTC plan that is controlled by, controls, or is under common control with an entity that provides FI or LHCSA services or provides FI or LHCSA services itself.
- Require, by April 1, 2025 any existing health maintenance organization (HMO) or MLTC plan that provides FI or LHCSA services or is controlled by, controls, or is under common control with an entity that provides FI or LHCSA services to re-apply for a certificate of authority and prohibit such HMOs and MLTC plans from maintaining their certifications.

HCBS, Aging & Human Services

Clarifies that CDPAS personal assistants would continue to be subject to the home care minimum wage mandate, notwithstanding the Governor’s proposal to exclude them from wage parity requirements.

The Executive's EMS and Hospital at Home initiatives are amended to:

- Clarify that DOH must approve the county medical emergency response plans, not the format of the plans.
- Clarify that general hospitals could be authorized to provide off-site *acute care* medical services, subject to the availability of Federal financial participation. The amendments eliminate primary care and “preventive wellness care” from the list of services that hospitals would be allowed to deliver offsite in patients’ homes. This narrows the type of care allowed to acute care.
- Add nurse practitioner to the list of medical professionals that can provide off-site acute care to a patient with a pre-existing relationship with the hospital or medical professional, including care for patients who were admitted through emergency departments and received care in inpatient hospital beds.
- Clarify that changes made to the Emergency Medical Dispatch section would apply only to dispatchers/dispatch agencies with a primary role as emergency medical dispatch, and that all licensure/protocols/minimum standards will be established with the advice and consent of the State Interoperability Emergency Communications (SIEC) board.

Health Care Facility Transformation Program (CCP)

The amendments make various technical corrections including to authorize up to \$300 million in existing DOH capital re-appropriations to be used for a SUNY Downstate Transformation Plan as well, and up to \$20 million to be made available for the Empire State ALS alliance.

Housing

The 30-day amendments make clarifying corrections to appropriation language for the Downtown Revitalization Initiative (DRI), the NY Forward Program, the Regional Economic and Community Assistance Program, and the Long Island Investment Fund relating to requiring a “Pro-Housing Community” designation to access these funds. The 30-day amendments would also provide consideration to communities impacted by the closure of State correctional and juvenile justice facilities in DRI and NY Forward awards.

The 30-day amendments increase the Executive Budget’s proposed utilization of excess reserves from the Mortgage Insurance Fund from \$53.58M to \$53.581M to support several homeless housing programs, including the Solutions to End Homelessness Program (STEHP), the New York State Supportive Housing Program and the Operational Support for AIDS Housing Program.

Next Steps

In early March, the Senate and the Assembly will put forth their one-house budget proposals. Each proposal will amend the Executive’s budget bills to reflect the priorities of each respective house. As legislators hear from stakeholders from across sectors about countless State budget requests, it is critical that we keep the funding needs of long-term care and aging services

providers top-of-mind. **It is critical that ALL LeadingAge NY members are engaging in Budget Advocacy NOW to create as much noise as possible, highlighting the needs of long-term care providers and the people we serve.**

LeadingAge New York has crafted the below service-line specific digital budget advocacy letters to help us keep the pressure on legislators for the remainder of 2024-25 budget discussions. Each letter takes only a minute or two to send. ***Simply enter your information to automatically send an email to the Governor and your State Senator and Assembly Member!***

Please use the below links to send messages to your legislators and the Governor TODAY!

- [Nursing Home Budget Letters](#) – several letters available for family members, staff, residents, etc.
- [Resident Assistant in Affordable Senior Housing Budget Letter](#)
- [Adult Care Facilities/Assisted Living Budget Letter](#)
- [Home & Community-Based Services Budget Letter](#)
- [Managed Long-Term Care Budget Letter](#)
- [Adult Day Health Care Budget Letter](#)
- [Continuing Care Retirement Communities Budget Letter](#)

After you send your letters, we strongly encourage members to share these links with colleagues, board members and volunteers. This is a simple and easy way to strengthen our unified message to the Legislature at this critical time.

Additionally, LeadingAge NY has launched a [NEW Social Media Toolkit](#) for LeadingAge NY Member Service Lines. There is more to come, but we ask members to ***utilize these social media tools AS MUCH AS POSSIBLE from NOW until March 8th.***

The Final SFY 2024-25 Budget, as negotiated and agreed upon by the Executive, State Senate, and Assembly, will be due by April 1, 2024. From now until then, we will need your help in our advocacy with state legislators and legislative leaders if we hope to accomplish our budgetary goals. Thank you in advance for your continued participation in advocacy, and for all you are doing for the individuals in your care.

As always, please contact the policy team if you have any questions.

Diane Darbyshire, LCSW

Vice President of Advocacy and Public Policy

LeadingAge New York

13 British American Blvd., Ste. 2

Latham, NY 12110

P 518.867.8828

F 518.867.8384

www.leadingageny.org