

Dear LeadingAge New York Members:

After a week delay in enacting a final budget, the Legislature worked through the night to deliver all the State Fiscal Year (SFY) 2022-23 Final Budget legislation to the Governor for signature. LeadingAge NY will be providing a comprehensive final budget overview for our membership later in the week, but wanted to share some initial highlights, below.

### **WORKFORCE AND SCOPE OF PRACTICE OF PROFESSIONS**

- **Health Care Worker Bonuses**: Appropriates approximately \$1.8 billion for bonuses. Modifies the Governor's proposal to provide healthcare and mental hygiene worker retention bonuses, by including many categories of workers, but not maintenance, housekeeping and other workers we had advocated to include. Eligible employers include (among others) nursing homes, home care agencies, hospice programs, fiscal intermediaries, and adult care facilities; however, at least 20% of the patients/residents of providers that are not subject to Certificate of Need must be Medicaid beneficiaries or public assistance recipients. Employees in qualifying job titles with base salaries of up to \$125,000 will be eligible for bonuses totaling up to \$3,000 over two 6-month vesting periods. Employees of state-operated facilities are also eligible for the bonuses.
- **Nurses Across New York (NANY)**: Accepts proposal to create a loan repayment program for nurses who work in areas determined to be underserved/underserved populations and agree to work in such areas for a period of three consecutive years.
- **Non-Patient Specific Regimens**: Authorizes physicians and nurse practitioners to issue to nurses non-patient specific regimens for COVID and flu tests.
- **Pharmacists**: Authorizes pharmacists to serve as directors of limited services labs and order and administer COVID and flu tests.
- **Nurse Practitioners**: Eliminates collaborative agreement requirements of experienced nurse practitioners and makes permanent the Nurse Practitioner Modernization Act.
- **Oversight of Professions**: Rejects proposal to transfer oversight of health care professions to DOH.
- **Interstate Compacts**: Rejects participation in the Interstate Physician and Nurse Licensure Compacts.

### **HEALTH CARE TRANSFORMATION (CAPITAL) GRANTS**

Includes a new \$1.6 billion capital program for the purpose of financing capital improvements for eligible health care facilities and nursing homes and building out ambulatory care infrastructure for financially distressed hospitals. Notable for members are the following:

- \$750M focused on delivery transformation via grants to health care providers for capital projects which build innovative, patient-centered models of care, increase access to care, improve care quality, and ensure financial sustainability. Specifies minimum allocations of \$25M for residential healthcare facilities and nursing homes, community-based health care providers, and behavioral health centers.
- \$450M for a mix of healthcare investments, including the opportunity to finance submitted proposals under prior healthcare capital programs, and includes minimum allocations for residential healthcare

facilities and nursing homes (\$50M), community-based health care providers (\$25M), and behavioral health centers (\$25M).

- \$150M to build out IT infrastructure and telehealth capabilities across all eligible provider types.
- \$50M to support implementation of alternatives to traditional institutional nursing homes.

### **VAP, VAPAP AND FINANCIALLY DISTRESSED PROVIDER FUNDING**

- VAPAP: Adds nursing homes and other provider types to the list of eligible applicants for Vital Access Provider Assurance Program (VAPAP) funding which has been available exclusively to hospitals. The program is designed for organizations in severe financial distress, to enable them to maintain operations while they establish long-term solutions to achieve sustainability. \$1.6B is also appropriated for hospitals, nursing homes and other providers experiencing severe financial distress that agree to a transformation plan.
- VAP: Continues funding for the Vital Access Provider (VAP) program at \$132M. The 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 and supports a number of multi-year projects.
- Distressed Provider Funds: Continues account to assist financially distressed hospitals and nursing homes through \$150M in tax intercepts per year. To date, this program has been used exclusively for hospitals.

### **NURSING HOMES**

- Nursing Home Staffing Funding: Includes \$374M (all funds) over two years for nursing home resident-facing services provided by RNs, LPNs, and CNAs.
- Changes to 70/40/5: Modifies the nursing home minimum spending requirements by excluding certain pass-through funding from being counted as revenue when the spending percentages are calculated: cash receipts assessment reimbursement and federal grants that reimburse for COVID-19 expenses. It also excludes capital reimbursement for homes with a 4 or 5-star rating while adding some related party ownership limitations. It specifies that any penalties for failure to meet 70/40/5 requirements in 2022 would be pro-rated to the part of the year that penalties were in effect.
- Nursing Home Quality Pool: Authorizes nursing home quality pool distributions to be funded through State appropriations, Medicaid rate adjustments (i.e., “self-funded”), or a combination of the two. This provision would facilitate expansion of the pool, subject to State Budget appropriation.
- Medication Aides: Rejects the proposal to authorize medication aides in nursing homes.

### **ADULT CARE FACILITIES/ASSISTED LIVING**

- Enriched Housing Subsidy: Accepts proposal to level fund at \$380,000.
- EQUAL: Accepts proposal to level fund program, with \$3.26M in “aid to localities” funding and \$3.26M in capital funding; without programmatic changes.
- ALP CON Process: Accepts proposal to push back the development of the Certificate of Need (CON) process for the assisted living program (ALP) to 2025. DOH had previously been directed to develop the process by 2023.

- SSI Congregate Care Level 3: Does not include an increase to the state supplement of the SSI Congregate Care Level 3 payment.
- ACF VAPAP Eligibility: Does not include ACFs or ALPs as eligible for VAPAP.

### **MANAGED CARE/MLTC/HEALTH INSURANCE**

- Competitive Procurement: Rejects proposal to competitively procure Medicaid managed care and MLTC plans. Requires an independent study by Oct. 31, 2022, of “the status of services offered by managed care organizations,” including a market assessment, areas of potential improvement, cost savings associated with a procurement, impacts on providers, and new performance standards that might be imposed on plans.
- Independent Assessor: Does not repeal or delay the independent assessor for personal care and CDPAS services. Modifies the provisions authorizing the amendment and extension of the Maximus contract for the purpose of conducting independent assessments and independent clinical reviews to prohibit its extension without a competitive bid beyond Sept. 30, 2025.
- Medicaid Enrollment Broker Contract: Prohibits the extension of the Maximus enrollment broker contract beyond Aug. 19, 2026 without a competitive bid.
- PACE Licensure and Oversight Streamlining: Rejects the unified licensure process and separate regulatory framework for Programs of All-Inclusive Care for the Elderly (PACE) that was proposed in the Executive Budget.
- Uniform Tasking Tool: Eliminates provisions requiring DOH procurement of a uniform tasking tool for developing MLTC and local department of social services care plans, but requires DOH to issue guidelines and standards for use of tools.
- Surprise Bills, Provider Directories, Health Plan Provider Applications: Includes expansion of emergency service dispute resolution to include physician services; provisions to confirm with federal No Surprises Act; surprise and balance billing notices; provider directory requirements; and reimbursement of consumers by providers for excess cost-sharing charges. Requires health plans to disclose requirements for network participation and deadlines for network participation decisions.

### **HOME AND COMMUNITY-BASED SERVICES**

- Fair Pay for Home Care: Includes a \$3.00 per hour wage increase above the minimum wage in the applicable region to home care aides. The increase will be paid in two increments, with a \$2.00 per hour increase Oct. 1, 2022, and a \$1.00 hourly increase Oct. 1, 2023. In wage parity regions, beginning Jan. 1, 2023, the cash portion of the total compensation will be minimum rate of compensation in the applicable region; in NYC the benefit portion will remain \$4.09, and in Nassau, Suffolk and Westchester, the benefit portion will remain \$3.22.
- Home Care CON: Eliminates proposed provisions regarding notices for CON changes in ownership for LHCSAs and CHHAs.
- Telehealth: Requires Medicaid reimbursement of telehealth services to be made on the same basis, at the same rate, and to the exact same extent as the equivalent services are reimbursed when delivered in person. Applies similar telehealth reimbursement parity to insurers providing comprehensive coverage for hospital medical or surgical care. Adds mental health practitioner to the list of providers able to deliver telehealth services.

- Fiscal Intermediary (FI) Authorization Process: Addresses the FI authorization process by accepting the offers to enter into contracts with all FI providers that were not initially selected in Feb. 2021 but who were qualified as meeting minimum requirements, provided that applicants not initially selected attest they were providing FI services for at least 200 consumers in a city with a population of more than one million between Jan. 1 and March 31, 2020; or were providing service for at least 50 consumers in another area of the state at any time during same time period. Provides attestation and submission process for qualified applicants moving forward.

## **SENIOR HOUSING**

- New Five-Year Plan: Enacts a comprehensive new five-year housing plan to create and preserve 100,000 affordable homes, including 10,000 homes with support services for vulnerable populations, and to electrify an additional 50,000 homes as part of the State’s broader plan. Dedicates more than \$4.5B in capital resources over five years, including \$300M in capital funding for affordable senior housing available to individuals 60 and older.
- Broadband and Digital Infrastructure: Commits more than \$1.4 B to support the ConnectALL initiative to provide affordable broadband access in rural and urban areas statewide. Seeks to remove barriers to broadband access.

## **MEDICAID**

- Restoration and Increase: The Budget Agreement includes a restoration of the 1.5 percent across-the-board (ATB) reduction to fee-for-service providers implemented in 2020, as well as an increase of 1 percent to all provider reimbursement rates. A full review of funding initiatives will be provided in the comprehensive budget memo.
- Global Cap: Extends the Medicaid Global Spending Cap until March 31, 2024 and updates the metric used to set this Medicaid spending limit, allowing for an additional \$366M in Medicaid spending subject to the Cap in FY23.

### **Eligibility:**

- Rejects proposal to eliminate asset test for individuals in “aged, blind or disabled” Medicaid eligibility category.
- Expands eligibility for individuals aged 65 and older who are otherwise ineligible due to their immigration status.
- Raises the Medicaid income limit to 138 percent of the federal poverty level (FPL) for individuals who are age 65 or older or have a certified disability.
- Raises the income eligibility level for Medicare beneficiaries to qualify for Medicaid coverage of their Medicare premiums, deductibles, and other cost sharing.
- Shifts from Medicaid to Essential Plan coverage certain categories of lawfully-present immigrants who would not otherwise qualify for FFP in the cost of their Medicaid coverage and who have functional limitations or chronic illnesses and require long-term care services.
- Raises income eligibility level for coverage under the Essential Plan to 250 percent of the FPL.

## **NEXT STEPS**

We deeply appreciate all members have done during this uniquely challenging time, your engagement in advocacy this year has been remarkable. We will provide a comprehensive analysis of the final budget in the days to come. In the interim, do not hesitate to reach out with 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](http://www.leadingageny.org)

