



150 State Street, Suite 301 Albany, New York 12207-1698 Telephone (518) 449-2707 Fax (518) 455-8908 Web [www.nyahsa.org](http://www.nyahsa.org)

## MEMORANDUM

**TO:** All Members

**FROM:** NYAHS Public Policy Department

**DATE:** January 21, 2010

**SUBJECT:** Summary of 2010-11 Executive Budget

**ROUTE TO:** Program Directors, Department Heads

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ABSTRACT: Detailed summary of the 2010-11 state health and housing budget proposal.

### Introduction

The governor officially released his \$133.9 billion state fiscal year (SFY) 2010-11 Executive Budget proposal earlier this week, which represents an increase of \$786 million or 0.6 percent over SFY 2009-10. The proposal is intended to close a projected SFY 2010-11 deficit of \$7.4 billion, and recommends a health care gap-closing package of \$1.9 billion. Budget materials are posted at: <http://publications.budget.state.ny.us/eBudget1011/ExecutiveBudget.html>.

The proposal would cut total long term care funding by about \$400 million by reducing funding for nursing home care by \$140.2 million (state share) and home care by \$73.9 million (state share). Combined with federal matching funds, this means total reductions in funding of about \$240 million for nursing home and \$155 million for home care services during SFY 2010-11.

NYAHS has already responded to these proposed cuts through a [press release](#), and in conversations with reporters. NYAHS will be posting sample advocacy letters on the [Legislative Action Center](#) Web page for members' use. **We provided members with a briefing on the budget via teleconference this past Tuesday. You can access a recording of this call by clicking on the file in the attachment section below.**

NYAHS has reviewed the relevant legislation and is being briefed by Division of the Budget and Department of Health (DOH) staffs. This memo will provide you with details on the governor's budget proposal, based on currently available information. NYAHS will provide members with further information as we receive it. **We also anticipate issuing provider-specific budget impact estimates as early as this week.**

## Nursing Homes

The following proposals would save the state \$140.2 million in 2010-11 and \$162.8 million in 2011-12:

### Proposed 2010-11 Budget: Nursing Home Measures<sup>1</sup>

Proposal	Effective Date	SFY 10-11 State Savings (\$ millions)	SFY 10-11 Provider/Recipient Impact (\$ millions)	SFY 11-12 State Savings (\$ millions)	SFY 11-12 Provider/Recipient Impact (\$ millions)
Limit rate appeals and authorize settlements <sup>2</sup>	4/1/10	(\$16.5)	(\$40.2)	(\$20.0)	(\$40.0)
Reduce payment for bed hold days	4/1/10	(\$6.9)	(\$16.8)	(\$9.4)	(\$18.8)
Increase assessment to 7% <sup>3</sup>	4/1/10	(\$67.8)	(\$67.8)	(\$74.0)	(\$74.0)
Remove drug costs from rates <sup>4</sup>	4/1/10	(\$2.4)	(\$5.9)	(\$3.0)	(\$6.0)
Eliminate 2010 trend factor	4/1/10	(\$46.6)	(\$113.7)	(\$56.4)	(\$112.8)
Delay regional pricing	4/1/10	\$0	\$0	\$0	\$0
<b>TOTAL</b>		<b>(\$140.2)</b>	<b>(\$244.4)</b>	<b>(\$162.8)</b>	<b>(\$251.6)</b>

<sup>1</sup> - Provider/recipient impacts are for 12-month periods, and assume state shares of 41% in 2010-11 and 50% in 2011-12.

<sup>2</sup> - Primarily a cash flow impact.

<sup>3</sup> - No lost federal matching funds, therefore no additional provider/recipient impact.

<sup>4</sup> - Depending on how this is implemented, there may be no provider/recipient impact.

1. **Limit rate appeals and authorize settlements:** Cap the amount of rate appeals that can be certified in SFY 2010-11 and 2011-12 at \$80 million per year, and authorize DOH to prioritize appeals processing and negotiate settlements with facilities facing financial problems.
2. **Reduce payment for bed hold days:** Payments would be reduced to 95 percent of the nursing home rate, and limited to 14 days annually for hospitalizations and 10 days annually for therapeutic leaves. Pediatric facilities would be excluded. It's not yet clear how this proposal would dovetail with proposed regulations from last year's budget that would cut payments to 75 percent of the rate and reduce the maximum vacancy rate from 5 percent to 3 percent.
3. **Increase assessment to 7%:** The cash receipts assessment would increase from 6 percent to 7 percent. The added 1 percent assessment would not be reimbursable by Medicaid.
4. **Remove drug costs from rates:** Remaining prescription drug costs would be carved out of nursing home rates and reimbursed on a fee-for-service basis, allowing the state to collect rebates on these drug costs.
5. **Eliminate 2010 trend factor:** The calendar year 2010 nursing home trend factor of 1.7 percent would be eliminated for the period April 1, 2010 through December 31, 2010. The 2010 trend factor for the first quarter of 2010 was already eliminated as part of the deficit reduction plan (DRP) enacted last November.
6. **Delay regional pricing:** The budget would extend nursing home rebasing through February 28, 2011 and implement the new regional pricing model on a budget-neutral basis on March 1, 2011. A quality incentive funding pool of up to \$50 million would be implemented on April 1, 2010 out of the existing \$210 million of funding for rebasing. The January 2010 MDS snapshot would also be used for case-mix adjustments to the January through July 2010 rates, under the proposal.

The budget includes the following additional proposals affecting nursing homes:

- **Expansion of rightsizing demonstration:** The budget would expand the Voluntary Nursing Home Rightsizing program, which allows nursing homes to temporarily

decertify or permanently convert beds to other long term care options, by an additional 2,500 beds statewide. This demonstration is an opportunity for providers to convert beds to Assisted Living Program (ALP), adult day health care (ADHC) program or long term home health care program (LTHHCP) capacity. NYAHSa had proposed expanding the program, and supports this initiative.

- **County nursing home demonstration:** This program would operate in up to 5 counties, and is intended to encourage transformation of county nursing home beds into other long term care options. Under the program, a county that downsizes or closes its nursing home could use the savings to: (1) expand community-based services such as managed long term care plans, LTHHCPs, ADHC programs and caregiver support services; (2) expand senior housing; (3) increase ALP capacity; (4) pay subsidies to encourage other facilities to accept hard-to-serve residents; and (5) make contracts with other nursing homes to guarantee beds for hard-to-serve patients. The county's local share cap could be adjusted to reflect savings from the demonstration.
- **Transitional care units:** The transitional care unit (TCU) demonstration would be extended by 5 years, and expanded from 5 to 10 sites. TCUs are units within acute care hospitals that provide skilled nursing facility subacute care to Medicare Part A beneficiaries. NYAHSa has consistently opposed this demonstration as duplicative of services nursing homes already offer.
- **Equity withdrawals/asset transfers:** Prior DOH approval is required now for equity withdrawals and transfers from a facility to another entity, such as a foundation, when such withdrawals or transfers exceed 3 percent of the prior year's Medicaid revenue. This requirement is currently being litigated. The budget proposes to change the threshold to 3 percent of total revenues.

## Home Care Agencies

The governor's 2010-11 budget would cut state spending on home care services by \$73.9 million in the current fiscal year and \$100.6 million in SFY 2011-12, as follows:

### 2010-11 State Budget: Home Care Budget Measures<sup>1</sup>

Proposal	Effective Date	SFY 10-11 State Savings (\$millions)	SFY 10-11 Provider/Recipient Impact (\$millions)	SFY 11-12 State Savings (\$millions)	SFY 11-12 Provider/Recipient Impact (\$millions)
Eliminate 2010 trend factor	4/1/10	(\$25.8)	(\$62.9)	(\$31.2)	(\$62.4)
Increase assessment to 0.7% <sup>2</sup>	4/1/10	(\$17.6)	(\$17.6)	(\$19.2)	(\$19.2)
Limit on personal care services	4/1/10	(\$30.0)	(\$73.2)	(\$48.7)	(\$97.4)
Change in frequency of assessment <sup>3</sup>	4/1/10	(\$0.6)	(\$1.5)	(\$1.5)	(\$3.0)
Implement Episodic Payment System	1/1/12	\$0	\$0	\$0	\$0
<b>TOTAL</b>		<b>(\$73.9)</b>	<b>(\$155.2)</b>	<b>(\$100.6)</b>	<b>(\$182.0)</b>

<sup>1</sup>- Provider/recipient impacts are for 12-month periods, and assume state shares of 41% in 2010-11 and 50% in 2011-12.

<sup>2</sup> - No lost federal matching funds, therefore no additional provider/recipient impact.

<sup>3</sup>- Depending on how this is implemented, there may be no provider/recipient impact.

1. **Eliminate 2010 trend factor:** The calendar year 2010 trend factor of 1.7 percent would be eliminated for the period April 1, 2010 through December 31, 2010 for all LTHHCPs, certified home health agencies (CHHAs), AIDS home care programs, and personal care services. The 2010 trend factor for the first quarter of 2010 was already eliminated as part of the DRP enacted last November.

2. ***Increase assessment to 0.7%:*** Effective April 1, 2010, the cash receipts assessment would be increased to 0.7 percent from the current 0.35 percent. The assessment, which is not Medicaid reimbursable, would apply to LTHHCPs, CHHAs, AIDS home care programs, and personal care services.
3. ***Limit on personal care services:*** Personal care and consumer directed personal care services to recipients aged 21+ would be capped at an average of 12 hours per day (360 hours per month). Recipients who need more service hours than the cap allows would be exempted if they receive services from a CHHA or are enrolled in the LTHHCP, an AIDS home care program, a managed long term care (MLTC) plan or the Nursing Home Transition and Diversion (NHTD) waiver. Under the proposal, the state would redirect affected recipients to these programs.
4. ***Change in frequency of assessment:*** Existing law would be amended to change the frequency of comprehensive assessments for LTHHCP, AIDS home care program or CHHA recipients from every 120 days to every 180 days. NYAHSa is very pleased to see this proposal as we have long been advocating for it.
5. ***Implement Episodic Payment System:*** An Episodic Payment System would be implemented for CHHA services effective 1/1/12. An EPS was first proposed in the 2009-10 Executive Budget, but was effectively delayed by the Legislature pending the results of a DOH workgroup report. The current proposal is budget neutral to the state, but concerns remain that the new system could significantly reduce outlier payments. The current proposal would continue the DOH workgroup process in the meantime.

The budget includes the following additional proposals related to home care:

- ***Coordination of services:*** DOH would establish procedures to allow LTHHCPs and other waiver providers, as well as other providers that furnish case management services, to provide joint case management services when the services of more than one such program are needed to meet a recipient's needs. The providers would need to maintain distinct yet coordinated service and case management responsibilities and not duplicate benefits. NYAHSa is very pleased to see this, as we have advocated for such a provision to avoid duplication of services.
- ***Reporting penalties:*** Civil money penalties of up to \$5,000 could be imposed on any home care provider which fails to submit required statistical, cost reporting, and contracting data to the DOH. This penalty extends to CHHAs which fail to provide the necessary statistical/cost reporting data to any subcontracting LHCSA.

### **Adult Day Health Care Programs**

The governor's Executive Budget includes cuts to ADHC programs, as follows:

1. ***Eliminate 2010 trend factor:*** Eliminate the 2010 trend factor of 1.7 percent for the period April 1 through December 31, 2010.
2. ***Increase assessment to 7%:*** The cash receipts assessment would increase from 6 percent to 7 percent. The added 1 percent assessment would not be reimbursable by Medicaid.

Proposals described elsewhere in this memo capping personal care services and managing non-emergency transportation could also affect adult day health care programs and recipients.

## Managed Long Term Care

The Executive Budget proposes to transfer statutory authority for Medicaid rate setting for MLTC services from the Insurance Department to DOH. This is consistent with DOH's move to a risk-adjusted payment system replacing the previous negotiated rate structure.

Proposals described elsewhere in this memo – the county nursing home demonstration, the limit on personal care services and the federal-state Medicare savings partnership – may be relevant to MLTC plans.

## Other Community-Based Services

- ***Congregate Services Initiative:*** The 2009-10 NYSOFA budget provided \$806,000 for CSI provides services for older persons in senior centers and other congregate settings. Services include information and assistance, referral, transportation, nutrition, socialization, education, counseling, caregiver support, volunteer opportunities and health promotion and wellness activities. The program is proposed to be eliminated.
- ***Patient's Rights Hotline and Advocacy Project:*** Operated by the New York Statewide Senior Action Council at \$63,000 in the 2009-10 budget, the program would be eliminated.
- ***Supplemental Nutrition Assistance Program (SNAP):*** SNAP funding is used to provide home delivered meals, some congregate meal funding and other nutrition related services to eligible frail elderly, including in senior housing settings. The Executive Budget reduces this program by \$2 million to \$21.3 million.
- ***Community Services for the Elderly (CSE):*** NYSOFA services funded through CSE include case management, personal care, caregiver services, congregate and home delivered meals, information and assistance, referrals, social adult day care, transportation, respite, wellness activities, senior centers and other congregate programs. CSE program funding would be reduced by \$1 million to \$15.3 million.
- ***Expanded In-home Services for the Elderly Program (EISEP):*** EISEP is a community based long term care program that provides case management, non-medical in-home, non-institutional respite, and ancillary services needed by New Yorkers aged 60 and over. EISEP program funding would be reduced by \$2 million to \$46.03 million.
- ***Enriched social adult day services:*** The budget level-funds this program at \$245,000.
- ***NORCs and NNORCs:*** The Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs program would be level-funded at \$2,027,000 each, with priority given to renewal of existing contracts with the NYS Office for the Aging (NYSOFA).
- ***Community Empowerment Program:*** NYSOFA's Community Empowerment program is level funded at \$245,000 to provide up to eight start-up grants to enable communities to develop supportive services to support "aging in place" initiatives.
- ***Social day programs:*** NYSOFA funding for social day programs is being level-funded at \$872,000, with preference towards the renewal of funding existing programs.

## Adult Homes/ Enriched Housing/Assisted Living Residences

- ***Changes to QUIP and EnAble:*** The budget would repeal the Quality Incentive Payment Program (QUIP) and restructure funding for the EnAble program as part of a new quality improvement program for adult homes. DOH would develop a methodology to allocate funds that would take into account the financial status of a facility as well as resident needs. An apparent effort to consolidate programs of similar purpose, this is being

funded at \$6.9 million, whereas last year QUIP was funded at \$4.66 million and EnABLE at \$5.5 million total, which included funding specific for air conditioners and generators. This restructuring thus reflects an overall cut of \$3.2 million.

- ***SSI enriched housing subsidy:*** The subsidy would be level-funded at \$502,900, and is for Supplemental Security Income (SSI) recipients who reside in not-for-profit or public enriched housing programs, and is paid directly to the operator. The \$115 per month subsidy is paid for each SSI recipient. If appropriations are not sufficient to meet this monthly amount, the subsidy will be reduced proportionately.
- ***ALR oversight & licensing:*** The budget proposes just over \$2.1 million for oversight and licensing activities for assisted living facilities. Last year's budget appropriated \$1.1 million for these activities.
- ***Services to adult home residents:*** The budget proposes \$1 million to provide education, assessments, training, and monitoring to adult home residents, to implement a remediation plan resulting from a 2009 federal court decision. Presumably, this relates to the *Disability Advocates, Inc. v. Paterson* decision, which concluded that the state violated the Americans with Disabilities Act and the Rehabilitation Act by housing mentally ill people in adult homes. This ruling suggests the state will have to find alternative smaller, community based residences for these individuals. Thus, these funds would likely be directed towards residents of impacted homes.

## Assisted Living Programs

- ***Elimination of 2010 trend factor:*** As with other Medicaid providers, the 2010 trend factor would be eliminated for the period April 1 through December 31, 2010. Last year's budget actions resulted in ALP rates effectively reverting to 2007 levels, where they would remain during 2010 per this proposal.
- ***DOH study on ALP rates:*** DOH would conduct a study on using resident data collected from a uniform assessment tool to evaluate and adjust Medicaid rates of payment for ALPs. DOH would report results to the Legislature by July 31, 2011. NYAHSAs had advocated for a study on the appropriateness of the assessment tool and the subsequent adequacy of ALP rates, as members report that the PRI does not capture the true cost of providing care to their residents, and that the rate is generally inadequate.

Proposals described elsewhere in this memo on the nursing home rightsizing demonstration and the county nursing home demonstration present opportunities to increase ALP capacity.

## Senior Housing

The Division of Housing and Community Renewal (DHCR) reduced its operational costs by 10 percent with a savings of \$2.2 million reflected in the 2010-11 Executive Budget. In addition, the budget includes combining administration functions of DHCR and nyhomes (i.e., the Housing Finance Agency) for an estimated savings of \$3.2 million. The proposal includes the consolidation of the DHCR Commissioner and the nyhomes President into one position.

- ***New York State Low Income Housing Trust Fund:*** The budget level-funds \$29 million for the Housing Trust Fund Program, providing grants to finance construction or rehabilitation of low-income apartment buildings.
- ***State low-income housing tax credits:*** The budget level-funds at \$4 million for state low-income housing tax credits, which will result in \$40 million in new funding for affordable housing over the next ten years.

- ***Access to Home:*** The program provides building modifications for seniors and the disabled to remain independent. Although previously in the state budget, the program was funded at \$4 million in 2009-10 through Housing Trust Fund Corporation (HTFC) transaction fees. DHCR has a 2010 request for applications for the program, and it is anticipated to be level-funded at \$4 million again through HTFC fees.
- ***NHTD waiver housing subsidy:*** Continuing the program from the past two years, the budget level-funds \$2.3 million for housing subsidies for participants of the nursing home transition and diversion waiver program.
- ***Funding for renovations & repairs:*** DHCR received \$253 million for the Weatherization program through the federal American Recovery and Reinvestment Act in the 2009-10 budget. There is \$174 million for the federal Weatherization program in the 2010-11 budget. The Public Housing Modernization Program, level-funded at \$12.8 million, is available to state-aided developments (Mitchell-Lama) not receiving federal operating subsidies.

## Fraud and Abuse

The SFY 2010-11 budget increases the Medicaid fraud recovery target by an additional \$300 million. It is expected that the state share of recoveries will reach a record level of \$1.17 billion. The Executive Budget also proposes the following actions:

- Increased civil penalties for first-time and repeat offenders who commit Medicaid fraud;
- Collaboration between the Office of the Welfare Inspector General (OWIG) and the Department of Labor to target those who illegally shift the cost of employees' medical care to Medicaid by paying people under the table and/or enabling employees who receive public benefits to earn income exceeding established eligibility levels.
- Shared services between the Office of Medicaid Inspector General (OMIG) and OWIG to provide greater efficiency and strengthen collaborative efforts to detect and control public benefits fraud.
- Match individuals and providers who are disqualified from the Medicaid program to the records of the Department of Taxation and Finance and the Workers' Compensation Board to ensure Medicaid is not billed.
- Document citizenship and audit tax return data to determine Medicaid and Child Health Plus eligibility.
- Implement an asset verification system to identify resources not captured today.

## Other Initiatives Affecting LTC

- ***LTC financing demonstration program:*** DOH would be authorized to implement a long term care (LTC) financing demonstration program, subject to federal approval, for up to 5,000 individuals using alternative approaches to the establishment of Medicaid eligibility. Modeled after the Partnership for LTC, the program would encourage individuals to spend a certain amount of their resources on services, in exchange for having other resources disregarded as part of the Medicaid eligibility determination. NYAHSAs has previously expressed support for this concept.
- ***Federal-state Medicare savings partnership:*** DOH would seek federal approval of a demonstration program designed to achieve savings and efficiencies in serving individuals who are eligible for both Medicaid and Medicare. Under the program, the state would seek a share of the savings in Medicare expenditures for hospital, long term care and other medical care for dual eligibles resulting from care management initiatives.

The savings could be reinvested in the health care system and shared with providers. NYAHSA proposed a similar concept for long term care services.

- ***Expand estate recoveries:*** The definition of “estate” for the purpose of Medicaid recoveries would be expanded to enable recoveries from assets that individuals could otherwise shelter from recovery by bypassing probate. This would save the state \$1.1 million in 2010-11 and \$2.6 the following year. NYAHSA has proposed this change in the past.
- ***Require irrevocable funeral accounts:*** The budget would require pre-need funeral accounts established for consideration in a Medicaid eligibility determination, including those for a spouse or family members, to be irrevocable. State savings is estimated at \$1 million in each of the next two years.
- ***Health information technology:*** DOH would be authorized to promulgate rules and regulations on the development of a Statewide Health Information Network of New York, consistent with federal stimulus requirements and to enable widespread interoperability among health information systems.
- ***Establish transportation managers:*** DOH would contract with an external organization to manage non-emergency transportation.

## **Conclusion**

We will be seeking further clarifications in several areas, and communicating them to you as we receive them. If you have any questions, please contact Dan Heim at [dheim@nyahsa.org](mailto:dheim@nyahsa.org) or 518-449-2707 ext. 128 or another member of the policy staff.