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MEMORANDUM

TO: All Members

FROM: Policy Solutions and Government Relations

DATE: February 11, 2011

SUBJECT: **SFY 2011-12 Executive Budget Proposal**

ROUTE TO: Administrators/Directors

ABSTRACT: Additional analysis of 2011-12 Executive Budget proposal.

Introduction

This is a follow-up to our Feb. 1st budget memo ([NYAHS Doc. ID # n00004990](#)) released on the day the governor issued his executive budget proposal for state fiscal year (SFY) 2011-12. In this memo we reiterate many of the details from the prior memo, along with additional information/clarifications; analysis of provider impacts; and additional advocacy information.

NYAHS has been in contact with both the administration and the Department of Health (DOH) seeking additional information, including clarification on the potential suspension of nursing home rebasing. Our advocacy staff has already been talking to legislative leaders, laying the groundwork for our upcoming budget battle. Finally, NYAHS has been in the media, in print and on the airwaves, making our case on behalf of our members.

Important Budget Briefing Today!

We are also releasing this additional information in preparation for today's budget briefing teleconference, scheduled for **10:30 a.m. to noon, Friday, Feb. 11**. The purpose of this call is to provide members with a thorough analysis of the governor's budget proposal as well as an assessment of the negotiations that lie ahead. We are setting aside an hour and a half so that there is ample time for any questions you may have. The call is open to all NYAHS members, no registration is required and it is free of charge. You should have received call-in information in a separate e-mail, but please contact Alyssa Lovelace via e-mail at alovelace@nyahsa.org if you need the information.

Comprehensive Information

This memo represents a comprehensive analysis of budget proposals cutting across all of NYAHSA's membership. While not all of the information is immediately relevant to all providers, we recommend that our members get a general perspective of what is happening across the various sectors. As discussed below in the MRT section, the administration has laid out an ambitious goal of not simply cutting costs, but of also redesigning the system. Our discussions indicate that they are not looking at specific sectors of providers as much as they are looking at overall systems. They are seeking to simplify and achieve greater coordination and integration of care. In this regard, no provider sector is an island in this budget battle, and impacts in one sector will likely have ripple effects across the entire continuum.

Budget Impact Estimates

The details of how to achieve the nearly \$6 billion in Medicaid savings with which the MRT (see below) is tasked are not scheduled to be unveiled until the team presents its report on March 1st. While this represents a reduction in total Medicaid funding in excess of ten percent, the lack of information makes provider impacts difficult to estimate in advance and leaves very little time for discussion and advocacy once the recommendations are released.

To help facilitate discussion, NYAHSA, along with other associations, has allocated the total dollar amount of the reductions across individual Medicaid providers based on the proportion of Medicaid spending that they represent. Impact estimates are available for [nursing homes](#), [CHHAs](#), and [LTHHCs](#). In effect, the impact estimates assume that the savings will be achieved by across-the-board provider cuts. While this is necessary for informed discussion and advocacy, please note that the MRT recommendations are **not yet known and may or may not rely on across-the-board cuts**.

NYAHSA has submitted numerous money saving ideas to the MRT and we are hopeful that the team's recommendations will not rely primarily on provider cuts. However, with history as a guide and given the type of rhetoric surrounding this year's budget, provider cuts are a likely scenario with which we need to contend. The purpose of these estimates is to demonstrate the unprecedented magnitude of the proposed reductions. **They should not be used for planning or revenue projections at this time.**

Please note that the estimates are based on figures provided by the MRT. Their presentation materials show how the [projected 2011-12 Medicaid spending of \\$58.3 billion is broken down among broad service areas](#). We allocated these figures to individual LTC programs using [2009 spending distribution by setting](#) information, also from the MRT. Because the estimates rely on state projections of Medicaid spending that include pretty aggressive enrollment and utilization assumptions, members may notice that their provider-specific impact estimates exceed ten percent of historical Medicaid revenue.

Medicaid Redesign

As noted above and unique to this year's executive budget proposal, the administration is anticipating state savings coming from the current Medicaid Redesign Team (MRT) initiative, which has yet to develop final proposals. This translates into an approximate 10% cut in projected Medicaid spending. The 2% reduction referred to in the budget presentations does not reflect the significant savings that the MRT has been tasked to find.

In addition, the executive budget recommends more than \$162 million in reductions to public health and aging programs, including \$48 million in savings from agency operations (i.e., the cost of running the DOH and its various agencies.) The total proposed “gap closing” actions equal \$3.01 billion in SFY 2011-12, and is projected at \$4.86 billion in SFY 2012-13. This increase in the subsequent year is predicated on the MRT developing \$4.6 billion in savings for SFY 2012-13 by modifying program requirements and limiting spending growth to the average medical Consumer Price Index.

Nursing Home Rebasing

As noted above, a key area of concern for many of our members is the fate of the 2002 nursing home rebasing. The executive budget is proposing to suspend implementation of the 2002 base year update until July 1, 2011, at which time the new regional pricing methodology takes effect. DOH is confirming at this time that the legislation is intended to postpone rebasing. At this time, we are cautious and concerned as to what the ultimate result will be in yet a further delay in rebasing.

Rebasing in its original form represented a needed update to the nursing home methodology (which was still based on 1983 base year costs). It should have resulted in a long overdue infusion of cash into the system. However, subsequent changes and amendments to the methodology, precipitated by state budget cutting strategies such as the “scale back,” the Medicaid-only case mix, and several trend factor freezes, have rendered the original intent of the base year update almost unrecognizable. In conjunction with our Joint Association Task Force partners we are in close contact with DOH on this issue, and we hope to be able to present clearer guidance over the coming weeks.

Along with suspending the new nursing home reimbursement methodology, the proposal extends the reimbursement cap (i.e., the \$210 million scale back) and permanently extends the authorization to collect the 6% assessment tax. Other proposals impacting nursing homes include:

- Permanently extending authorization for up to \$300 million annually for nursing home intergovernmental transfer payments for non-state operated public nursing homes;
- Permanently continuing previous years’ cuts: the exclusion of the 1996-97 trend factor from nursing home and inpatient rates; and the 0.25 percent trend factor reduction for hospitals and nursing homes;
- Authorizing Medicaid payments for nursing homes with discrete units for treating patients with Huntington's disease; and
- Allowing prior year Medicaid payments to be made to adult day health care providers treating patients with AIDS.

Home Care

In his budget presentation, the governor started out by pointing to home care as an area that has been particularly mismanaged and therefore has the most potential for significant savings. NYAHSa strongly disagrees with this characterization, and refuting this rhetoric with facts and rationale will constitute a major piece of our advocacy on the home care side. Specific home care proposals include:

- ***Discontinue Article 6 reimbursement for all optional services:*** including early intervention service coordination and other programs - a \$10.5 million state-share impact. Last year DOH,

contemporaneous with the budget, adopted regulations to eliminate Article 6 reimbursement for optional services, including home health in those areas where a county was **not** the sole provider of these services, and hospice services.

- **CHHA A&G Cap:** continuing the elimination of the \$1.5 million reconciliation limit for the Certified Home Health Agency (CHHA) administrative and general cap.
- **LTHHCP A&G:** permanently extending a limitation on the reimbursement of the long term home health care (LTHHCP) program administrative and general costs to a statewide average, and to amend the public health law in relation to rates of payment for long term home health care programs.
- **Demonstrations for Recruitment and Retention of Health Care Workers:** provides \$50 million to support rate increases for CHHAs, LTHHCPs, AIDS home care programs, hospice programs, managed long term care plans and approved managed long term care operating demonstrations for recruitment and retention programs.
- **Recruitment and Retention of Personal Care Workers:** provides \$136 million for MA program related to supporting workforce recruitment and retention of personal care services or any worker with direct patient care responsibility for LDSS which include a city with a population of over 1 million persons.
- **Recruitment and Retention of Personal Care Workers:** provides \$11.2 million for MA program related to supporting workforce recruitment and retention of personal care services or any worker with direct patient care responsibility for LDSS which **do not** include a city with a population of over 1 million persons.
- **CHHA Bad Debt and Charity Care:** extend authorizations for bad debt and charity care allowances for CHHAs through June 30, 2013.
- **Uniform Assessment Program:** provides \$4.8 million for services and expenses related to the development of a universal assessment program (**impacts across continuum.**)
- **Criminal History Record Check:** includes \$11.7 million to reimburse CHHAs, LTHHCPs, and LHCSAs for the costs related to criminal history record checks.
- **Social Model Adult Day Care:** The elimination of \$250,000 in discrete funding for the enriched social model demonstration. The budget proposal establishes potential funding for enriched social model programs through a new, local competitive performance grant program.

Waiver Programs

- **Improvements in the Long Term Care System:** \$1.75 million for the long-term care restructuring, the nursing home transition and diversion waiver, and the point of entry initiatives for.
- **NHTD Housing Subsidy:** \$2.3 million for a housing subsidy for certain participants in the Nursing Home Transition and Diversion waiver program.
- **Traumatic Brain Injury (TBI) waiver:** \$13.2 million for services and expenses related to TBI for personal and non-personal services.

EPIC

Modify Elderly Pharmaceutical Insurance Coverage (EPIC): EPIC enrollees will be responsible for paying their Medicare Part D premiums or their full deductibles starting July 1, 2011 and EPIC will only pay provide payment for drugs when an enrollee has entered into the Part D coverage gap, starting January 1, 2012. Estimated savings are \$58.4 million in 2011-12.

Managed Care

Managed care plans: provides \$25 million for contractual services related to a third party entity responsible for education of persons eligible for Medicaid regarding their options for enrollment in managed care plans.

Adult Care Facilities and Assisted Living

The following proposals pertain to adult care facilities (ACFs) and assisted living. Please note this is an update from our initial preliminary overview of the budget.

- Quality Funding for Adult Care Facilities:** While the proposal *increases* funding for services and expenses of a quality program for ACFs, including enriched housing facilities, we are told by the Division of Budget that this is an error. We expect that this will be corrected in the amendments the Governor will issue in the weeks to come, and the program will be level-funded at \$6.9 million. The language for this funding pool mirrors last year's budget initiative, which replaced the QUIP and the enhancing abilities and life experience (EnAbLE) programs with "EQUAL". The program is targeted at improving the quality of life for ACF residents, and gives significant discretion to DOH to develop an allocation methodology, which takes into account financial status of the facility as well as resident needs (subject to division of budget approval). [DOH's approach to EQUAL](#), for which applications are due on February 18, is likely to give insights into their future approach to the methodology of the funding distribution. Members are thus encouraged to share their comments with NYAHSa about the methodology, so that we can provide feedback to DOH to help shape the approach for the upcoming fiscal year.
- SSI enriched housing subsidy:** The budget proposes to level-fund the enriched housing subsidy at \$502,900. The subsidy is for Supplemental Security Income (SSI) recipients who reside in not-for-profit certified enriched housing programs. Such subsidy shall not exceed \$115 per month per each SSI recipient and will be paid directly to the certified operator. If appropriations are not sufficient to meet such maximum monthly payments, the subsidy will be reduced proportionately.
- Re-appropriation of EnAbLE funding:** The budget re-appropriates \$2,477,800 for the EnAbLE program, for funding initially appropriated in 2009. Operators have already been given the opportunity to apply for these grants, and we are awaiting Division of Budget approval before DOH can announce the awards. EnAbLE grants were designed to support ACFs in initiatives that would improve the quality of life and independence for residents.
- Continuation of Limited Licensed Home Care Services Agency:** The budget continues the statutory requirement that establishes limited licensed home care service agencies in adult homes or enriched housing programs as providers of personal care and limited medical services.
- Criminal history background check program:** The budget appropriates \$11.7 million for the reimbursement of criminal history record checks.
- Uniform assessment program:** The uniform assessment tool, which is planned to be implemented in assisted living programs and adult day health care state wide, and personal care in certain parts of the state, was funded at \$4.8 million. Obviously, this signals that the new administration is supporting this direction. This is not surprising, given that the Medicaid Redesign Team is consistently raising the need for a uniform assessment tool throughout the continuum.
- Impacted adult homes:** In response to a Federal court order, the Executive Budget continues a multi-year plan to provide additional funding for supported housing and

support services needed for 4,500 individuals leaving certain New York City adult homes. In 2011-12, \$41.3 million, roughly \$40 million above 2010-11 levels, will fund rental housing units and services for the first of these individuals beginning February 1, 2011.

- ***CQCAPD adult home advocacy program:*** Since 1995, the Commission on Quality Care and Advocacy for Persons with Disabilities receives funding for services and expenses related to the adult home advocacy program. 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 New York City and Long Island. The program was level-funded at \$170,000.
- ***Adult Home Resident Council Support Project:*** The adult home resident council support project operated by the Family Services League on Long Island is level-funded at \$60,000.

Medicare

Medicare Maximization: Extending previous requirements that nursing homes, hospitals, CHHAs and LTHHCPs maximize Medicare revenues through February 1, 2013.

Senior Housing

In 2010, the New York State Homes and Community Renewal (HCR) was established by combining the state's major housing and community renewal agencies, including the Division of Housing and Community Renewal, Housing Finance Agency, the Housing Trust Fund Corporation and others. The 2011 Executive Budget recommends a HCR budget of \$307.8 million, for a decrease of \$156.9 million from the 2010-11 budget. The major reduction in the budget primarily reflects the elimination of the onetime American Recovery and Reinvestment Act (ARRA) funding of \$ 129.1 million which NYAHSAs members received funding through the Weatherization Program, and a ten percent administrative cost reduction. Other proposals affecting housing are as follows:

- ***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:*** HCR has a 2011 request for applications for the program, and it is anticipated to be level-funded at \$4 million again through Housing Trust Fund Corporation transaction fees. The program provides building modifications for seniors and the disabled to remain independent.
- ***Funding for renovations & repairs:*** While federal funding for renovations under the ARRA is eliminated the budget proposes \$4 million for the Low Income Weatherization Program.
- ***The Public Housing Modernization Program:*** The budget proposes a slight reduction from \$12.8 million to \$12.4 million, and the funding is available to state-aided developments (Mitchell Lama) not receiving federal operating subsidies.
- ***Neighborhood and Rural Preservation Programs:*** The budget recommends consolidating the Neighborhood Preservation Program (NPP) and Rural Preservation Program (RPP) into a single competitive, performance-based program. Funding would be

reduced by 50 percent, from \$12 million in 2010-11 to \$6 million in 2011-12. NPP and RPP provide services such as housing rehabilitation, home buyer counseling, landlord/tenant mediation, community renewal and crime watch programs.

- ***NHTD waiver housing subsidy:*** The budget level funds \$2.3 million for housing subsidies for participants of the nursing home transition and diversion waiver program.
- ***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).

Adult Day Health Care

- ***Cash Receipts Assessment:*** Permanently extends the authorization to collect the six percent cash assessment tax on operating income from ADHC programs;
- ***AIDS Programs:*** Provides a \$1,867,000 rate increase for AIDS ADHC programs for the period April 1 to June 30, 2011 allocated proportionally among providers based on their Medicaid reported visits in the most recent cost report submitted by Jan. 1, 2011. An additional rate ad-on of \$236,000 will be provided to AIDS ADHC programs for the same period and in the same manner; and
- ***Transportation:*** Anticipates a reduction in Medicaid transportation administrative costs due to the implementation in 2011 of proposals passed in FY 2010-2011. These changes include the hiring of a transportation manager in New York City and 13 counties in the Hudson Valley. These managers would handle transportation authorizations for programs utilizing Method 2 transportation and for registrant transportation to medical appointments.

Other Aging Services Funding

The following proposals pertain to other aging services, most of which are designed to help seniors remain in their communities.

- ***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 level-funds this at \$21.3 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. The Executive Budget level-funds EISEP at \$46.03 million.
- ***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.
- ***NY Connects:*** The budget eliminates funding for the NY Connects Program, which provides seniors with information regarding available services through the establishment of call centers, telephone hotlines and NY SOFA's NY Connects website. The state expects to save \$0.95 million in the 2011-12 fiscal year and \$3.8 million in the 2012-13 fiscal year.

The Executive Budget seeks to **eliminate discrete funding** for the below listed programs; however these initiatives could be eligible for funding through a new local competitive performance grant program established in the budget. This performance grant program is

intended to support priority initiatives that address emerging or ongoing matters affecting older adults and pursuing innovations in assisting older adults. Funding is available for this grant program through the savings creating by reducing support for the below services. The state expects to achieve \$1.4 million savings in the upcoming fiscal year and \$1.6 million in the 2012-13 fiscal year as a result.

- Community Empowerment Initiative: NYSOFA's Community Empowerment program provided up to eight start-up grants to enable communities to develop supportive services to support "aging in place" initiatives;
- Congregate Services Initiative: This program 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;
- EAC/Nassau Respite Program;
- Elderly Abuse Education and Outreach Program;
- Enriched Social Adult Day Centers Program;
- Long Term Care Senior Respite;
- Foster Grandparent Program;
- Foundation Home Sharing;
- Modify Early Intervention (EI): provides for a 10 percent across-the-board reduction in rates. Estimated savings \$11.6 million in 2011-12
- Patients' Rights Hotline and Advocacy;
- Regional Caregivers Centers for Excellence; and
- the Retired and Senior Volunteer Program.

These programs could be eligible for funding through a new performance grant program established in the Executive Budget, which is intended to support priority initiatives that address emerging or ongoing matters affecting older adults and innovations in assisting older adults. This funding is available through the savings creating by reducing support for the services listed above and adds a new Elder Law § 224 to establish a Local Competitive Performance Grant program for priority initiatives in aging.

Other matters of Interest to Members

HEAL Funding: NYAHSAs has been following developments regarding funding for the Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY), as members are very interested in the possibility of future projects. The Executive Budget is unclear about the future of HEAL funding-this, along with so many other details of the budget, seem to be subject to negotiation. Another factor, still up in the air, is whether the F-SHRP waiver that authorized the HEAL initiative will be extended, to secure the flow of the federal share of HEAL funding beyond September 2011. The budget re-appropriates past year's capital funding for HEAL projects. Certain re-appropriations for this program from 2009 and prior appear to have been cut. We are told that these cuts should not affect already approved projects underway.

Funding for DOH's Office for Long Term Care: NYAHSAs noticed in analyzing the budget that discrete funding for DOH's Office for Long Term Care was eliminated, and that more general administrative funding for DOH has been increased. We were concerned about what that might suggest for DOH and investigated. DOB indicated that this does not suggest any sort of reorganization or elimination, but rather was appropriated in a way that would facilitate the state

agency budget cuts that the Governor is seeking to achieve; the details of which are subject to negotiation with the employee unions.

Initial Recommendations

Since the bulk of the savings the governor hopes to attain will be determined through the MRT, a provider specific analysis will ultimately rest on the recommendations of the MRT. However, some initial recommendations contained in the governor's budget presentation include:

- Achieving savings by modifying Early Intervention, and General Public Health Work, and implementing various other changes;
- Extending the Health Care Reform Act (HCRA) for three years;
- Extending various provisions of the Public Health, Social Services and Mental Hygiene laws, including continued authorization of previously enacted Medicaid savings initiatives;
- Amending the Medicaid eligibility status of individuals served in Institutions for Mental Diseases; and
- Establishing a one-year deferral of the Human Services Cost of Living Adjustment.
- Ensuring the efficient and cost-effective delivery of programs and services operated by the Office of Mental Health.

Knowledge is Power

We present this ongoing information and invite you to join our budget briefing call because understanding the budget proposal and its impact on your specific program or operation is critical to launching an effective advocacy campaign. The key over the next few weeks is to develop the information we need and mobilize a unified advocacy position.

NYAHSAs policy and advocacy staff are mobilized to analyze and respond to the proposal. NYAHSAs ongoing analysis of the financial status of senior care providers across the continuum demonstrates beyond any doubt that these drastic cuts cannot be absorbed by our members; not-for-profit and mission-driven providers who already operate with paper thin margins, if they have any margin at all.

Past experience teaches that the road from budget proposal to final budget can be a long and challenging one. While this may be the most challenging budget year we have yet to face, please be assured that NYAHSAs will pursue every means possible to maintain the unique and sacred mission of New York's not-for-profit senior care and services providers.

To that end our analysis of the budget is in full swing, and we continue providing members with the most up-to-date information. The ground work for our advocacy has already been laid. As always, we stand ready to work with our partners in other associations facing the same challenges. Now more than ever we need the continued support and involvement of our Board, Cabinets and total membership as we fight the good fight. There could not be a more important time to schedule a meeting with your legislator and join us for Advocacy Day on March 15. Please visit our [advocacy Web site](#) for more information.

The official budget press release is available by [clicking here](#), and the actual budget documents are available by [clicking here](#).