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## MEMORANDUM

**TO:** All Members

**FROM:** Dan Heim, Vice President for Public Policy  
Ami Schnauber, Director of Government Relations

**DATE:** April 8, 2009

**SUBJECT:** **Additional Information on 2009-10 State Budget**

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

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ABSTRACT: Further clarifications on 2009-10 state budget.

### Introduction

This memo is intended to update and supplement the information provided in our summary of the state budget provisions in [NYAHS Doc. ID# n00003322](#), issued on March 30, 2009. Please assume that all of the information in that memo is still correct to the best of our knowledge, except for clarifications noted in this memo. NYAHS will provide members with further information on the budget provisions as we receive them.

At this point, both the Assembly and Senate have passed all of the budget bills comprising the budget for state fiscal year (SFY) 2009-10. For health and mental hygiene services, budget appropriations are covered in S.54-C/A.154-C, and Article VII language provisions appear in S.58-B/A.158-B. You can access the text of these lengthy bills by navigating to <http://public.leginfo.state.ny.us/menuf.cgi> and entering either the Senate or Assembly bill number without punctuation (e.g., S.58-B should be entered as "S58B").

The SFY 2009-10 Executive Budget had proposed \$3.5 billion in health funding reductions. The final \$131.8 billion budget restores \$1.2 billion of this amount.

### Nursing Homes

Our March 30, 2009 memo summarized the disposition of the proposed 2009-10 cuts, noting that the following cuts are included in the final budget: (1) cap rebasing payments and delay regional pricing until April 1, 2010; (2) eliminate remaining 2008 trend factor, effective April 1, 2009; (3) eliminate 2009 trend factor, effective April 1, 2009; (4) eliminate occupancy adjustment to discrete AIDS rates, effective April 1, 2009; (5) reduce bed hold payments to 75 percent of the

rate and decrease the maximum vacancy factor from 5 percent to 3 percent; (6) transition 6,000 nursing home to assisted living program (ALP) beds over five years; and (7) reduce adult day health care (ADHC) transportation rates.

Brief comments and clarifications on some of these cuts and related issues follow:

- **Cap on rebasing and case-mix adjustments:** Rebasing will be implemented effective April 1, 2009, with a Medicaid-only case mix index (CMI). The statewide increase in total payments will be limited to \$210 million on a net basis (i.e., rebasing limited to \$460 million, minus a \$250 million limit on the impact of Medicaid-only CMI). A CMI adjustment to these rates will be made in July 2009, based on the July 29<sup>th</sup> picture date. Although the Department of Health (DOH) will still collect census roster data in January 2010, there will not be a CMI update made at that time. Instead, the July 2009 Medicaid-only CMI will continue to be used in the rebased rates until March 31, 2010, at which time the new regional pricing system is scheduled to go into place. We do not yet know the methodology that DOH will use to limit the overall benefit of rebasing and the overall impact of Medicaid-only CMI to a net \$210 million for SFY 2009-10.
- **First quarter 2009 transition funding:** One of the unintended consequences of delaying rebasing from January 1, 2009 to April 1, 2009 in the Deficit Reduction Plan (DRP) agreed to in February was discontinuation of the rebasing transition funding that facilities received for 2007 and 2008. Despite our best efforts to have this funding continued during the first quarter of 2009 (at the 2008 level of \$41.875 million statewide), the final budget did not include this funding.
- **Workgroup on regional pricing:** The existing reimbursement workgroup (of which NYAHS is a member) will be expanded to include representatives of regional provider associations and consumers, and charged with overseeing development of the new regional pricing methodology. DOH will be reporting its activities to the Legislature. The next meeting of the workgroup will be held in late April or early May, and we hope to obtain more details on how the workgroup process will function at that time.
- **Depreciation funding:** Under the rebasing statute, voluntary nursing homes were not required to fund their depreciation reimbursement in 2007 or 2008. However, it appears that this provision has lapsed, meaning that facilities may need to resume depreciation funding in 2009. We are seeking clarification on this.
- **Trend factor elimination:** The elimination of the 2008 and 2009 trend factors takes effect on April 1, 2009. This means that the roll factor used in the rates for the first quarter of 2009 will include both the 2008 and 2009 trend factors, as reduced in 2008.
- **Bed hold payments:** We are seeking to clarify with DOH how and when these changes will be implemented. The budget did not include any language on the new vacancy standard or the lower daily payment, so these changes will need to be made administratively by DOH through regulations or otherwise.
- **Transition 6,000 RHCF beds to ALP beds:** Similarly, we are seeking more information from DOH on what their plans are for this initiative, which is to occur over five years.
- **Recruitment and retention (R&R) adjustments:** The final budget reduces funding for R&R adjustments for the period April 1, 2008 through March 31, 2009 for both non-public and public facilities, and ends these adjustments effective April 1, 2009. We are seeking clarification on the exact amounts that will be paid to facilities during SFY 2008-09, as well as updates on the anticipated timing of these payments.
- **Financially disadvantaged fund:** Although the program criteria are changing effective April 1, 2009, this will not affect the distribution of funds for 2008. DOH is currently working on the 2008 calculations, and we expect status updates shortly.

- **IGT program:** Intergovernmental transfer program payments of up to \$300 million on a statewide basis will be made to public nursing homes during SFY 2009-10. However, the actual total amount of these payments will be a function of the state's calculation of the Medicare upper payment limit.
- **Equity transfers:** DOH prior approval will be required if a voluntary facility transfers funds from its nursing home to another entity that exceed three percent of the prior year's revenue. DOH will have up to 60 days to act on such requests, and could impose a penalty of up to 10 percent of any such amount transferred without prior approval. We are seeking clarity on how and when DOH plans to implement this requirement.
- **Across-the-board rate cuts:** A budget proposal to implement across-the-board rate reductions to the operating component of rates of 8 percent for the period January 1, 2009 through March 31, 2009; and 2 percent for the period April 1, 2009 through March 31, 2010 was **rejected** during the DRP deliberations, and was also **not included** in the final SFY 2009-10 budget (estimated \$189.4 million provider impact).

### Adult Day Health Care Programs

Further clarifications for provisions in the budget affecting ADHC programs follow:

- **ADHC transportation rates:** We understand that these rates will be revised by DOH, effective April 1, 2009, and expect to have more details in the near future on what the rates will be and how they will be implemented.
- **Trend factor elimination:** The elimination of the 2008 and 2009 trend factors takes effect on April 1, 2009. This means that the rates for 2009 will reflect elimination of both the 2008 and 2009 trend factors (as reduced in 2008) after the first quarter.
- **AIDS ADHC Inflationary Trend.** Although the law was changed to allow AIDS ADHC programs to receive trend factor adjustments beginning April 1, 2009, trend factors for all Medicaid providers have been eliminated for 2009. Therefore, we understand these programs will not see an inflationary increase in 2009.

### Home Care Agencies

The following cost containment actions are included in the final SFY 2009-10 budget:

#### Home Care Cuts in Final Budget

Provision	Effective Date	SFY 09-10 State Savings (\$ millions)	SFY 09-10 Provider Impact (\$ millions)
Eliminate 2008 Trend Factor in 2009-10 Rates	4/1/09	(\$12.6)	(\$25.1)
Eliminate 2009 Trend Factor	4/1/09	(\$18.0)	(\$36.0)
Establish a 0.35 Percent Assessment	4/1/09	(\$5.4)	(\$10.9)
Eliminate Infrastructure Funding	4/1/09	(\$8.0)	(\$16.0)
<b>TOTAL</b>		<b>(\$44.0)</b>	<b>(\$88.0)</b>

Further clarifications on budget provisions affecting home care agencies follow:

- ***Trend factor elimination:*** The elimination of the 2008 and 2009 trend factors takes effect on April 1, 2009. This means that the rates for 2009 will reflect elimination of both the 2008 and 2009 trend factors (as reduced in 2008) after the first quarter.
- ***Reimbursement workgroup:*** The budget establishes a workgroup to study the home health care reimbursement system. We are seeking further information on how and when the workgroup will be appointed, and how they will function.
- ***Home health registry:*** The Executive budget appropriated \$2 million to create and maintain a registry of certified home health and personal care aides. NYAHSAs and other associations collaborated on this legislation. **This proposal was accepted, as proposed.** The appropriation amount cited in the March 30, 2009 NYAHSAs memo was incorrect.
- ***Consumer directed personal assistance program (CDPAP):*** This appears to be a new initiative aimed at expanding the CDPAP. In addition to outreach and educational efforts, local districts will be monitored on their compliance with the program and for consistency with other counties. Further, all home care recipients who may be eligible for the CDPAP will be given notice of the availability of the program, and have the opportunity to apply for participation.
- ***Home health R&R funding:*** The Executive Budget proposed cuts in home care recruitment and retention funding for Certified Home Health Agencies (CHHAs), Long Term Home Health Care Programs (LTHHCPs), AIDS programs, hospice, and managed long term care (MLTC) plans, and further proposed to make CHHAs ineligible for this funding beginning January 1, 2010. **The final budget includes \$50 million (\$100 million including federal funds) in program funding, and does not exclude CHHAs from receiving continued adjustments.**
- ***CHHA Bad Debt and Charity Care:*** Our March 30<sup>th</sup> memo discussed new community service plan requirements, but not in the context of CHHA bad debt and charity care. The final budget requires DOH to revise the minimum percentage for charity care contained in regulations and, in turn, requires CHHAs to adopt community service plans identifying their organizational mission, the populations to be served, and their commitment to meet the needs of their community. The agency would have to file its plan with DOH, and report annually on the amount of charity care provided.
- ***Home health telemedicine demonstration:*** The Executive Budget proposed to eliminate funding and repeal the legislative authority for this program, effective March 1, 2009. **This proposal was accepted.** The March 30, 2009 NYAHSAs memo incorrectly indicated that funding was allocated to this program.
- ***Telehealth funding:*** \$5 million is allocated for home health telehealth and IT demonstrations. We believe this funding is allocated for home telehealth Medicaid reimbursement, however it is unclear if any other activities will be covered.
- ***Home care infrastructure:*** The Executive Budget proposal effectively eliminated funding of \$8 million (\$16 million, including federal funds) in home care infrastructure for rural, small city and suburban areas for April 1, 2009 through March 31, 2010. **This proposal was accepted.**
- ***LTHHCP special needs patients:*** The Executive Budget proposed an extension to the demonstration authorizing LTHHCP special needs participants until March 31, 2013. **This proposal was accepted, with amendments.** The final budget makes this authorization permanent.
- ***CHHA and LTHHCP A&G cost caps:*** The DRP proposed a 20 percent administrative and general (A&G) cost cap for CHHAs and LTHHCPs with more than \$20 million in total annual reported expenses. **This proposal was rejected.**

- **CHHA and LTHHCP Medicaid rate ceilings:** The DRP proposed to reduce the Medicaid rate ceilings for CHHAs and LTHHCPs from 110 percent to 100 percent of the applicable peer group averages starting January 1, 2009. **This proposal was rejected.**
- **Across-the-board rate cuts:** In addition to larger proposed additional across-the-board cuts, the DRP proposed an across-the-board reduction of 1 percent in CHHA, LTHHCP and personal care rates in SFY 2009-10. **This proposal was rejected.**
- **Elimination of CHHA moratorium:** This proposal would lift the current administrative moratorium on processing certificate of need (CON) applications for new CHHAs. **DOH is still assessing whether they will move forward with this action.**
- **Include Personal Care Services in Managed Care:** The governor's proposal included a provision to incorporate personal care services in the managed care benefit package with an anticipated state savings of \$0.9 million in SFY 2009-10 and \$1.2 million in SFY 2010-11. **This proposal was rejected.**

## Managed Long Term Care

The Executive Budget proposed measures that would affect managed long term care (MLTC) programs.

- **Administrative Cap:** The Executive Budget proposed to impose a ceiling on the administrative costs of MLTC programs to "encourage operating efficiencies," resulting in a \$16.6 million estimated impact on MLTC programs in SFY 2009-10 and SFY 2010-11. **This proposal was accepted.** NYAHS is seeking further clarity from DOH on how this will be implemented.
- **Establish LTC Assessment Centers:** The Executive Budget proposed to create regional LTC assessment centers to take over from the local departments of social services responsibility for assessing the need for, and authorizing Medicaid recipients to receive managed long term care and other services. **This proposal was accepted, with modifications.** This will be a 3-year demonstration program in two counties (one in New York City and one upstate) to study the process of transferring responsibility for determining an individual's need for LTC services from the county to the regional center. For MLTC, DOH anticipates that the regional LTC assessment center will play the same role as the local social services district currently does.
- **Maximize Enrollment of Dual Eligibles:** The Executive Budget proposed further enrollment of dual eligibles in managed care plans, which was projected to reduce state Medicaid spending by \$3.0 million in SFY 2009-10 and \$5.0 million in SFY 2010-11. **This proposal was accepted.** It is a continuation of current efforts to increase enrollment of these individuals, primarily in the Medicaid Advantage program.

## Multiple Provider Types

- **Uniform Assessment Tool:** The Executive Budget proposed the development of a uniform assessment tool for long term care (LTC). Once developed, the tool would be piloted in the last quarter of the 2009-10 fiscal year before statewide implementation. **This proposal was accepted, with modifications.** The final budget allocated \$5 million for a "uniform assessment program." While it is presumed that this funding would be used to develop a uniform assessment tool for LTC, there is no statutory language detailing this initiative.
- **Funding for Restructuring Activities:** The final budget includes \$16 million in funding for DOH and the State Office for the Aging for expenses related to LTC restructuring

activities, the nursing home transition and diversion waiver and NY Connects (i.e., the point-of-entry initiative).

- **Health Workforce Retraining Grant Program:** The Executive Budget proposed to continue funding of \$10.4 million for state grants under the health workforce retraining program. **This proposal was accepted, with modifications.** An additional \$21.1 million was allocated, \$8.9 million of which is specifically set aside to fund training for workers in jobs/job skills that meet the changing requirements of the health care field.
- **Electronic Health Records (EHR) Loan Program:** The final budget establishes an authority to administer an EHR loan fund for the purpose of advancing health care technology, using federal economic stimulus funding. The authority under DOH includes provisions for both funding and technical assistance. Any health care provider can apply for a loan to cover a variety of technology initiatives, including the purchase of technology and the training of personnel.
- **Fees for Licensure and/or Certificate of Need (CON) Applications:** The final budget authorizes the following new fees and increases to existing fees on applicants for the establishment and/or construction of various services. In each instance, these fees are fully reimbursable as capital costs under Medicaid.

### New CON/Licensure Fee Schedule

CON Application/Licensure Action	Prior Fee	New Fee
Nursing home establishment only	\$0	\$3,000
Diagnostic and treatment center (D&TC) establishment only	\$0	\$2,000 <sup>1</sup>
Home care (CHHA, LTHHCP, LHCSA) establishment only	\$0	\$2,000
Hospice establishment only	\$0	\$2,000
Construction applications (nursing homes, D&TC):		
• Base fee (prior to approval)	\$1,250	\$2,000 <sup>2</sup>
• Added fee (after approval)—SHRPC review needed	0.45% of TPC <sup>2</sup>	0.55% of TPC <sup>1</sup>
• Added fee (after approval)—No SHRPC review	\$0	0.30% of TPC <sup>1</sup>
Construction applications (CHHA, LTHHCP):		
• Base fee (prior to approval)	\$0	\$2,000
• Added fee (after approval)	\$0	0.30% of TPC
Construction applications (hospice):		
• Base fee (prior to approval)	\$0	\$2,000
• Added fee (after approval)	\$0	0.30% of TPC

#### NOTES:

<sup>1</sup> - "Safety net" diagnostic and treatment centers (operated by a not-for-profit or local health department and meeting other criteria, including uncompensated care) are charged reduced fees as follows: \$1,000 for establishment only, and for construction applications a \$1,250 base fee and 0.45% added fee after approval (SHRPC review) and 0.25% added fee after approval (no SHRPC review).

<sup>2</sup> - "TPC" refers to total project cost, or the total capital value of the application.

### Conclusion

We are continuing to seek further clarifications in several areas, and communicating them to you as we receive them. If you have any questions in the meantime, please contact Dan Heim at [dheim@nyahsa.org](mailto:dheim@nyahsa.org) or 518-449-2707 ext. 128 or Ami Schnauber at [aschnauber@nyahsa.org](mailto:aschnauber@nyahsa.org) or 518-449-2707 ext. 121.