To: HCA Membership

From: HCA Public Policy Staff

CC: Hinman Straub

Date: April 15, 2021

Re: Enacted State Fiscal Year 2021-22 Budget

Introduction

On April 7, lawmakers announced agreement on a final state budget for Fiscal Year (FY) 2022. The final enacted budget includes $212 billion (all funds) for FY 2022, $12.6 billion in federal stimulus funds from the "American Rescue Plan Act of 2021," and adds $3.5 billion in tax revenues. The final budget closed a budget deficit that the Executive estimated to be approximately $15 billion, including approximately $5 billion over FY 2021 and $10 billion over FY 2022.

The final budget agreement included a record $29.5 billion in school aid; $2.4 billion for rent and homeowner relief; $2.1 billion for excluded workers; and $1 billion for small business recovery. Lawmakers also legalized mobile sports betting, as well as recreational marijuana, which was done outside of the budget, however simultaneously, as revenue raisers.

The final enacted budget also includes a plan for broadband internet affordability and access. It requires internet service providers to offer an affordable $15 per month high-speed internet plan to qualifying low-income households.

Throughout the past several months, HCA urged lawmakers to: reject proposed major cuts to Medicaid; reconsider a proposed home care wage mandate in favor of HCA's alternative proposals for workforce support in the budget; provide an equitable framework for the provision of telehealth services; revisit the Fiscal Intermediary (FI) and state request for offer (RFO) contractor process; and more. We made these appeals all within the context of an overall HCA push for a New York State "Home Care First" policy.

As outlined below, key cuts proposed by the Executive, and unfunded mandates proposed by the Legislature, were either rejected, modified, or replaced in the final budget, responsively to HCA's advocacy appeals. Yet much more work needs to be done in the post-budget period to make critical improvements and give further direction for each of the above areas and others affecting home and community-based care.

HCA anticipates a very active post-budget legislation session, where legislative activity can move more independently from the environment of intense fiscal negotiation with the Governor, as the Legislature intends to take up many priority areas outside of the budget's timeline constraints.

HCA will now direct its focus toward that arena as the Association positions its platform for the post-budget environment to address critical areas set aside from the budget process, including the need for further investment in home care services and workforce, an equitable framework for the provision of telehealth services, regulatory relief, and our overall push for a New York "Home Care First policy."

Medicaid

Medicaid Program Funding: Total federal, state and local Medicaid spending, including spending outside the Medicaid Global Cap, is expected to be $82.9 billion in FY 2022 with $27.6 billion in state spending. *Please note that these indicated values also include significant federal COVID-19 response funding.*

Across-the-Board Cuts: The final state budget rejects the Executive's proposed 1% across-the-board (ATB) reduction to Medicaid services and programs for FY 2022, but it did not eliminate the 1.5% ATB reduction that was already in effect due from last year's budget.

Global Medicaid Cap Extension*:* The final Budget extends the Global Cap through FY 2022-2023 and includes reporting requirements that will now be required on a quarterly basis rather than monthly basis.

Delivery System Reform Incentive Payment Program (DSRIP): The final budget includes modified language to extend the DSRIP Regulatory Waiver Authority to allow providers who are involved in DSRIP projects, or who would like to scale and replicate the ideas coming out of the DSRIP program, to avoid duplicative requirements, through April 1, 2022. *HCA pressed for regulatory relief for the home and community-based sector in its own right, and we will continue to do so in the post-budget period.*

Regional Global Budgeting Demonstration Programs: The final budget includes language to require that at least one of the regional global budgeting demonstration programs, which were authorized in last year's budget, be established in the Western, Central, Southern Tier, or Capital regions of the state, as the Assembly has proposed in its one-house budget bill. The original language intended to authorize a pilot program to improve health outcomes and reduce costs, using a value-based model that pays providers an actuarially sound global, pre-paid and fully capitated amounts for individuals in a designated region.

Penalties for Public Health Law Violations: The final budget rejects the Executive's proposal to increase the civil monetary penalties for a violation of the Public Health Law from the current $2,000-$10,000 range per violation to $10,000-$25,000 per violation. *HCA strongly opposed these fine increases.*

Workforce

Home and Community Based Services (HCBS) Federal Medical Assistance Program (FMAP): The final budget includes a $1.6 billion appropriation to the state Department of Health (DOH) from the 10% HCBS FMAP increase in the federal American Rescue Plan. This appropriation is to be used for providing non-competitive grants for HCBS.

It is our understanding that these funds are intended to be used, at least partially, for home care worker compensation. HCA will be fully engaging with lawmakers on how this funding will be allocated, advocating for an effective method of implementation benefiting patients, workers and agencies, as well as an equitable process in the way these funds are dedicated.

Fair Pay for Home Care: The final budget rejects the Senate's proposed home care wage mandate to require payment for home care aides be no less than 112% of the applicable minimum wage or other applicable wage requirement.

Hundreds of HCA members participated in our Legislative Action Center campaigns urging the Senate to reconsider its position on this proposed wage mandate, which offered no guarantee of long-term, equitable appropriations to cover the mandate's cost for providers across all payors, and to urgently adopt HCA's proactive and positive plan for health workforce funding and support. We look forward to continuing our work with lawmakers on a productive approach for workforce support post-budget.

Home Care Competency Exams: The final budget rejects the Senate's proposal to require state DOH to maintain a schedule setting forth when DOH will offer competency exams to qualified home care service workers residing out of state in order to fulfill any shortage of home care services workers.

Workforce Recruitment and Retention: The final budget rejects the Executive's proposal to reduce funding for health care workers by up to 25% ($45 million annually). *HCA advocated strongly against these cuts.*

COVID-19 Relief

New York Medical Supplies Act: The final budget accepts the Executive's proposal to require that state agencies and public authorities only purchase such items made in whole or substantial part in the United States for contracts over $50,000 for personal protective equipment (PPE) and medical supply items.

Paid Leave for COVID-19 Vaccination: Requires employers to allow employees four hours of paid leave for up to two COVID-19 vaccinations (this was legislation passed prior to the adoption of the final state budget).

Medicaid Managed Care & MLTC

Quality Pool Payments: The final budget rejects reductions to Medicaid Managed Care (MMC) and Managed Long Term Care (MLTC) Quality Pool payments and restores $60 million in MMC Quality Pool payments and $51.75 million in MLTC Quality Pool payments. *These restorations were a priority advocacy area of HCA.*

Transportation Management in MMC: The final budget modifies the Executive's proposal to extend provisions for six years authorizing DOH to contract with Medicaid transportation vendors on behalf of local social services districts to achieve Medicaid cost savings and the authority to contract with one or more transportation managers to manage Medicaid transportation services. *HCA has raised concerns with this proposal and its categorical exclusion of transportation from plans who would wish to include it in their care management and patient service benefit structure.*

Telehealth Reforms

The final state budget includes limited telehealth legislation that defines "distant site" as a site at which a telehealth provider is located while delivering health care services by means of telehealth. Under the budget's new telehealth expansion, any site within the U.S. or its territories is eligible to be a distant site for delivery and payment purposes.

The telehealth provision also removes limitations to the definition of "originating sites," and adds certified peer recovery advocate services providers that are certified or credentialed by the commissioners of addiction services and Office of Mental Health.

HCA submitted budget language to ensure home care's inclusion in any telehealth budget amendments. The Legislature, however, took a limited approach in its final actions on telehealth, and thus telehealth is among the areas anticipated for further action post-budget. HCA will continue to press for the adoption of our telehealth safeguards that avoid duplication of services, improve coordination among health care settings, and provide equitable coverage for home care.

Fiscal Intermediary Reform

The final state budget includes revisions to the Fiscal Intermediary (FI) contractor provisions. The statute would allow for the selection of some additional FIs who meet certain criteria to continue as FIs in addition to those selected under the recent RFO process. *Here, HCA urged the Legislature to revisit the DOH process for awardees who may have been excluded but to approach this relook without impact on FIs already selected by DOH in its original RFO review. HCA submitted language that would have required a further RFO cycle and/or review – with accountability to the Legislature – on any of the original FIs that DOH had excluded.*

The final budget includes a two-part process for selecting new FI contractors whereby DOH first surveys qualified applicants on the following:

- Whether the applicant is a not-for-profit organization.
- Whether the applicant was an FI prior to January 1, 2012.
- Whether the applicant is authorized to provide HCBS to the developmentally disabled.
- Whether the applicant has historically provided FI services to racial and ethnic minority residents or new Americans in such consumers' primary language.
- Whether the FI is verified as a minority or woman-owned business enterprise (MWBE).

To be considered for an additional award, applicants must respond to the survey within 30 days. Following receipt of the survey, DOH is directed to make additional awards, to the extent necessary.

These would include awards to:

- 1 or 2 additional applicants that are located in each county with a population of more than 200,000 but less than 500,000.

- 1 or 2 additional applicants that are located in each county with a population of 500,000 or more.

- At least 2 additional applicants who are either not-for-profit organizations or have provided FI services prior to January 1, 2012 and that are currently authorized, funded, approved or certified to deliver state plan or home and community-based waiver supports to individuals with developmental disabilities.

- At least 2 additional applicants who are either not-for-profit organizations or have provided FI services prior to January 1, 2012 and that serve racial and ethnic minority residents, religious minority residents, or new Americans, as evidenced by information and materials provided to consumers in the consumers' primary language.

- At least 2 additional applicants that have been verified as a MWBE.

Survey responses cannot be used by DOH as a basis for changing the scores that DOH already assigned to applications for the initial RFO awards announced on February 11. However, awards will be based on either the next highest scoring applicant or who meets the criteria cited above. The amendments also clarify that the requirements related to FI closure apply to an FI that is acquired by, merges with, sells assets to, or engages in a similar type of transaction with an FI that was awarded a contract under the FI RFO process.

HCA also appealed to the Legislature to revisit the LHCSA RFO process, as there is widespread concern that the same inexplicable and potentially inequitable process that DOH applied to FIs could be used by DOH in the LHCSA review. HCA has targeted this to be a major post-budget item of advocacy.

Capital Funding

Health Care Transformation Grants: The final budget extends the re-appropriation of capital financing for health care providers, including the remaining funds available for Statewide Transformation III. The RFA for this funding opportunity has not been released.

Statewide Health Information Network of New York (SHIN-NY): The final budget includes an appropriation of $30 million for the continued funding of the SHIN-NY. The funding is directed to the New York eHealth Collaborative, which will administer funding for the SHIN-NY and Qualified Entities, formerly known as Regional Health Information Organizations (RHIOs).

Other Home Care Proposals

Bad Debt & Charity Care for Certified Home Health Agencies: The final budget extends authorization for CHHAs to receive allowances for bad debt and charity care for two years, through June 30, 2023. Current eligibility for such funds is limited to voluntary non-profit, private propriety and publicly sponsored non-hospital based CHHAs.

CHHA/LTHHCP Cap on Administrative and General Costs: The final budget extends the cap on reimbursement for CHHA/LTHHCP administrative-and-general costs through March 31, 2023.

Zero Trend Factor: The final budget extends the elimination of the trend factor for CHHAs, LTHHCPs, and personal care services through the 2023 calendar year.

Home Health Aide Registry: The final budget allocates $1.8 million for the operation of the Registry (same as FY 2020-21).

Other Proposals

Nurse-Family Partnership: The final budget rejects cuts to the program. It restores base funding to the $3 million level and adds $1 million provided by the Legislature.

Nursing Home Transition and Diversion Waiver: The final budget delays the transition of the Nursing Home Transition and Diversion (NHTD) and Traumatic brain Injury (TBI) waiver programs to managed care for an additional four years. The programs had been slated to be incorporated into managed care on January 1, 2022, but now it will not be transitioned before January 1, 2026.

Rural Health Care Access and Development: The final budget rejects the proposed cut for Rural Health Care Access and Development, which is a new program the Governor created last year when he combined the Rural Health Care Access and Rural Health Care Development programs into a single appropriation. The final state budget provides base funding of $9.4 million and adds $1.2 million, for total funding of $10.6 million.

Digital Privacy: The final budget rejects the proposal to implement a comprehensive law imposing new mandates intended to provide New Yorkers with transparency and control over their personal data.

Next Steps & Advocacy

While the final enacted budget addressed many of our core concerns with the original proposals, there are many unresolved or unaddressed issues that HCA will be tackling in the post-budget legislative session, including: HCA's Home Care First policy, telehealth payment parity and safeguards for home care, the current LHCSA Authorization process and FI RFO, as well as an appropriately directed use of federal FMAP increases for workforce reinvestment.

The HCA Public Policy team will keep members updated on the status of the aforementioned policies and will ask for support and advocacy involvement throughout the process.