

Home Care Developments

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NY Assembly and Senate Release their "One House" Budget Proposals

Fair Pay for Home Care Workers is in, Along with Proposals to Set Reimbursement Rates and Pause the CDPAP RFO

Legislative "One House" budget proposals were released late Saturday night by the Assembly, and on Sunday night by the Senate. As relevant to our alert, the proposals aim to amend the existing Medicaid and healthcare laws in New York State and, in some cases, create new laws as part of the State's overall budget planning. The Senate, Assembly, and the Executive Chamber will now begin three-way negotiations toward a final budget, which is due by the April 1 start of State Fiscal Year 2022-23. This is our assessment of the one-house proposals:

Proposal to Put on Hold and Potentially Repeal the CDPAP RFO

The Senate one-house budget includes a proposal to require the Commissioner of Health to "prepare a study of the" CDPAP to "assess the current need and costs associated with" the program, including but not limited to: total current and anticipated eligible Medicaid recipients; the appropriate number of fiscal intermediaries required to ensure continuity of care and program administration for all participants statewide; the need for procurement of fiscal intermediary services; all evidence-based criteria and scoring to be used during any procurement process, if required; and the need for any programmatic and changes to support the program." The Commissioner has until December 31, 2023 to complete and submit the study to the temporary president of the Senate, the Speaker of the Assembly, and the chairs of the Senate and Assembly Health Committees. Until the Commissioner's study and report are submitted, any changes to the CDPAP would be suspended and, "if necessary," the RFO would be re-issued 180 days after the study's release.

The mandate on the Commissioner and any "hold" on the CDPAP RFO would be in effect immediately if the budget were to pass.

Interestingly, contrary to the majority of proposals that impact home care and Medicaid, this Senate proposal was not mimicked in the Assembly's one-house proposal. Further, the Senate proposal did not track the language proposed several weeks ago by New York Senator Mannion to repeal the CDPAP RFO.

Fair Pay for Home Care

Perhaps the biggest topic of the one-house budget proposals falls under the "Fair Pay for Home Care" umbrella because, as we interpret the various proposals collectively, the Fair Pay proposal is not backed up by sufficient funding for providers.

Both the Senate and the Assembly proposals seek to increase the base wage compensation for every "home care aide" (defined to including personal assistants in CDPAP, PCAs, HHAs, and NHTD/TBI aides Statewide) on October 1, 2022, so that the resulting base wage is equal to 150% of the higher of either (a) the applicable State minimum wage rate or (b) "any otherwise applicable wage rule."

The increase in base pay does not appear to be a one-time increase to the aides' wages. Rather, to the extent the State's minimum wage increases, then the aides' compensation would also have to be increased so that it is at least 150% higher than the

State's minimum wage rate.

Reimbursement Changes

Both the Senate and the Assembly's one-house budgets propose establishing, or fixing, reimbursement rates. The Commissioner would establish a "**regional minimum hourly base reimbursement rate**" for all home care providers covered by the Fair Pay for Home Care requirement.

Per the proposals, the "regional minimum hourly base reimbursement rate" would be defined to "mean a reimbursement rate that reflects the average combined costs associated with the provision of direct service[s] inclusive of but not limited to overtime costs, all benefits, all payroll taxes, including but not limited to federal insurance contributions...federal unemployment tax...state unemployment insurance, disability insurance, workers' compensation, and the metropolitan transportation authority tax, related increases tied to base wages such as compression, reasonable administrative costs defined by the [C]ommissioner, allowances for capital costs; the development of profit or reserves as allowable by law or regulations of the [C]ommissioner, and any additional supplemental payments." Thus, at first blush, this "regional minimum hourly base reimbursement rate" would encapsulate direct care costs **and** administrative costs.

New York City and Long Island/Westchester would be their own regions for purposes of the reimbursement rate, and the rest of New York State would be its own separate region. For PCA services, the "regional minimum" reimbursement rate would be \$38.50/hour for New York City, Long Island and Westchester. For the rest of New York, the PCA "regional minimum" reimbursement rate would be \$38.18/hour.

A special rate would be developed for NHTD and TBI providers.

For CDPAP, the above PCA rates could apply, but the Commissioner would have the authority to reduce the "regional reimbursement" rate by almost 13%. If such a reduction occurred, a PMPM increase reflective of actual administrative and general costs, adjusted to reflect regional differences, would be made to FIs.

Plans and local departments of services would be prohibited from reimbursing providers at rates lower than the above-proposed rates. The Senate proposal details the process by which the Commissioner would raise reimbursement rates each year. In addition, the Senate's proposal details the establishment of a special fund, to be known as the "Fair Pay for Home Care Fund" that would be used to assist in paying for aides' wages, but this would not be the sole source for funding the Fair Pay wage increases.

As a miscellaneous item, we note that both houses' budgets propose creating a billing code that would allow providers to report the "hourly cost of services at an overtime rate" for unauthorized work hours.

Wage Parity Changes

According to both proposals, beginning on January 1, 2023, the benefit portion of the "total compensation" requirement under the Wage Parity Law would be increased; for Long Island and Westchester providers, the \$3.22 portion of the \$18.22/hour total wage parity requirement would increase to \$3.89/wage parity hour and for New York City providers, the \$4.09 portion would be increased to \$4.84/wage parity hour.

These benefits requirements appear to be applicable **in addition to the** Fair Pay for Home Care increases for downstate providers.

Changes to LHCSA Ownership Rules

The Senate's one-house proposal amends Section 3611-a of the Public Health Law to require any transfer, assignment or other disposition of an interest, stock, or voting rights in a sole proprietorship, partnership, LLC, not-for-profit, or a corporation of a LHCSA or CHHA to be approved by PHHPC. In addition, with respect to LHCSAs, the Commissioner would be empowered to pass regulations requiring the forgoing changes to go through the public need analysis. The proposal also outlines notice provisions for individuals who are acquiring less than 10% of an interest in a LHCSA.

Medicaid Increase

Both the Assembly and the Senate proposals include a 1% across-the-board increase to Medicaid providers. In addition, the Assembly adds another 1.47% rate increase in the overall Medicaid lump sum.

Also, the Senate and the Assembly both propose repealing the Medicaid Global Cap, which the Healthcare Chairs have both long argued is an artificial number that no longer serves any benefit for New Yorkers.

Nurse Loan Repayment Program

Subject to sufficient funding, both the Assembly and Senate one-house budgets propose establishing a student loan repayment program for RNs and LPNs who are working in “underserved areas in New York State and who agree to work in such areas for a period of 3 consecutive years.” This would apply to nurses working in a “facility, physician’s office, nurse practitioner’s office, or physician assistant’s office.” There is no specific mention of this loan repayment program applying to nurses working for LHCSAs or CHHAs. 1/3 of the available funding would be allocated to nurses in New York City, and the rest to the rest of the State.

Unless this proposal is amended or clarified to confirm that it applies to home care nurses, there is a risk of exacerbating the LHCSA and CHHA nursing shortages by passing a program like this in New York. This is because nurses with student loan obligations would have even more incentives to work for non-home care healthcare providers.

Healthcare Facility “Transformation” Program

Both the Senate and Assembly bills, subject to sufficient funding, include proposals to “transform, redesign, and strengthen quality healthcare services” by having the State distribute “grants” to various healthcare facilities (including “home care providers certified or licensed” under Article 36 of the PHL). Fiscal intermediaries do not appear to be covered by this proposal. As part of this program, the State Commissioner of Health would have \$450 million to distribute to eligible providers and, according to the Assembly proposal, “at least \$100 million of total awards” would be made to community-based healthcare providers, which are defined to include CHHAs and LHCSAs. Under the Senate proposal, “at least twenty five percent” of the total funding would go towards community-based providers.

Private Duty Nursing

Both houses propose to increase reimbursement rates for private duty nursing services for “medically fragile adults” no later than 60 days after the budget is adopted. The Commissioner of Health would also increase FFS reimbursement rates for PDN services provided to medically fragile adults, and, in setting the rates, the Commissioner would be authorized to use the average 2020 Medicaid managed care pay reimbursement rates for PDN as a benchmark.

Also, a directory of PDN providers serving medically fragile adults would be created (modifying a directory that was established solely for medically fragile children receiving PDN).

Summary

As stated at the outset, these proposals are simply proposals at this time. Now, the representatives of the Legislature and the Governor will negotiate the final budget language. As in years’ past, the budget, once issued, will be the final compromise of this negotiation process. We do not know what will be in the final budget. Some or all of these proposals might make their way into the final budget. Other proposals will be dropped. And then there are opportunities for proposals that are not in the one-house budgets to be included in the final budget bill at the last minute. We will keep you updated as this process evolves over the next few weeks. In the meantime, clients who have any questions about the budget proposals as they currently stand, should not hesitate to contact us.



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