Preliminary Analysis

State Budget Issues Impacting Older New Yorker and Their Families

State Fiscal Year (SFY) 2015-2016 - April 1, 2015 – March 31, 2016

As proposed by Governor Cuomo (as of January 21, 2015)

NY StateWide Senior Action Council has reviewed the Governor’s Budget Proposal and the policy recommendations within the State of the State Address.\(^1\) This analysis was prepared by StateWide to brief the community on issues of interest to older New Yorkers.

**Fiscal Overview:** Governor Cuomo’s proposed budget holds spending growth in State Operating funds to 1.7% and in All Funds (including federal and capital funds) to 2.8%. Medicaid and School Aid are the state’s largest aid program, compromising over 40.13% of the State Operating Funds budget. The current index rate for School Aid is an increase of 1.7%. The Governor holds out the promise of increased School Aid funding at the rate of 4.8% only after agreement to a series of reforms. The Governor’s proposed budget keeps most agency spending at last year’s levels and does not make an investment in needed human services.

\(^1\) You can read the source documents by following these links:

- [Budget bill, includes Aging funding on pages 3-17](http://publications.budget.ny.gov/eBudget1516/fy1516appropbills/Local.pdf)
- [Budget bill, regarding the development of an Office for Community Living](http://assembly.state.ny.us/leg/?default_fld=&bn=A03007&term=2015&Text=Y), page 70
- [Narrative on budget bill: health and aging issues appear on page 97](http://publications.budget.ny.gov/eBudget1516/fy1516littlebook/BriefingBook.pdf)
**Budget Process:** The Governor has the opportunity to amend his budget within 30 days of its original submission (1-21-15). During that period, the State Assembly and the State Senate hold joint hearings on the budget proposals where agency heads and advocacy groups present and face questions. The Legislature has the opportunity to negotiate with the Governor and convince him that they need to see certain changes prior to their vote. In recent years, the process has gone on in a timely manner and the entire budget vote happens before April 1, the start of the state fiscal year. With a brighter economic forecast (tax revenues, wages and personal income are projected to grow by 4-5% annually over the next four years) and the infusion of $5.4 Billion surplus from legal settlements, the biggest challenges to the process this year may be due to the changes in Assembly leadership, the broad reforms the Governor is linking to Education funding and the Governor’s pledge to keep state spending below a growth rate of 2%.

**Budget Proposals**

*The NYS Office for the Aging (NYSOFA)*

NYSOFA does not have any significant proposed services cuts. Some funds that were added by the Legislature last year to the NYSOFA budget were not included in the proposed budget, and the Legislature may choose to restore these items. The NY Connects budget is proposed to grow, with additional state dollars pledged to maintain ongoing operational funding needed due to the expiration of federal Balancing Incentive Payments in October 2015. The Budget includes funding of $8.2 million in 2015-2016 and a commitment for $18.1 million in 2016-17.

**StateWide’s Patient Rights Helpline** Additional financial support is needed for StateWide’s Patient Rights Hotline where calls related to health system changes, rights of dual eligibles (Medicare and Medicaid joint enrollees) and the growth in observation status in hospitals has created a heightened need for assistance. StateWide’s Patient Rights Hotline was originally funded by the state at $180,000 annually. Subsequently, funding was reduced during economic crises and

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2 You can watch the budget hearings on the web at [http://www.nysenate.gov/live_today](http://www.nysenate.gov/live_today). The Health Department and Medicaid budgets are scheduled for 10:00 AM on February 2. The Office for the Aging Budget is scheduled with other agencies during the morning hearing on February 4 (starts at 9:30 AM).

3 Fiscal Policy Institute Response to Executive Budget Proposal
ultimately resulted in $31,500 annually. In 2014-5 the Legislature doubled the funding to $63,000, but the Governor’s budget for 2015-16 only provides $31,500. Additional funding is essential to provide thorough, personalized assistance to all callers and to provide community education.

**Recommendation:** Increase funding to a total of $100,000 annually.

**Managed Care Consumer Assistance Program (MCCAP).** StateWide’s MCCAP counselors assist older New Yorkers in choosing the Medicare coverage that best meets their needs, assists Medicare enrollees with billing problems, provides enrollment and benefit information on other initiatives including the Elderly Pharmaceutical Insurance Coverage program (EPIC) and Medicare cost sharing programs, and provides updates to the community on coverage issues. We are pleased to see that the Governor has included funding for this program in the proposed budget. Current total funding for the six programs operating MCCAP services is $1,767,000 of which StateWide receives $354,000. The 6 partner agencies who provide this service request that funding for the program be increased to the levels prior to state budget cuts during the economic crisis. A restoration is justified by increased volume of requests for counseling due to the needs of the growing older population for education and information about Medicare, particularly during a time when retiree health plans are discontinuing benefits and options are changing for those that are dually eligible for Medicare and Medicaid.

**Recommendation:** Support funding for StateWide’s MCCAP counseling services and restore total funding levels for the 6 programs to $1,962,00, an increase of $195,000 (9.9%).

**The Long Term Care Ombudsman Program (LTCOP)** Administered by NYSOFA with services provided through local partners, LTCOP provides advocacy for residents in long term care settings, working to uphold their rights, improve quality of care and ensure that residents are treated with dignity. LTCOP coordinators manage and train volunteers in local communities who visit nursing homes, adult homes and assisted living facilities. They are empowered to resolve issues and file complaints with the Department of Health. Managed locally, some programs operate on a county level, others are run by a not for profit with several
counties in their jurisdiction. Federal funds combined with $690,000 state dollars have been flat for more than a decade, with a commitment for more funding once assisted living programs were licensed not yet available. In the past year several programs have ended their contracts to manage the LTCOP, due to stagnant revenue and increasing responsibilities both in the field and in administrative requirements. Additional coordinators are planning to withdraw from the program this year. Outside of the Budget, NYSOFA has proposed a restructuring of the program to regionalize services and create a competitive funding proposal to be released shortly. With multiple new providers and new catchment areas, it is unreasonable to expect this transition to be successful without an investment of additional resources, be they from federal or state appropriations that NYSOFA administers.

**Recommendation:** Provide oversight and accountability for this restructuring and determine how to provide sufficient resources to locally based providers.

**Core Programs** There is an escalating need for services due to the increased numbers of older New Yorkers and the public policy push to encourage people to receive services in the community rather than in residential institutions. This is particularly true for the core programs of EISEP (Expanded In-Home Services for the Elderly), CSE (Community Services for the Elderly) and Wellness in Nutrition (formerly called Supplemental Nutrition Assistance Program) where there may be local waiting lists. There are real dollar savings by investing in the aging services that prevent institutionalization and therefore prevent spend down into state and county supported Medicaid. With cost constraints due to the tax cap at the local level where Aging services are optional, local dollar investments in aging services are stagnating or facing reductions.

The state budget continues the cost of living adjustment for the labor components of these programs, added during the 2014-15 budget negotiations last year.

The state budget also includes an additional $5 million in funding for the CSE that had been added by the Legislature in 2014-15. While this was a 24.5% increase in CSE, it represents only a 5.1% overall increase in these core programs and does
not keep pace with an expected 37.5% increase in the older population projected between 2010 and 2020. The CSE program also requires a 25% local share match.

Recommendations:
1. Increase appropriations to reduce waiting lists in these vital services where the value invested is significantly less than the cost of a nursing home stay.
2. Ensure that additional funds added do not require a match by local governments in order for the funds to be distributed.
3. Commit to a multi-year funding plan investing additional resources to bring core services into alignment with the client population growth and allowing community-based providers to plan for expansion.

Office for Community Living A new initiative is planned, with budget language authorizing NYSOFA to meet with stakeholders to discuss creation of a state Office for Community Living. NYSOFA is also charged with collecting data from other state agencies and stakeholders that would support the need for such an office. NYSOFA would report to the Governor and Legislature by December 15, 2015 outlining the data and feedback received and the feasibility of an expansion of the agency’s community living integration services beginning April 1, 2016.

In past years there has been discussion about merging and consolidating the services of NYSOFA into or with other agencies, including a proposal within the SAGE Commission. The current proposal may mirror changes that have occurred at the federal level with the Administration on Aging being housed within the Administration for Community Living, but the language is vague and the organization of services and focus is undefined.

Recommendation: Stakeholder and listening sessions are important but should not include what appears to be a foregone conclusion that such a proposal for integration of services between the aging and disabilities communities will begin April 1, 2016. Furthermore, there is no budget funding or increased staffing delineated to support this activity which will further compromise the efforts of NYSOFA to provide its core services and contract administration in a timely manner.
The NYS Department of Health & Medicaid

Elderly Pharmaceutical Insurance Coverage Program (EPIC) We are pleased to see that the Governor has continued funding for the expansion of the EPIC program to those with higher incomes, enacted in 2014.

Recommendation: The EPIC program should be expanded to meet the needs of all Medicare enrollees, without limit to age. The current program is for persons age 65 and over, leaving to struggle with high out of pocket costs those younger Medicare enrollees who qualify due to disability.

Caregivers The Governor recognizes the need to support informal or family caregivers and increases respite funding serviced with $25 million. Additional funding is increased for the Alzheimer’s Disease Assistance Centers and the Community Assistance Program.

Recommendation: Increased funding is directed towards programs funded through the Department of Health. There should also be an increase in respite services for the aging provider network funded through the NYS Office for the Aging.

Medicaid. It is important to note that individuals aged 65 and older and those with disabilities compromise 25% of the Medicaid population, but account for 66% of total expenditures. This is a factor directly related to expensive long term care needs and the failure of Medicare to cover such services. As a result, municipal budgets across the state are strained due to significant cost sharing of the Medicaid bill for local residents. In order to address the burgeoning weight of Medicaid costs on the local real property tax base, the state has taken steps to reduce the local share of Medicaid costs. Additionally, the state has undertaken a series of reforms through its Medicaid Task Force that created a global cap on the increase of Medicaid spending. As a result, Medicaid spending will grow at an indexed rate of 3.6%.
Spousal Impoverishment – There has been a long standing public policy to protect spouses from becoming impoverished by spending down assets in order for a spouse who needs medical care to receive Medicaid benefits. In fact, this is a provision of the Affordable Care Act, which requires all home-and-community based waivers to include spousal impoverishment protections. State budget proposals have often attempted to minimize the protection that allows a spouse (or parent of a minor) to refuse to contribute income and assets towards the cost of health care; usually these attempts have been rebuffed by the Legislature. The Governor’s budget proposal does continue the spousal refusal option for some Medicaid enrollees, but eliminates the right of spousal refusal those in for service Medicaid. It is important to note that those newly eligible for Medicaid enroll automatically in fee for service Medicaid, only later is a managed care choice required. The benefit of spousal refusal would be denied to those families who are not enrolled in managed care.

Recommendation: Oppose repeal of the right for spousal/parental refusal.

Prescription Drugs

The budget would authorize the state to negotiate supplemental rebates directly with manufacturers both within and outside of Managed Care to leverage the total volume of Medicaid drug coverage.

Recommendation: Support

Budget language changes the current Medicaid standard to require prior authorization for a prescription that is not pre-approved for fee for service Medicaid enrollees. This change would reduce a physician’s ability to ensure that a prescription for a certain drug be dispensed as written for brand name drugs.

Recommendation: Oppose elimination of the provider prevails standard.

Community First Choice Option. Bill language is proposed that will create a new classification of health worker, the advanced home health aide. The language is needed to implement a federal initiative that supports the ability
of Medicaid recipients to continue to reside in the community with an aide providing care. Restrictive nurse licensing laws would not allow the advanced health aide to provide assistance with medication and other medical tasks without bill language to specifically authorize. The intent is to support the ability to live in the least restrictive setting, including hospice. Regulations will follow to define the tasks allowed, the level of supervision, and the appropriateness of this model to specific people needing services.

**Recommendation:** Support enactment and pledged reinvestment of any additional federal funding generated through Consumer First Choice Option in the State's Olmstead Plan.

**Medicaid Managed Care Ombudsman.** Implementation began December 1, 2014 to provide assistance to Medicaid enrollees in Managed Long Term Care and Fully Integrated Dual Advantage. Those who need help upholding their rights, having quality or access concerns or problems with their insurer can immediately call 1-844-614-8800. Ultimately, this initiative should serve all Medicaid Managed Care enrollees, whether or not they use 120 days of long term care supports and services. More than 2/3 of Medicaid recipients are currently in Managed Care Plans, with that participation expected to reach 95% by 2017.

**Recommendation:** We are pleased to see funding directed to this program, growing to $25 million in SFY 2016-17 and $70 million in SFY 2017-2018. With flat budget funding of $5 million this year, more funds are likely needed in the early years while so much transition is occurring.

**Health Care Providers** Not considered part of the Budget, the state is awarding money to hospital systems throughout the state in a competition for funding known as DSRIP (Delivery System Reform Incentive Payment Program) with the primary goal to reduce avoidable hospital use by 25% over 5 years. Up to $6.42 billion dollars are allocated to this program with payouts based upon achieving predefined results in system transformation, clinical management and population health.
In the name of continued health system reform, the Governor proposes an investment of $1.4 billion to support the health care delivery system’s capital (construction) needs. A distinct reserve of $400 million is set aside to address the needs of rural hospitals.

**Recommendation:** An additional investment is needed to provide capital to not-for-profit community-based providers to truly effectuate reform. The Governor does create a $50 million Non Profit Investment Program for eligible nonprofit human services organizations which is a good start. We recommend funding at $500 million as part of the legal settlement surplus.

**Private Equity Investors** The Governor proposes that hospitals that need an infusion of funds for capital costs related to building or retrofitting a facility would have the opportunity to seek private investors. There is state law prohibiting the ownership of hospitals by publicly traded corporations – that means there is a prohibition on profit interests in hospitals. A proposed demonstration provides authority for up to five business corporations to invest in health facility projects. While there is limiting language, the demonstration allows for a role for corporate investor operation or ownership of hospitals approved, blurring the definition of non-profit hospitals.

**Recommendation:** Oppose the private equity pilot program that would allow up to five demonstrations of private investments in hospitals.

**Office Based Surgery** The budget includes revised regulations for office based surgery to include office-based anesthesia, standardizes and limits the procedures, and strengthens accreditation and incident reporting requirements.

**Recommendation:** Support.

**Certificate of Need** Provisions of the budget language make significant revisions to the process to approve facility changes, waiving for some projects the public needs assessment, reducing the look back period for character and competence review of members of the facility’s board, and
defining transparency regarding the transfer of voting rights or ownership interests of hospitals.

**Recommendation:** Oppose changes to the Certificate of Need process that remove the requirement for public needs assessment and other changes that facilitate the investment of private equity in health care facilities.

**Physician Profiling** The budget proposes to discontinue a physician profile website, the legislative language would actually require the elimination of an entire medical safety reporting and public disclosure program. The Physician Profile program allows consumers to access, at one website, key information on the credentials, discipline and malpractice records of physicians practicing in New York State. Without Physician Profiles, people who are dealing with healthcare issues will be forced to rely on searching among alternative sources of information, most of them proprietary and of unknown accuracy. New Yorkers rely on this site when choosing managed care plans to determine if participating physicians that they may choose represent a high standard of quality.

**Recommendation:** Reject this proposal.

**Disaster Preparedness**

The Governor proposes initiatives to improve the State’s emergency response with increased security and improved coordination of response systems.

**Recommendation:** Include in disaster preparedness improvements the development of a registry of seniors and persons with disabilities who may need assistance in an emergency; an improved infrastructure that supports provision of electricity, food, heat, water and communications; safe and effective evacuation planning; sufficient safe and accessible shelters, ability to get emergency prescription refills and replacement durable medical equipment; and sufficient numbers of rescue and health personnel to meet emergency needs.
**Economic Security**

**SSI** – The Governor’s budget proposal anticipates a Federal Supplemental Security Income Cost of Living (COLA) Adjustment stating January 1, 2016 and authorizes the pass-through to ensure benefits are not reduced.

**Recommendation:** Enact the pass-thru of the federal COLA and increase the state supplement by 20% to address income inequality.

**Housing** – The Governor identifies making affordable housing a priority. He proposes an investment of $486 million in housing for vulnerable New Yorkers. There is an additional $25 million dedicated to improve seniors and veterans housing.

**Recommendation:** In addition to construction costs, ensure assistance in navigating connections to benefits by including a requirement for service coordinators to be employed in facilities built to serve this population.

**Hunger** The Governor funds the Hunger Prevention and Nutrition Assistance Program to respond to emergency food needs of hungry New Yorkers, with an increase of $4.5 million. This increase offsets anticipated federal decreases.

**Recommendation:** Additional funding is needed to address the rising number of children and elderly who are experiencing hunger. Furthermore, there should be an increase in the targeted funding for nutrition in the NYSOFA Wellness in Nutrition budget where there has been no increase in state funding.

**Transportation** A new planning initiative is proposed within the Department of Health to assess the mobility and transportation needs of disabled and other special needs populations. The result of the study would be recommendations for the Olmstead Mobility Management Pilot program to coordinate transportation services, maximize funding and enhance community integration.

**Recommendation:** Ensure that the needs of the older population is included in the assessment and recognize that there is a need for transportation beyond vital services (that usually focus on medical needs) to minimize isolation and promote inclusion in community activities.
Minimum Wage. The Governor proposes to increase the minimum wage to $10.50 by the end of 2016 and increase the minimum in New York City to $11.50 an hour, due to the City’s high cost of living.

Recommendation: Support a further increase to ensure a true living wage of $15 per hour.

Student Loan Forgiveness – The Budget proposes support for college graduates who continue to live in the State if their income is not high enough to cover their student debt burden without significant financial hardship. The proposal would have the state contribute to their student loans for the first two years.

Recommendation: With the growing need for workers in the health and human services fields, efforts to incentivize recent college graduates to stay in our state will help offset the problems associated with recruitment of workers.

Tax Relief

Further adding stress to the tension between taxes and spending, the Governor’s Real Property Tax relief proposal ties real property tax relief to keeping local taxing jurisdictions (property and school taxes) within a spending tax cap. Localities may feel compelled to reduce funding for services, including aging services, to stay within the spending cap.

STAR The proposed budget includes a change in both the Basic and Enhanced school tax STAR to eliminate the annual growth of the exemption benefit. The Governor justifies this change based on the implementation of the proposed property tax cap (below.)

Recommendation: Oppose

The budget proposes to allow homeowners who registered for STAR exemption with the NYS Dept. of Taxation and Finance, but failed to file timely exemption applications with their local assessors receive the benefit of the exemption for tax year 2014.

Recommendation: Support
Real property tax credit – The proposed budget links homeowners and renters income to their property tax burden in a model that StateWide supports known as the “circuit breaker.” It is a progressive model, with those with the highest tax burden and lowest income receiving the greatest amount of relief. It targets relief to those whose property taxes exceed 6% of their income, for homeowners with incomes up to $250,000 and renters with incomes up to $150,000. (ex. A homeowner making $50,000 per year and paying $6,000 annually will be eligible for a $1,500 refundable income tax credit, or a 25% assistance to offset their out of pocket real property tax bill.) The Governor projects the average benefit for homeowners would be $950 and for $400 for renters. Unfortunately, this benefit would only be available to residents of those local taxing jurisdiction that stay within the proscribed tax cap, and would be phased in over four years; only school taxes will apply in the first year.

Recommendation: Support a new circuit breaker real property tax relief program, however, the benefits should be decoupled from the proposed requirement that only residents of a jurisdiction that adheres to property tax caps would qualify. Localities know best if services, some of which like aging services are not mandatory, are community priorities; tying the promise of needed property tax relief to the threat of reduced services is unconscionable.

Campaign Finance Reform and Public Campaign Financing:

Included in the Governor’s budget is a proposal to create a public campaign finance system, with contributions up to $175 are matched $6 to $1. The proposal also prohibits the use of campaign funds to expenses directly related to elections or public duties, reduces the annual limit to $25,000 for political party “housekeeping accounts,” limits party transfers to candidates, reduces the limit on corporate contributions from $5000 to $1000 per year, and closes a loophole that allowed corporations formed as LLCs to contribute at individual levels. An income tax check off is proposed to enable resident taxpayers to make a donation to a new Campaign Finance Fund.

Recommendation: Support broad campaign finance reforms and institute public campaign financing.