RM&S Communication. Teamwork. Results.
One Commerce Plaza
Suite 402
Albany, NY 12210
Phone: 518.465.7330
Fax: 518.465.0273
Website: lobbywr.com
ROBERT REID | SHAUNEEN MCNALLY | MARCY SAVAGE | PADRAIC BAMBRICK | KELLY FORSTER | KAYLA BOGDANOWICZ

Executive Budget Update
Health/Mental Hygiene Budget
January 22, 2020

Late yesterday, Governor Cuomo released his SFY 2021 Executive Budget totaling $178.6 billion, which included several measures to close the States $6.1 billion budget deficit. Below is a sector-by-sector summary based on our review of the Budget Briefing book and the Health Article VII Health/Mental Hygiene budget.

Contents

General/Multi-Sector

Medicaid Reforms: In addition to the 1% across the board Medicaid cut effective January 1, 2020 which impacted most Medicaid providers, the Executive Budget proposes to address Medicaid shortfall through a Medicaid Redesign Team (MRT) 2. It would be chaired by Michael Dowling, President & CEO of Northwell Health and Dennis Rivera, former President of SEIU 1199 (as MRT 1 in 2011 was) with the mission to find $2.5 billion in savings by addressing industry inefficiencies and rooting out waste, fraud and abuse with a required to report on their proposals by April 1, 2020 (the start of the new fiscal year). It is unclear who the other

members of the MRT 2 would be. The State Budget Director, Robert Mujica hinted at the need to focus on and bring down the costs of long term care under Medicaid, stating that "33% of the state's spending is long-term care for 5% of enrollees." Further, it was pointed out that local governments are in charge of making Medicaid eligibility determinations for long-term care and persons with disabilities, yet the State is paying for the costs with no control over the administration.

Medicaid Local District Spending Reforms Limits growth of the Medicaid takeover savings that counties receive to 2% annually if the county fails to adhere to the 2% property tax levy cap, which excludes New York City. In order to qualify for the Medicaid takeover savings, New York City is required to adhere as if they were subject to the tax cap. Any expenditures that exceed 3% annually will result in localities assuming financial responsibility for the excess amount of the non-federal share of those expenditures.

HCRA Reauthorizes the Health Care Reform Act and its funds for various initiatives for three years through March 31, 2020.

Certificate of Need (CON) Surcharge of 3% would be imposed on the total capital value of CON construction projects for hospitals, nursing homes, and diagnostic and treatment centers. Projects solely funded by State grants of any kind are exempt, provided that fees may be imposed under criteria adopted in regulation by DOH with the approval of the Director of Budget.

Program Discontinuation including Empire Clinical Research Program (ECRIP), Graduate Medical Education (GME) Doctors Across New York Diversity in Medicine Program, GME DANY Ambulatory Training Program, and the Area Health Education Center (AHEC) program.

Public Health & Social Services Law Extenders extending several laws and authority to use funds for various purposes through March 31, 2023 or longer. Notable extenders include limited prescribing exception from the state's requirement for electronic prescriptions through June 1, 2023. This applies to prescribers that prescribe 25 or less prescriptions annually. Also state agency authority to waiver regulations to allow for efficient scaling and replication of DSRIP practices is extended through April 1, 2024.

Creating a consumer-friendly health care cost/quality website, *NYHealthCarecompare*, to use to easily be able to find health care costs and quality information.

New York State of Health includes $519 million in total funding.

Health Provider Capital Funding continues $3.8 billion in capital investments for health care providers (Briefing Book).

Reproductive Health includes $14.2 million in funding to support the loss of Title X funding to launch a state program to ensure access to a full array of reproductive health services statewide.

School-Based Health Centers are level-funded at $17,188,000.

Legalize Gestational Surrogacy

NYSDOH Camp Permit Fees would be increased to $800.

Tanning Facility Fees would be increased to $120.

Tanning Equipment Inspection Fees would be increased $200/device.

Vital Access Provider (VAP) funded at $66 million.

Cannabis Regulation Proposes to legalize adult-use cannabis and create the Office of Cannabis Management (OCM) within the Division of Alcohol Beverage Control which would consolidate governance of all forms of cannabis and create a regulatory structure overseeing the licensure, cultivation, production, distribution, sale, and taxation of cannabis in New York State. The proposal includes $13 million in new funding to support the operations of the OCM.

Adult-Use of Cannabis (21 years of age and older) Utilizes a three-tier market structure, prohibiting vertical integration. The OCM would use licensing limits and supply management to control market concentration. The program would also encourage social equity applicant participation by providing technical assistance, training, loans, and mentoring to qualified social and economic equity applicants. There are three proposed taxes for adult-use cannabis with revenue projections of $20 million in FY 2021, $63 million in FY 2022, $85 million in FY 2023, $141 million in FY 2024, and $188 million in FY 2025. Revenues from the State cannabis taxes will be deposited in the New York State Cannabis Revenue Fund.

1. The first tax is on the cultivation of cannabis at the rate of $1 per dry weight gram of cannabis flower, $0.25 per dry weight gram of cannabis trim, and $0.14 per gram of wet cannabis.
2. The second tax is imposed on the sale by any person to a retail dispensary at the rate of 20% of the invoice price.
3. The third tax is imposed on the same sale by any person to a retail dispensary at the rate of 2% of the invoice price, collected in trust for and on account of the county in which the retail dispensary is located.

Counties and cities with a population of 100,000 or more would have the opportunity to opt-out of the distribution and sale of cannabis products through the passage of a local law.

Expansion of the Medical Cannabis Program

The OCM will facilitate the continued expansion of the medical cannabis program by promoting reforms which expand patient access, product affordability, and encourage further medical cannabis research opportunities.

Cannabinoid Hemp (CBD Products)

The growth and cultivation of all hemp will continue to be regulated by the Department of Agriculture and Markets. The bill sets requirements for production, testing and product labeling of CBD products. Processing and sales of CBD products will be subject to OCM oversight.

Hospitals/Facilities

The Surprise Bill law is amended to:

- Expand the IDR process to all hospitals. A law passed last year added hospitals to the IDR process but exempted those for which at least 60% of annual patient discharges are Medicaid patients, uninsured or dual eligible.
- Provide that when a patient assigns benefits for emergency services, including inpatient services which follow an emergency room visit, to a non-participating physician or hospital that knows the insured is insured under a health care plan, the non-participating physician or hospital shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured utilized a participating hospital or physician.

Hospital Administrative Denials Proposes to amend existing law which prohibits denial of medically necessary inpatient services following an emergency admission based solely on a hospital's failure to notify a plan of the services. The proposed budget extends this prohibition to all types of administrative denials and to emergency services, observations stays, and all inpatient admissions. Exceptions are provided for denials:

- Based on a reasonable belief of fraud, intentional misconduct, or abusive billing;
- When required by a State or federal government program (e.g. Medicaid);
- For coverage that is provided by the State or municipality to its respective employees, retirees or members;
- A duplicate claim, or for non-covered benefits or a non-covered person; or
- For services for which preauthorization was denied prior to the delivery of services.

Sexual Assault Forensic Examiner (SAFE) Program Expansion Currently, the SAFE program is limited to specialty-designated hospitals. The proposed budget requires all hospitals with emergency departments to establish SAFE programs. Hospitals without emergency

departments are required to transport victims of sexual assault to a hospital with a SAFE program.

Hospitals operating a SAFE program are responsible for (new requirement in bold):

- maintaining sexual offense evidence and the chain of custody;
- contacting a rape crisis or victim assistance organization to establish coordination of non-medical services when requested by the victim;
- offering and making available HIV post-exposure treatments;
- ensuring sexual assault survivors are not billed for forensic exams and are notified orally and in writing of the option to provide private health insurance information and have the Office of Victims Services reimburse the hospital for the exam;
- ensuring that the victim, absent exigent circumstances, is met within an hour of arriving at the hospital by a sexual assault forensic examiner who is a specially trained nurse, nurse practitioner, physician assistant, or physician who shall be available on a 24 hour a day basis every day of year;
- ensuring that the victim, upon consent, is examined in a private room;
- designating a qualified staff person to exercise administrative and clinical oversight of the treatment of sexual assault patients and developing policies and procedures to guarantee sufficient staffing;
- ensuring that all emergency department personnel receive training for standards of care for assessment and treatment of victims of sexual assault. Such training must be provided by October 2020, and annually thereafter.
- Beginning March 1, 2021, and annually thereafter, hospitals with an emergency department must provide an attestation to the hospital that lists the name and contact information of the staff person who has been designated by the hospital to oversee the treatment of sexual assault patients and affirms that the hospital has completed training for standards of care for assessment and treatment of victims of sexual assault.

Hospital Resident Audits discontinues hospital resident working hour compliance audits and instead allows hospitals to attest annually to compliance with applicable NYS rules, regulations and laws.

EQUAL Program Changes restructures the Enhanced Quality of Adult Living (EQUAL) Program and limits the use of the grants to support independent skills trainings, mental hygiene staff trainings and capital improvement projects.

Home Care/Long Term Care

Home Health Aide Worker Registry funded at $1,800,000.

Health Occupation Development and Workplace Demonstration Program proposes to repeal this program with the elimination of the Health Workforce Retraining Initiative (HWRI) under HCRA.

Home Care Workforce and Recruitment is extended through March 31, 2023.

Personal Care Workforce Recruitment and Retention is extended through March 31, 2023.

Medicare Maximization Program proposes to extend the Home Care Medicare Maximization program through February 1, 2023.

Health Occupation Development and Workplace Demonstration Program proposes to repeal this program with the elimination of the Health Workforce Retraining Initiative (HWRI) under HCRA.

Health Professionals

Doctors Across NY continues funding for loan forgiveness and practice support $9.065 million and for physician workforce studies $478,000.

Physician Profile links the physician profile reporting process and the licensure/reporting process. Requires hours of operation, availability of assistive technology, and availability to take new patients, the physicians website and social media accounts, and the names of other physicians that he or she shares a group practice as mandatory elements. Also states it is the responsibility of health plans, not physicians to ensure accuracy of provider network participation information. Authorizes physicians to elect an employee to be an official designee for profile reporting.

OPMC Changes

- **Making OPMC Investigations and Non-Disciplinary Actions Public:** Would allow the State Health Department (NYSDOH) to immediately publish charges upon investigative requests, along with the immediate convening of an investigative committee, eliminating the current 90-day threshold. Allows for the publication of Administrative Warnings and Consultations.
- **Changes to Lifetime Licensure:** If a licensee has failed to register with NYSDOH for two consecutive registration periods, license will be stricken.
- **Fingerprint and Criminal Record Check Requirements:** Will require of licensee prior to licensure
- **Professional Misconduct and OPMC Notification of a Crime or Misconduct:** Revives the definitions of professional medical misconduct and professional misconduct; Also requires licensees charged with a crime or misconduct in any jurisdiction to notify OPMC within 24 hours.

- **Authorizes OPMC to issue administrative inspection warrants.**
- **Executive Secretary of OPMC would serve at the direction and appointment of the Commissioner of Health,** instead of the Chairperson.
- **Expand Delivery Methods for Notices of Hearing**
- **Allowing NYSDOH to Summarily Suspend a Physician's License** if the Commissioner deems that physician to be at risk to the health of the people (current law requires that the individual be an imminent danger to do so).

Physician Excess Medical Malpractice program is extended through June 30, 2021. Program funding line is reduced to $105.1 million, but is consistent with prior year payments.

PCMH Funding is continued at a level of $110 million.

Pharmacy/Pharmaceuticals

Capping the Co-Payments on Insulin at $100 per monthly supply

Granting the Department of Financial Services (Insurance) additional enforcement authority over spikes in drug costs (by more than 100% within a one year time period) with the ability to hold a hearing to demand that manufacturers justify the increase and if deemed unjustified, DFS would have the ability to disallow the increase and potentially impose a fine, including rebates to impacted consumers, Includes the creation of a Drug Accountability Board to assist with reviewing drug pricing criteria and making recommendations.

Creating a Prescription Importation Commission to work with insurers, consumers, health providers and other stakeholders to identify any potential consumer savings from importing drugs from Canada and compile a list of drugs that could be imported through such a program

Registering and Regulating Pharmacy Benefit Managers similar to the Governor's prior year proposals

Explicitly designate fentanyl analogs as controlled substances adding 24 additional Synthetic Fentanyl Analogs to the State Schedule I list and 2 to the State Schedule II list. Authorizes the Commissioner of Health to classify any substance as a State Schedule I when it is already listed on the Federal Schedules of Controlled Substances.

Pharmacist-Administered Immunizations makes pharmacist immunization administration authority permanent for CDC-recommended vaccines for adults.

Pharmacy Technicians expands the number of unlicensed personnel and registered pharmacy technicians that a licensed pharmacist may supervise to 6:1 and 4:1 respectively. Expands pharmacy settings where registered pharmacy technicians can be employed.

Collaborative Drug Therapy Management (CDTM) makes law permanent and codifies regulatory qualifications for pharmacists to participate in CDTM and expand the settings where it may be utilized, as well as collaboration with NPs and PAs.

Public Health

Cracking down on retailer sales to underage youth through increased penalties.

Ban the sale of flavored e-cigarette products

Ban unregulated carrier oils in vaping products and vape manufacturer ingredient disclosure to NYSDOH.

Limit online vaping sales

End the sale of tobacco and e-cigarettes in pharmacies

Clarifies Clean Indoor Air Act to include all workplaces with covered roofs.

Prohibition on Coupons for Tobacco/Electronic Cigarettes.

Ban Vaping Product Ads targeted at youth

Ban on the display of tobacco products or electronic cigarettes in stores

Includes proposals to preserve the **effectiveness of antibiotics** by requiring hospitals and nursing homes to establish antibiotic stewardship programs and antimicrobial resistance and infection prevention training programs for all individuals licensed or certified pursuant to Title XIII of the education law who provide direct care.

Discontinue the **Adult Cystic Fibrosis Assistance Program**.

Behavioral Health/Housing

Funding is increased in the OMH operating budget by $72.4 million or 2.4% in FY 2021 and in the OASAS operating budget by $23.8 million or 3.7%, according to the briefing book. This includes:

- Funding the direct care wage increases enacted in the current year's budget (2% increase effective January 1, 2020 and another 2% effective April 1, 2020).
- Minimum wage funding support continued.

- $20 million to support existing residential programs.

N**ew Funds for Supportive Housing** providing an additional $69 million to generate an estimated 1,000 apartments; New funding will go to the Homeless Housing and Assistance program

Increasing access to Medication-Assisted Treatment (MAT) for treating opioid use disorder by breaking down unnecessary barriers to care (from Briefing Book).

Behavioral Health Parity Compliance Fund Amends the Insurance Law by directing the Department of Health and Department of Financial Services to promulgate regulations Also establishes a new special review fund for the penalty fines levied on insurers for violations of current law to fund the New York State Behavioral Health Ombudsman program.
Requires DOH, DFS, in consultation with OMH and OASAS to promulgate regulations to ensure compliance with State and Federal behavioral health parity statutes by October 1, 2020. The regulations would require health insurance providers to provide mental health and SUD coverage consistent with State and Federal behavioral health parity statutes.

The Behavioral Health Parity Compliance fund will be established for fines levied for violations of behavioral health parity statutes. The fund is designated for initiatives supporting parity implementation and enforcement on behalf of consumers, including the Behavioral Health Ombudsman Program. Any fines resulting from violations collected before October 1, 2020 will be deposited in the General Fund, and all fines collected after will be deposited in the Behavioral Health Parity Compliance Fund.

Continued funding of $1.5 million to support the **Behavioral Health Ombudsman program**, along with authority to utilize up to $1.5 million in funds received in the newly established Behavioral Health Parity Compliance Fund.

Pre-Admission Process for Children and Youth for Residential Treatment Facilities (RTFs) amends the Mental Hygiene Law (MHL) by removing the Pre-Admission Certification Committee (PACC) for placement into an RTF for the purpose of promoting timely and appropriate placement of individuals onto RTFs. The Commissioner of OMH would be required to consult with the Council for Children and Families to establish an Advisory Board. The Commissioner of OMH is authorized to develop admission standards, in consultation with the Commissioners of Education, Social Services, and Office of Children and Families.

Comprehensive Psychiatric Emergency Programs (CPEPs) amends provisions of the Mental Hygiene law with respect to CPEPs to:

- extend the time that facilities can operate for four years to July 2024;
- extend the time that an individual can be detained from 72 hours to 96 hours for observation and treatment when the person is determined to be a danger to themselves or others;

- require that triage and referral services be provided by a psychiatric nurse practitioner or physician as soon as a person is received into the comprehensive psychiatric emergency program;
- require that if a patient is not discharged within six hours, they must be examined by a physician;
- permit hospitals that operate CPEPs, upon approval of the Commissioner of OMH, to operate satellite facilities. A satellite facility is defined as a medical facility providing psychiatric emergency services that is managed and operated by a hospital who holds a valid operating certificate for a CPEP and is located away from the central campus of the general hospital.

Local Jail Mental Health Units outside of New York City for incapacitated persons in the court system. The local jail mental health units may operate residential mental health units for the purposes of housing, treating felony level defendants as they await trial. Local jail mental health units must be approved by the OMH, the director of Community Mental Health Services and the sheriff representing the institution. Currently OPWWD and OMH operated hospitals, or a DOH licensed hospital may provide these services.

Transform Kingsboro Psychiatric Center into a Recovery Hub (Briefing Book).

Comprehensive Care Center for Eating Disorders program is moved from NYSDOH to OMH.

Affordable Housing and Homelessness Initiative announced during the Governor's Budget Address would continue the $20 billion five-year investment in affordable and supportive housing.

Adult Home Transitional Funding with an additional $12.5 million for individuals living in transitional adult homes in New York City to move to more integrated settings in the community.

Infrastructure Funding to support replacement of the Mid-Hudson Forensic Psychiatric Center in Orange County ($100 million).

VAP Funding for Behavioral Health is funded at $25 million.

Developmental Disabilities

Funding is increased in the OPWDD operating budget by $201.7 million (5.4%) in FY 2021 according to the briefing book. This includes:

- Funding the direct care wage increases enacted in the current year's budget (2% increase effective January 1, 2020 and another 2% effective April 1, 2020).

- Minimum wage funding support continued.
- Continued commitment to transitioning OPWDD services to managed care, with re-appropriated funding of $5 million to assist with provider readiness.
- An additional $15 million to support the expansion of residential opportunities for those with I/DD.
- OPWDD authority and oversight of certain State Plan Medicaid services (Care Coordination Organizations/Health Home services).

OPWDD Operating Certificates OPWDD would be authorized to issue operating certificates for approval for a number of providers of State Plan Medicaid services to individuals with developmental disabilities. These providers would be under the jurisdiction of the Justice Center. This legislation also would authorize the removal of health homes authorized by DOH as 'providers' as defined by law subject to the DOH's criminal history check process.

Autism Awareness and Research Fund would be moved from NYSDOH to OPWDD

Insurance

Insurance Down-Coding requires that down-coding decisions be made based on national coding guidelines by CMS and AMA and increases the period over which an insurer is required to pay interest if claims payment is not timely.

Health Care Administrative Simplification Workgroup consisting of insurers, hospitals, physicians and consumers or their representatives to study and evaluate mechanisms to reduce health care administrative costs and complexities through standardization and technology. Areas to be examined include claims submission and payment, claims attachments, preauthorization, provider credentialing and insurance eligibility verification. The workgroup shall submit its findings and recommendations within one year.

Quarterly and Annual Reporting by plans to the Department of Financial Services (DFS) on health care claims payment performance. Such reports would include the number and dollar value of all claims, broken down by those received, paid, pended and denied. They would be reported in the aggregate and broken down by provider type. Reports would be posted on DFS' website.

Utilization Review shortens the timeframe to one business day for UR prior authorization determinations for inpatient rehab services.

Appeal Determinations shortens the timeframe for UR agents to make appeal determinations from 60 to 30 days.

Physician Credentialing requires insurers to provisionally credential physicians to permit them to provide services to plan members while they undergo the full plan credentialing process.

Early Intervention (EI) Pay and Pursue
Amendments are made to the State Insurance Law to increase the percentage of EI services covered by commercial insurance companies. Currently, commercial insurance covers less than 2% of total EI costs, although 42% of children (25,400) have commercial insurance. Provisions of the bill would:

- require health insurance companies to pay a claim for EI services to a provider that participates in the insurer's network where the insurer's obligation to pay is reasonably clear, even where there is a disagreement about whether the service was medically necessary.
- allow insurers to initiate a non-expedited external appeal following payment of the claim to determine whether the service was medically necessary.
- provide that if the external appeal agent determines that the EI services were not medically necessary, in whole or in part, the insurer may recoup, offset, or otherwise require a refund or any overpayment.
- provide that none of the Pay and Pursue provisions prohibit an insurer from requiring prior-authorization for EI services.

OMIG

The Executive Budget (Briefing Book) includes a proposal to increase Office of the Medicaid Inspector General (OMIG) staffing by 69 employees and establish a dedicated unit for investigating Medicaid Managed Care payments.