



2017-18 EXECUTIVE BUDGET HIGHLIGHTS: HEALTH & MENTAL HYGIENE

Late Tuesday, Governor Andrew Cuomo released his State Fiscal Year 2017-18 Executive Budget proposal. Rather than provide a detailed public and legislative briefing with budget documents and legislation being released simultaneously with the presentation, the Governor briefed the Senate privately with a very high level overview and no paper. The Governor gave a high-level briefing for the press around 8PM on Tuesday night, and the bills and briefing documents were released at the end of the presentation. Following the first ever regional State of the State addresses, the unconventional budget roll-out raised eyebrows with legislators.

To remind everyone about the budget process: the Executive's Budget proposal is the first volley in the budget process, with legislative hearings to begin next week (Health and Medicaid hearing 2/16, Mental Health 2/28 and Human Services 2/8), one-house legislative responses likely in late February or early March, and the final Budget due by April 1. Below are some highlights from the Governor's Budget Proposal.

The budget proposal was lean, with generally flat funding. While the Governor said that there were no Medicaid cuts, there do appear to be cuts. The Department of Health's budget was about \$400M less than last year, and we had trouble finding some appropriations that historically had been there – and those were just the ones that Brown & Weinraub looks for. With a flat or reduced budget, there are not a lot of new programs. Indeed, the process of getting through the budget documents was not as onerous as previous years, simply because there was less to review.

Additional observations and notable items:

- ***Repeal of the ACA and Medicaid Block Granting.*** The Budget does not acknowledge or make specific contingency plans for the impact of federal changes to the Accountable Care Act or Medicaid block granting. What it does do, however, is change Medicaid Cap language to allow the Department to make unilateral changes to Medicaid appropriations if federal financial participation is reduced or there are changes in federal Medicaid eligibility requirements (in addition to other powers the Department has under the Cap). Additionally, because HCRA (the Health Care Reform Act) funds about a third of the State share for Medicaid, specific, individual HCRA appropriations have language attached that allows the Department to alter those appropriations if receipts – including but not limited to federal receipts – are less than the State projected. The language does not require there to be a connection between the projected receipts and the actual appropriation (i.e., if FFP for X program is reduced – instead, there could be reduced tax revenues generally that could allow for the State to reduce funding for a program). The Commissioner, working with DOB, would devise a plan and present the plan to the Legislature, but legislative approval would not be necessary to change the appropriation. Anticipate pushback from the Legislature.

- ***\$650M Life Sciences Initiative.*** We have had a lot of inquiries about the Governor's \$650M (over 10 years) Life Sciences initiative (see attached document "Economic Development" and more information can be found here: <http://www.governor.ny.gov/news/governor-cuomo-presents-11th-proposal-2017-state-state-investing-650-million-fuel-growth-world>). Our Article VII and appropriations matrices do not include this initiative because the initiative is a compilation of new and existing programs that include tax credits, and these are spread across the budget bills. Not all of this money new and not all of the money is uncommitted. Our advice is that if you are interested in this program, you should reach out to your regional Economic Development representative and meet with him or her to discuss your interest and the mechanics of the program. You can reach your representative here: <https://esd.ny.gov/regions>, or Brown & Weinraub can assist you in setting up the meeting – just let us know.
- ***Funding for enhanced safety net hospitals.*** Last session, outside of the budget process, both houses of the Legislature passed a bill that would have provided for increased reimbursements for "enhanced" safety net hospitals. The Governor vetoed the bill, suggesting that it would be more appropriate to discuss in the context of budget discussions. The Governor did not, however, include anything in his Executive Budget proposal. Stay tuned.
- ***Missing appropriations.*** As noted above, it looks like appropriations for various programs (e.g., school health centers, maternal health programs, public health programs) were not where we were expecting them to be. That does not necessarily mean that the programs were cut – the money could have been shifted to larger pots and not lined out, but we are still trying get information on some of these funds. Please contact us if you have specific questions.
- ***Health Care Facility Transformation Program.*** The Executive Budget proposes essentially building upon last year's health care facility transformation program, which totaled \$200M (\$5M for mobile breast cancer screening, \$30M for community based health care providers, and \$165M for hospitals, nursing homes and D&TCs). This year's proposed pool is would expand to \$500M, with \$50M dedicated to Montefiore, and \$30M for community based health care providers (D&TC, OASAS clinic, primary care provider, home care provider, Article 31 clinics). The purpose of the pool is to protect access to care through capital funding, debt relief, or non-capital projects, although it cannot be used for general operating expenses. Examples of eligible projects include mergers, consolidations, acquisition, expanding essential services, and creating financially sustainable systems of care. Eligible entities are hospitals, nursing homes, D&TCs, clinics licensed under the MHL. Please note that there is language that would allow DOH to use these funds to fund projects not funded under the earlier RFA – in addition to language that would give priority to applicants not previously funded. It is not clear whether this is intended to allow DOH just to access additional funds for last year's HCFTF RFA. Criteria for eligibility is the same as with the HCFTF.
- ***Health Care Regulation Modernization Team.*** This proposal would establish a 25-person team to advise on the restructuring of statutes, regulations and policies relating to governance and oversight of health care facilities and home care -- but the authority is very broad and will encompass a wide array of issues relating to improving and modernizing care delivery, including facility licensure procedures, alternative models of care delivery, etc. Members would include: state officers/employees, PHHPC chair & co-chair, 2 NYS Assembly members, 1 assembly nominee, 2 senators, 1 senate nominee, stakeholders with relevant experience. Notably, the language would allow for implementation (with 30-day prior notice and comment period) of time limited pilots notwithstanding any statute or regulation prohibiting the practice/program/project.
- ***Pharmacy Reforms.*** The most detailed proposals in the Governor's budget include attempts to address high cost pharmaceutical drugs. There are various prongs to the proposal:
 - ***High cost drugs.*** The Article VII would authorize DOH to collect information on drug prices to establish benchmark price for prescription and over the counter

drugs. “High priced drugs” would be defined as: (1) priced disproportionately given its therapeutic benefit; (2) when first introduced are prohibitively expensive to consumers; (3) suddenly experience an unexplained increased cost. The legislation applies to all drugs (generic and brand, multiple makers or single source, reimbursed by commercial or public payers, prescription *and non-prescription*). Manufacturers would be required to provide information on actual R&D costs, advertising costs, utilization data, prices charged for the drug outside of the US, prices charged to in-state purchasers, average rebates, average profit margins. This information would be used to set the benchmark. For drugs exceeding the benchmark, Medicaid would be able to require rebate for high-cost drugs (in addition to other rebates), and for other payers a 60% tax would be imposed, which would be used to offset premiums.

- **PBM Licensure and Regulation.** The Article VII would develop a very complicated administrative scheme to regulate the practices of pharmacy benefit managers (PBMs). The language would give the Department of Financial Services essentially unlimited authority to demand information from, audit, and fine PBMs.
- **Prescriber prevails.** Once again, the Governor has proposed eliminating prescriber prevails in Medicaid program except for atypical antipsychotics and antidepressants.
- **Essential Plan – Increasing Beneficiary Responsibility.** The Governor’s proposal would change the threshold at which Essential Plan beneficiaries are responsible for a \$20 monthly payment, from 150% FPL to 138% FPL. The monthly payment would be increased annually beginning in 2018, based on the CPI.
- **NYC asked to pay fair share.** Unlike last year’s Executive Budget proposal that would have balanced the Medicaid budget by significantly increasing NYC’s share of financial responsibility (it did not make it to the final budget) – this year’s proposed budget contains two targeted proposals. One is related to school supportive health services, which would require NYC to increase its commitment to \$100M, or risk a \$50M cut to funding. The other would reduce state funding to the General Public Health Work Program, but only for NYC.
- **All Mental Hygiene Agencies:**
 - **Minimum Wage:** \$17 M added for FY 2017-18 minimum wage increases for “direct care, direct support, and other workers” at non-profit agencies under the jurisdiction of OPWDD, OMH, and OASAS.
 - **No COLA:** The 2017-18 COLA for the mental hygiene agencies (and all human services agencies) is deferred for this year, however, the statutory authority for COLA is extended for a 2-year period, until March, 2020.
 - **No New Behavioral Health VAP:** No new behavioral health VAP funding in this year’s budget.
- **Heroin and Opioid addiction services:** A total of \$200 million is available to combat the Heroin Epidemic, including an increase of \$30 million above last year. These funds support prevention, treatment and recovery programs. Specifically, the funding will target the following:
 - Add 80 new **residential beds** operated by non-profit providers,
 - Add 600 additional **Opioid Treatment Program (OTP)** slots,
 - Fund 10 new “**regional coalitions and partnerships**” to increase collaboration among families, providers, schools, law enforcement, and State and local leaders,
 - Add 10 new **navigator programs** to provide assistance re: insurance coverage and treatment,
 - Add 10 new **peer engagement programs**,
 - Establish eight new **Clubhouses**: total of five in NYC; two in the Mohawk Valley and one in each of the other regions of the State.
 - Add five new **Recovery and Outreach Centers**,

- Ten new **Urgent Access Centers** will be opened, with 24/7 access to SUD treatment services to help alleviate delays in linking persons with treatment, and
 - Two **Recovery High Schools** will be established opening in 2019, targeted to assist students in recovery.
- **OPWDD:**
 - **\$120 Million for Program Priorities/New Service Opportunities.** A total of \$120 million in new annualized funding for individuals with intellectual and developmental disabilities who live at home or in residential placements. These funds will include:
 - Expansion of community-based residential programs,
 - Rental subsidies,
 - Day and employment programs,
 - Expansion of respite services,
 - \$15M to expand independent living capacity, and
 - \$24M for Olmstead implementation - expanded community-based supports.
 - **START Expansion:** The Systemic Therapeutic Assessment, Respite and Treatment (START) Program, provides crisis prevention and response. An additional \$12 million this year will be used to expand START in the “downstate area.”
 - **Transition to Managed Care:** OPWDD providers will phase-in transition to managed care over a five-year period: with enhanced care coordination in 2017; voluntary MC enrollment beginning in 2019; and complete transition targeted for 2022.
 - **Institute for Basic Research in Developmental Disabilities (IBR):** OPWDD will study of the feasibility of transferring IBR to CUNY College of Staten Island.
- **OMH:**
 - **Reinvestment:** \$11M in new reinvestment funding to expand community-based MH services.
 - **Supported Housing Units.** OMH will replace 140 state-operated residential beds with 280 new supported housing units (within the same geographic area).
 - **Support for Existing Residential Programs.** \$10M in new funds are provided for existing supported housing and SRO programs.
 - **State-Operated Outpatient Clinics.** OMH will evaluate 85 State-operated clinics and reconfigure some of them to redirect resources to the better functioning clinics.
 - **Hutchings Psychiatric Center (Syracuse) – Children’s Services.** OMH will evaluate whether to move the Hutchings Children and Youth inpatient unit to a local Article 28 hospital.
 - **Jail Restoration Programs:** \$850,000 is available to assist county jails to establish mental health units for criminal defendants who need to be restored to competency in order to stand trial.

As always, call us with questions (518) 427-7350, or ask to schedule a more detailed briefing.