

# **NEW YORK STATE SENATE STANDING COMMITTEE ON HEALTH**



**2018-19 SFY**

**HEALTH AND MENTAL HYGIENE  
BUDGET HIGHLIGHTS  
(S.7507-C)**

## **Introduction**

The State's health and Medicaid budget process is complicated. The process was initiated with the Executive's budget presentation, followed by a marathon public hearing, presentations by constituencies, an internal Senate budget sub-committee process, a report to the Republican/IDC Conference, introduction and passage of Senate-Assembly one house budget bills, negotiations with the Executive and Assembly, public Assembly-Senate Budget Conference Committee meetings, continued negotiations with the Executive and Assembly, introduction of final three-way agreed upon budget bills and final passage of the budget by the April 1<sup>st</sup> deadline.

The health budget includes 75 separate policy areas in Medicaid alone, a Global Cap target of over \$18 billion, new capital funding for facilities and community based organizations of \$525 million, and scores of public health initiatives, including Rape Kit preservation, donor breast milk coverage and programs for kids born drug afflicted among other new initiatives to address the opioid and heroin epidemic. The budget also addresses long term care services, including home care , nursing home quality, assisted living expansion, capital funding for all facilities, hospice and TBI funding, rural healthcare, Medicaid transportation, essential provider provisions, and measures to ensure more transparency in drug pricing and to level the playing field by requiring more accountability from Pharmacy Benefit Managers.

In the short time frame from introduction of the Senate one house proposal until adoption of an on time budget on March 30<sup>th</sup>, the Senate worked tirelessly to advance new initiatives essential to New Yorkers and expand upon the Executive's proposals. Many of the Senate priorities made it into the final enacted budget. These highlights summarize the important provisions that were ultimately adopted.

# HEALTH AND MENTAL HYGIENE BUDGET HIGHLIGHTS

## MEDICAID

**Global Cap** – the budget extends the Global Cap through fiscal year 2018-19. The Executive commits to continue monthly briefings updating the Legislature on Global Cap changes.

**Pharmacy** – the budget updates the professional dispensing fee for pharmacists and provides for increased reporting and transparency in the Medicaid Drug Cap. The legislature rejects the proposed elimination of prescriber prevails as well as the reduction in coverage for over the counter medications.

**Transportation** – the Legislature restores all the transportation cuts proposed by the Executive and includes an additional \$6.28 million to increase ambulance reimbursement.

**Assisted Living Programs (ALPs)** - the budget allows for the expansion of ALPs in order to help achieve the needs of aging New Yorkers wishing to remain in the community. Under this provision, the nearly 1,000 currently “stranded beds” will be redistributed to eligible applicants, 500 new beds will be available in counties with one or zero programs, 500 new beds will be available to counties where utilization of existing beds exceeds 85%, and a certificate of need process will be established by April 1, 2023 to approve ALPs on a needs basis going forward. The budget also authorizes the Commissioner to establish a pilot program to subsidize the cost of assisted living for those living with Alzheimer’s disease who are not eligible for Medicaid.

**Licensed Home Care Associations (LHCSAs)** – the budget requires the registration of LHCSAs, establishes a moratorium on the establishment of new LHCSAs until March 31, 2020, and limits the number of LHCSAs a Managed Long Term Care (MLTC) plan can contract with as follows:

- In NYC, Nassau, Suffolk and Westchester:
  - beginning October 1, 2018 - 1 contract for every 75 members; and
  - beginning October 1, 2019 – 1 contract for every 100 members.
- Rest of State :
  - beginning October 1, 2018 – 1 contract for every 45 members;
  - beginning October 1, 2019 – 1 contract for every 60 members.

**Spousal refusal** – the Legislature rejects (for the 28<sup>th</sup> time) the Executive proposal to require spousal contribution and responsibilities for spouses residing together in the community to be considered for Medicaid eligibility. The Legislature also rejects proposed changes to decrease the threshold of spousal budgeting for community spouse resources.

**Traumatic Brain Injury and Nursing Home Transition Diversion Waivers** – the enacted budget extends the statutory deadline to move these populations, who currently receive services through Medicaid Waiver programs, to managed care until at least January 1, 2022. The budget also increases the freestanding clinic rate for Medicare Part B beneficiaries participating in the TBI waiver

**MLTC Enrollment** – the budget allows MLTC enrollees to change plans within 90 days of notification of enrollment or the effective date of enrollment, whichever is later. After this 90-day period, the Department may prohibit a recipient from changing plans more frequently than once every 12 months, except for instances of good cause.

**Nursing Home Carve Out** – the budget carves individuals designated as permanent placed who have been in a nursing home for a consecutive period of three months or more from MLTC. Beginning May 1, 2018, any individual designated as permanently placed in a nursing home will not be enrolled in MLTC.

**Fiscal Intermediary Advertising** – the enacted budget prohibits false or misleading advertising and requires submission of all advertisements for approval by the Department of Health prior to dissemination.

**Universal Assessment System (UAS)** - the Legislature rejects the Executive’s proposal to limit MLTC enrollment to individuals scoring a nine or above on the UAS, the current standard of five or above remains.

**Physical Therapy** – the budget expands coverage of physical therapy from a maximum of 20 to 40 visits a year.

**Children’s Behavioral Health** – the Legislature includes \$15 million to support providers of children’s behavioral health services to allow plans to incorporate available federally approved services and mitigate the impact of the Executive’s proposed delay of transition of children’s behavioral health into managed care.

**Health Homes** – the final budget reduces spending on adult health homes by \$53 million in all funds spending over two years. Health homes are not physical facilities, but a Medicaid construct designed to coordinate care for the most expensive Medicaid patients. The Executive administration also commits to pursuing reforms including focusing resources on individuals with the highest risks and highest utilization of services; eliminating payments for cold calls from lists; ensuring quality by evaluating quality metrics, comparing performance and requiring public reporting; and allowing managed care plans to contract with health homes based on their performance and outcomes among other reforms. The Legislature concurs with the Executive’s request to support criminal background checks of existing and future health home employees.

**Rural Health** – the enacted budget includes \$3 million for the study and rate enhancements of home and community based services available to Medicaid recipients in rural areas.

**Patient-Centered Medical Home (PCMH)** – the Legislature restores \$10 million to health care providers who have worked to become PCMHs in order to ensure rates are not drastically reduced.

**Certified Registered Nurse Anesthetists (CRNAs)** – the Legislature rejects the proposal to allow CRNAs to practice without direct supervision.

## **HOSPITALS, NURSING HOMES AND OTHER PROVIDERS**

**Capital Health Care Facility Transformation Program** – the enacted budget includes a new round of capital funding, providing an additional \$525 million in the health care facility transformation fund (statewide III), to support providers engaging in projects that replace inefficient and outdated facilities as part of a merger, consolidation or acquisition, and projects to ensure sustainability such as debt reduction. At least \$60 million must be used for community based health care providers, \$45 million is earmarked for nursing homes, and up to \$20 million is set aside to support the previously outlined ALP initiative.

**Safety Net Hospitals** – the Legislature includes a new definition to include sole community hospitals and critical access hospitals and adds an additional \$30 million in funds.

**Pharmacy** – in an effort to establish a level playing field between pharmacists and pharmacy benefit managers (PBMs), the enacted budget: limits the ability of PBMs to use audit procedures or payment denials; prohibits PBMs from imposing claw backs, a practice which can have consumers with insurance paying more than the cost of the drug; and prohibits the imposition of gag clauses, which ban pharmacists from disclosing to individuals the cost of the prescription, alternative medications, or that the medication may cost less if they pay cash. The budget also extends for two years the authority for pharmacists to administer influenza vaccine to adults and children ages two to 18, and extends the Collaborative Drug Therapy Management demonstration program through July 1, 2021.

**Excess Medical Malpractice Pool** – the budget extends this program for one year.

**Medical Misconduct** – the budget includes language to authorize the Commissioner of Health to order a physician to stop practicing if charged with a felony that the Commissioner believes constitutes an imminent danger to people.

**Telehealth** – the enacted budget expands the list of eligible telehealth providers and authorizes telehealth services to patients in their homes. Further, the budget requires the Departments to issue a single guidance document setting forth any differences between the rules and regulations of the Department of Health, the Office of Alcoholism and Substance Abuse Services, the Office of Mental Health and the Office of People with Developmental Disabilities.

**Integrated Care** – the budget allows providers licensed or certified by the Department of Health, Office of Mental Health and Office of Alcoholism and Substance Abuse Services to provide integrated primary care, mental health and/or substance abuse disorders services without needing additional licenses or certifications from one of the other agencies.

## **PUBLIC HEALTH**

**Public Health Programs** – the Legislature rejects the Executive’s proposal to combine 30 public health programs into four competitive pools and reduce their funding by 20 percent. The Legislature fully restored the 20% (\$9.186 million) cut the Executive made to these programs.

**Sexual Assault Kits** – the budget includes several Senate proposals to:

- Require the storage of sexual offense evidence for 20 years from date of collection at a centralized storage location(s) to be determined by 2020. Evidence will continue to be stored in hospitals pending the establishment of the permanent storage location(s)
- Ensure hospitals do not bill survivors for sexual assault forensic exams and prohibits cost sharing when a survivor agrees to allow their insurance to be used to cover the costs associated with collecting sexual assault forensic evidence
- Provide \$300,000 to establish a Sexual Assault Forensic Examination (SAFE) telehealth program to ensure all victims receive care with the support of SAFE certified health care providers

**Opioid Addiction Initiatives** – the Legislature provides funding in addition to the amount proposed by the Executive in order to secure record-high funding of \$247 million, to address addiction. In addition to funding, the Legislature includes measures to:

- Establish an Opioid Stewardship Fund requiring opioid manufacturer's to support state programs that are growing in response to the opioid crisis. The fund consists of \$100 million to be paid based on the amount of morphine milligram equivalents (with the exception of certain drug treatment and hospice medications) sold by the manufacturer in the state. These funds will be used solely for substance use disorder prevention, treatment, recovery and other related expenses of the state as a result of the growing response to the opioid crisis. This fund is temporary and will cease once state expenditures on the epidemic drop below fiscal year 2010 levels. The language also prohibits the pass through of the payment to consumers;
- Create a Substance Use Disorder Ombudsman to assist those seeking treatment and recovery services accessing insurance coverage and ensuring there is network adequacy;
- Establish certified Peer Recovery Advocate Services Program;
- Prohibit health insurers from requiring prior authorization and concurrent review for the first 14 days of outpatient substance use disorder services;
- Require written opioid treatment plans from providers when prescribing opioids for pain which has lasted more than three months or past the time of normal tissue healing, unless the patient is being treated for cancer not in remission, is receiving hospice, end of life care, or other form of palliative care;
- Establish an Opioid Alternative Project designed to reduce the use of opioids in emergency rooms;
- Create a Children and Recovering Mothers (CHARM) Program to make sure health care providers have the training and resources they need to identify signs and symptoms of substance use disorder in expectant mothers and link them to care and services; and create a workgroup of stakeholders to study and evaluate barriers and challenges in identifying and treating expectant mothers, newborns and new parents with substance use disorder;
- Establish an Infant Recovery Pilot Program to provide cost effective and necessary services for substance exposed infants under one year of age and shall report data and information on the activities and outcomes of the pilot program;
- Create a Jail Based Services Program; and
- Authorize BOCES to enter an MOU with a non-component school district to participate in a Recovery High School Program (ELFA S 7506-B).

**Lead Prevention** – the Legislature rejects the Executive's proposal to establish a local mandate on State identified high-risk communities to have code enforcement inspect and report on lead problems in residential and non-residential buildings constructed prior to January 1978. The enacted budget includes:

- \$250 million in capital funding for NYCHA repairs;
- \$1 million for a lead risk reduction to children initiative;
- \$10 million in additional funding for the Lead Services Line Replacement Program from unallocated funds in the clean water infrastructure act of 2017. Funding will be utilized to award funds to the next highest ranking municipalities in each region that did not receive awards during the first round of funding in 2017; and
- Provisions to provide schools with access to information on children's blood lead levels through the Department of Health's vaccine registry so they can provide necessary educational information to parents.

**Clean Water Infrastructure** – the Legislature secured a commitment from the Executive to make funds available beginning in 2018 from the Clean Water Infrastructure Act of 2017, for grants to public water systems to address emerging contaminants. The grants will be awarded as the Department of Health completes rulemaking establishing maximum contaminant levels for PFOA, PFOS and 1,4-dioxane.

**Rural Health** – the Senate provides \$1.1 million for rural health care access development and \$1.1 million for rural health network development. It also directs the Commissioner of Health, in consultation with the Rural Health Council, to conduct a study of home and community based services available to Medicaid recipients in rural areas of the state.

**Early Intervention** – the Legislature rejects all of the Executive’s proposed changes to the Early Intervention program and restores the \$3.2 million in funding.

**Nurse Family Partnership** – the Senate adds an additional \$300,000 to this program that provides services to new mothers transitioning home.

**Donor Breast Milk** – the enacted budget includes provisions advanced by the Senate, to require insurers to cover the cost of donor breast milk on an inpatient basis for certain premature infants that would benefit from the nutrients of breast milk but the mother is unable to provider, or the baby is unable to receive such milk from the mother. Similar provisions were enacted in Medicaid last year.

**Organ Donation** – the Senate provides \$1.4 million in additional funding to increase organ donation efforts.

**Eating Disorders** – the Senate provides \$1.06 million in additional funding for Comprehensive Care Centers for Eating Disorders.

**Women’s Health Initiatives** – the Senate allocates \$5 million for women’s health services

**Lyme and Tick-borne Disease Initiatives** – the Senate allocates \$1 million for the Lyme Disease Task Force recommendations.

**Programs for the Elderly** – the enacted budget provides over \$218 million for services to assist seniors such as, Community Services for the Elderly program, which received an additional \$2.25 million and to expand the hours of the adult protective services hotline which addresses elder abuse.