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Governor Cuomo Addresses the State's Revenue Shortfall in 30-Day Amendments

On February 15, Governor Cuomo released formal amendments to the 2019-20 Executive Budget, referred to as "[30-day amendments](#)". As a result of a decline in Personal Income Tax receipts in December and January, the State financial plan was revised in early February to reflect a \$2.3 billion decline in revenue. The Governor acknowledged that the amendments would include revisions to adjust and [realign finances](#) to reflect updated impacts to the State financial plan.

The Governor included in the 30 day amendments broad Executive powers to manage the State budget during the Fiscal Year ("FY") 2020. Specifically, the Governor has included a proposal that would authorize the Division of Budget to unilaterally implement uniform reductions to address shortfalls in tax receipts which reach or exceed \$500 million. The proposal would exempt specific appropriations from the uniform reduction, including Medicaid, school aid, payments for CUNY senior colleges, and public assistance payments, including supplemental social security.

A second proposal would establish the “Fiscal Accountability and Budget Balance Act”, which would require the Budget Director to determine the estimated fiscal impact of any legislation passed after April 1, 2019, and associated plans to offset such spending. All legislation that may have a fiscal impact in the current or following fiscal year would be required to include a detailed fiscal accountability plan that identifies a plan to fully offset the fiscal impact of the bill. The proposal would authorize the Budget Director to apply a uniform reduction to aid to localities appropriations that equals the amount necessary to offset the fiscal impact of legislation passed. This proposal would exempt specific appropriations from the uniform reduction, but does not exempt Medicaid or school aid from the uniform reduction.

In addition to granting the aforementioned broad discretion to the Division of the Budget, the most significant adjustments made to the Executive Budget will impact the healthcare industry, as the amendments include a \$550 million cut to Medicaid spending and the hospital Indigent Care Pool. In addition, the proposed trend factor increase for hospitals and nursing homes (2% and 1.5%, respectively, over three years) will also be eliminated.

Public Health and Health Planning Council (PHHPC) Meetings

The Public Health and Health Planning Council (PHHPC) recently held a full council meeting in New York City. A link to the full PHHPC agenda materials can be found [here](#).

Prior to the Council meeting, the Codes, Regulations and Legislation Committee (CRLC) met to consider three motions for adoption and two topics for information.

- Motions for adoption:
 - *Emergency adoption (and for information)*- amendments that will permit state and local correctional facilities to use and operate [body imaging scanning equipment](#), without a licensed operator present. This motion failed to receive sufficient votes for an approval by the CRLC;
 - Proposed regulation that will create a tiered voluntary [stroke designation program](#) and stroke system of care for hospitals in New York State (this proposal was approved by the CRLC); and
 - Amendments to prohibit food service establishment operators from using [liquid nitrogen or dry ice](#) at the point of sale (this proposal was approved by the CRLC).

The CRLC recommended two of the three motions for adoption, and the Full Council subsequently recommended all three motions for approval.

- Topics for information included:
 - A new basis for [cardiac catheterization program](#) approval and operation to improve access to these services; and
 - Permitting operations of [midwifery birth centers](#) directed by a licensed midwife or a physician that have been accredited by a nationally recognized accreditation agency approved by the Department.

Additionally, the Health Planning Committee recommended approval for Olean General Hospital to receive a Stroke Center Designation. The Full Council subsequently recommended this application for approval as well.

Highlights from the Full Council meeting include:

- The Council recommended all CON applications on the agenda for approval with minimal added discussion. Notably, the Council recommended approval for an application by St Joseph's Hospital Health Center CHHA, seeking approval to expand their geographic service area to include Oswego, Cayuga, Madison, Oneida, and Lewis counties. This application was discussed at length at the Establishment and Project Review Committee (EPRC) earlier in January with opposition from two CHHA service providers currently serving those additional counties.
- Department of Health Commissioner, Dr. Howard A. Zucker, addressed the Council and provided updates regarding:
 - the Department's response to influenza vaccinations and updates on recent Measles outbreaks in the state;
 - the Governor's recent announcement of the [Statewide Healthcare Facilities Transformation Program- II](#) capital funding awards, totaling \$204 million, which included approximately \$125 million to community based healthcare providers projects, and approximately \$55 million to long term care provider projects, of which several projects included electronic health record system improvements, additionally the Commissioner noted the inclusion of a large telehealth project to improve access to specialty care;
 - record setting sign-ups on the New York State of Health's 2019 Open Enrollment Period;
 - efforts of the Maternal Mortality Task Force's recommendations; and
 - recent increases in tobacco use associated with young adults along with the Governor's proposal to address the issue.

The next PHHPC Committee meetings are scheduled for Thursday, March 28, 2019 in Albany and the next PHHPC Full Council meeting is scheduled for Thursday, April 11, 2019 in Albany.

Managed Care Policy and Planning Meeting

On Thursday, the Department of Health held the monthly Policy and Planning Meeting with the State's Medicaid Managed Care plans.

Highlights from the meeting include:

- **Mainstream Enrollment:** Statewide enrollment for January was 4,334,957, a .39% decline since December. Enrollment in NYC decreased .41% and is now 2,532,747, a decrease of 10,401 since December. Upstate, enrollment was 1,802,210, a decrease of .37% (6,758 members) since December.
- **MCO Provider Enrollment in FFS:** Managed care plans continue to be advised to hold on terminating providers who have failed to enroll in FFS at this time.
- **MLTC Enrollment:** MLTC enrollment through the month of January is 248,888, an increase of 1,736 since December (247,152). This represents the slowest month-over-month growth in the program since last July. Overall, the MLTC program has grown by 13.44% since last January. The majority of this growth continues to be in the MLTC partial cap program, which is currently at 224,857, an increase of 1,289 since January. The partial cap program has grown 12.74% since January 2018 (199,442 enrollees vs. 224,857). All MLTC programs realized month-to-month enrollment growth with the exception of FIDA, which saw enrollment decline to 3,135 compared to 3,489 a month ago. Enrollment in MAP saw the largest monthly increase in recent

- memory, growing from 13,120 to 13,904 between December and January. Overall, the program has increased by 50.43% since last January.
- CFEEC Evaluation of Marketing/Referral Sources: This month's meeting was the first time DOH presented on CFEEC marketing and referral sources. Between October-December, roughly 20% of all referrals were made by "other" sources, which include advertisements, law firms and bar associations, nursing homes, and HRA.
 - FIDA VBP: As the FIDA program will be ending on December 31st, plans asked that MLTC VBP contract submissions and reporting related to FIDA be suspended. DOH agreed to discuss internally and get back to plans.
 - Minimum Wage Reporting: DOH agreed to consider modifications to minimum wage reporting requirements after plans expressed that the new reporting format is quite onerous.
 - CFCO: Plans asked the State to hold weekly meetings to discuss plan-specific issues related to the implementation of CFCO. Plans also asked DOH to address conflict of interest guidance included in the Department's CFCO guidance related to person-centered service planning (PCSP). DOH does not believe the current guidance goes beyond Federal regulations on PCSP requirements but agreed to take another look.

Medicaid Program February 2019 Updates and Releases:

Special Edition - Expansion of Telehealth:

The New York State Medicaid Program has expanded coverage of telehealth services intended to improve access to needed services and to improve member health. The expanded [coverage of telehealth services](#) includes: 1.) Additional originating and distant sites; 2.) Additional telehealth applications (store-and-forward technology, and remote patient monitoring); and 3.) Additional practitioner types. This update also includes guidance related to Confidentiality, Patient Rights and Consents, Failure of Transmission, Billing Rules, and information related to Telehealth and Value Based Payments (VBP).

This expansion policy is effective January 1, 2019 for Medicaid Fee-for-Service (FFS) and March 1, 2019 for Medicaid Managed Care (MMC) plans. The definition of [telehealth](#) and covered telehealth services are outlined in the guidance provided by the Department of Health and apply to Article 28 facilities and private practitioners, where as separate guidance will be provided by other state agencies that will align with the payment policies for services provided under those agencies.

For additional informational resources or answers to policy related questions click [here](#).

New York Medicaid EHR Incentive Program – The Medicaid Electronic Health Record (EHR) Incentive Program promotes the transition to EHRs by providing financial incentives to eligible professionals (EPs) and hospitals. EHR systems are leading the way towards interoperability to exchange and use patient health records electronically.

The Department of Health has announced that the EHR Program is now Accepting Payment Year 2018 Pre-Validations from individual and group eligible professionals (EPs) who have already determined their Medicaid Patient Volume, and may utilize the pre-validation services offered by the NY Medicaid EHR Incentive Program. Pre-validation enables EPs to submit their data prior to attesting for preliminary review.

Pre-validation prior to submitting the complete attestation may subsequently reduce the time of state review. For additional details on registering as an EP, click [here](#).

Children’s Medicaid Health and Behavioral Health System Transformation Update - February 2019

The Department of Health recently released the February 2019 Children’s Medicaid Health and Behavioral Health System Transformation Update. This Issue #04 includes:

- Current Children’s Services and Timeline Update;
- Supporting Materials;
- Webinars; and
- Links to Prior Trainings and Releases.

This update will soon be posted on the Department [website](#) (under “... Updates” tab).

Medicaid Redesign Team Update – Managed Long Term Care

The State Department of Health’s Medicaid Redesign Team has recently posted guidance documents from the Managed Long Term Care (MLTC) Value Based Payment (VBP) Webinar and the VBP Tracking Report (VBPTR) Webinar. The purpose of these documents is to provide guidance to MLTC plans about Level 2 contracting and how to complete the VBPTR. The guidance documents can be found in the MLTC folder of the [VBP Resource Library](#).

For questions, please contact the New York State Department of Health at MLTCVBP@health.ny.gov

New York State of Health Announcements:

The New York State of Health (“NYSOH”), the state’s official health plan Marketplace, [recently announced](#) a commitment to provide NYSOH certified in-person assistors at more than 20 job and career fairs across the State, offering consumer education about health plan enrollment options and to schedule enrollment appointments. This is a continuation in efforts of a partnership between NYSOH and the NY State Department of Labor (DOL) to educate NY job seekers about obtaining affordable health coverage at 46 DOL Career Centers statewide. Details on NY State of Health job/career fair events can be found [here](#).

This follows a recent announcement of [record setting sign-ups](#), enrolling over 4.8 million New Yorkers during the 2019 Open Enrollment Period which came to a close on January 31, 2019. Additionally, NYSOH has released [county-level enrollment data](#) showing that overall enrollment increased in each of New York’s 62 counties.

Attorney General James Announces Conviction of Pharmacies for Medicaid Fraud

Attorney General Letitia James announced the conviction of a licensed pharmacist of Manhattan, and their three companies in connection with a multi-million dollar Medicaid fraud scheme involving HIV drugs. The pharmacist pled guilty in Manhattan Supreme Court before Justice Mark Dwyer to Grand Larceny in the First Degree, a class “B” felony, and will be sentenced to two to six years in state prison and will be required to surrender over \$3.6 million to be returned to the Medicaid program.

The Attorney General’s Office was assisted by the Office of the Medicaid Inspector General (“OMIG”), the United States Department of Health and Human Services, Office of the

Inspector General (HHS-OIG) in this investigation, and additionally thanks Medicaid MCOs Amida Care and Wellcare; pharmacy benefit managers CVS Caremark and Optum RX; and pharmaceutical wholesalers HD Smith and McKesson for their cooperation with the investigation.

Regulatory Update

Department of Health

Controlled Substances

The Health Department has re-issued a notice of [emergency rulemaking](#) to reclassify cannabidiol (CBD) from a Schedule I controlled substance to a Schedule V controlled substance. These FDA-approved CBD products have been found to be effective for the treatment of seizures associated with severe and dangerous forms of epilepsy that are notoriously treatment-resistant. This emergency rule will allow patients in New York State to be prescribed these medications and prevent any delay in reclassifying these FDA-approved products which would limit access to these medications for at risk patients.

The original notice of emergency rulemaking was posted on the State Register in the [November 14, 2018](#) issue which expired on January 27, 2019. This emergency rule will expire March 28, 2019.

Newborn Screening for Phenylketonuria and Other Diseases

The Health Department has issued a notice of [adopted rulemaking](#) that supports timely collection and submission of specimens for the screening of diseases in newborn infants in New York State. The rule will amend regulations to require “screening” for diseases rather than “testing” for diseases, and moves the list of diseases from regulations to the Department’s website, allowing for the facilitation of additional new conditions and an easily accessible list of screened diseases. The amendment makes technical updates to reflect current practices and includes initial and annual educational requirements on specimen collection.

This rule was originally published in the [August 1, 2018](#) issue of the State Register and received over 40 comments of support. The adopted rule is effective as of February 13, 2019.

Medical Use of Marihuana

The Health Department has *re-issued* a notice of [emergency rulemaking](#) that adds posttraumatic stress disorder (PTSD), pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, and substance use disorder as serious conditions for which patients may be certified to use medical marihuana.

The emergency rule is effective as of February 5, 2019, and will expire on April 5, 2019.

Voluntary Foster Care Agency Health Facility Licensure

The Health Department has issued a notice of [adopted rulemaking](#) to license Voluntary Foster Care Agencies to provide limited health-related services. These regulations add a new Article 8 to State Hospital Code for implementing the requirements of Article 29-I of the Public Health Law permitting the licensure of voluntary foster care agency (VFCA) health facilities by DOH. Authorized agencies that are approved by the Office of Children and Family Services (Office) to care for or board out children may become licensed to provide

limited health-related services, including behavioral health services, nursing services, clinical consultation of select services, coordination of specialized youth services, and program administration and liaison services.

The rule, as adopted, contains no changes and was originally proposed in the [July 25, 2018](#) issue of the State Register.

The adopted rule is effective as of February 20, 2019.

Department of Financial Services

Charges for Professional Health Services

The Department of Financial Services (“DFS”) has issued a [notice of withdrawal](#) of an emergency/proposed rule posted in the [June 27, 2018](#) issue of the State Register, which delayed the effective date of the Workers’ Compensation fee schedule increases for no-fault reimbursement. DFS has withdrawn the proposed rule and has submitted a newly proposed rule due to dramatic changes that were made.

Newly Proposed Rule: DFS has issued a new notice of [proposed rulemaking](#) to delay the effective date of the Workers’ Compensation fee schedule increases for no-fault reimbursement. The Worker’s Compensation Board had issued a notice of [proposed rulemaking](#) in December of 2018 intended to update and incorporate fees for medical services provided to injured workers. This proposed rule would impose costs on insurance carriers and self-insured employers, as the proposed rule increases the emergency room services reimbursement rate and establishes a fee schedule for clinic services and private psychiatric hospitals.

Based on public comments received, the implementation of the fee schedule is proposed to be postponed to go into effect on 10/1/2020 rather than 4/1/2019. This would allow additional time for insurers effected by the updated fee schedules to evaluate and make adjustments to the new fee amounts.

The proposed rule is open to public comment for 60 days, beginning February 20, 2019 as posted in the New York State Register.

Legislative Update

The Legislature will resume session on Tuesday February 26th. Add in one-house budget timeline

The following bills of interest have been placed on committee agendas this week:

Assembly Health (insert date/time):

- [A5248 \(Gottfried\)/S3577 \(Rivera\)](#): Establishes the New York Health Plan, a universal single payer health plan for all New York residents.
- [A2787\(Gottfried\)/S3960 \(Rivera\)](#): This Bill requires Medicaid Managed Care plans to implement changes in rates, coverage or payments for behavioral health providers on the change takes effect.
- [A2836 \(Gottfried\)/S2087 \(Rivera\)](#): This Bill requires Pharmacy Benefit Managers (PBMs) to have fiduciary duty to health plans that they contract with, requiring PBMs to act in the best interest of health plans when negotiating with drug manufactures. The Bill also establishes a licensure process for PBMs.

- [A3077 \(Gottfried\)](#): This Bill establishes a universal plan credentialing form for newly licensed providers and requires health insurers to develop procedures to allow newly licensed health care professionals to render care and receive payment for care on a provisional basis during the pendency of the application.
- [A4072 \(Gottfried\)/S1471 \(Hoylman\)](#): This Bill would requires hospitals and nursing homes to offer patients plant-based food options for every meal or snack, at no additional cost to the patient.
- [A4756 \(Gottfried\)](#): This Bill increase penalties for violations of public health law the current \$2,000-10,000 range per violation to \$5,000-\$20,000. In addition, for penalties imposed on nursing homes exceeding \$10k, the Bill would authorize the penalty to be transferred to nursing home quality improvement demonstration program.
- [A3899 \(Weprin\)/S2664 \(Sepulveda\)](#): This Bill authorizes a special Medicaid rate for nursing homes that accept elderly releases from state correctional facilities.
- [A3415 \(Abinanti\)](#): This Bill authorizes in-home private duty nursing to a Medicaid recipient by a relative who is a registered nurse (RN).
- [A4846 \(Barrett\)](#): This Bill amends Medicaid limit of 20 therapy visits a year for speech, physical, or occupational therapy if the practitioner that ordered therapy attests to the medical necessity of more visit

Senate Health

- [S992 \(Young\)](#): This Bill provides authority for programs serving developmentally disabled individuals to provide services to individuals with traumatic brain injuries (TBI) when there is limited service capacity and provided the programming is appropriate.

Senate Labor

- [S3120A \(Stavisky\)](#): This Bill would require employers to provide notice to current employees and job applicants where an employer alters, restricts, or eliminates contraceptive coverage offered to employees as part of the employment-based health insurance plan.

Calendar

Thursday, February
28, 2019

Population Health Summit
9:00 am

Wednesday, March 6,
2019

Commissioner's Medical Grand Rounds: Reversing the Trend
in Maternal Mortality: What Every Provider Should Know
7:30-9:30 am

Wednesday, March 13,
2019

Early Intervention Coordinating Council
10:15 am - 3:00 pm
Empire State Plaza Convention Center, Meeting Room 1,
Concourse Level, Albany

Tuesday, March 19,
2019

NY Medicaid EHR Incentive Program Webinars
2:00 pm to 3:00 pm

QUICK LINKS

[NYS Department of Health](#) --- **[NYS DOH –Meetings, Hearings & Special Events](#) --- **[Medicaid Redesign Team](#)** --- **[Senate Health Committee Website](#)** --- **[Assembly Health Committee Updates](#)** --- **[NYS Division of Budget](#)****

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