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## **State Budget Update**

On March 31, 2019, Governor Andrew Cuomo and legislative leaders announced an agreement on a \$175.5 billion budget on New York State's Fiscal Year (SFY) 2020. Highlights of the Budget include: a permanent property tax cap; a ban on plastic bags; public campaign financing to be established by recommendations by a commission authorized to allocate up to \$100 million for any new campaign finance system; congestion pricing for drivers south of 60th Street in Manhattan, effective December 31, 2020; a mansion tax for sales of properties of \$1 million or more; and \$27.9 billion in school aid funding. The budget included a number of significant health care initiatives, including:

- A restoration of the across the board Medicaid cuts proposed by the Governor in his 30-day amendments; however, the enacted budget expressly authorizes the Division of Budget to unilaterally implement up to \$190 million in each of the next two years for "across the board" Medicaid reductions.
- Extends the Medicaid Global Cap through fiscal year 2020-21 and allows for the continued growth within the Global Cap at the indexed rate of 3.6%, for a total cap of

\$19.4 billion for the 2019-20 fiscal year. In total, Medicaid spending will increase to \$22.25 billion (state share), including spending outside the Global Cap.

- Requires the Department of Health to examine how staffing enhancements and other initiatives could improve patient safety and quality of care in hospitals and nursing homes.
- Authorizes the Department of Health to award up to \$300 million for applications submitted under the Statewide II Health Care Facility Transformation Program (Statewide II), and requires the awards to be made no later than May 1, 2019. This funding is being shifted from the budget allocation for Statewide III, which will reduce the amount of funding available under Statewide III when it is released.

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## **Department of Health Discusses Details of LHCSA Public Need Methodology and Financial Feasibility with PHHPC**

The Public Health and Health Planning Council's (PHHPC's) Committee on Health Planning recently shared discussions with the Department of Health regarding the upcoming requirement for PHHPC to consider the public need and financial feasibility of applicants, when approving the licensure of home care service agencies. This upcoming requirement is in accordance with legislation included in the SFY 2019 Enacted Budget, and will be effective April 1, 2020.

After issuing a Request for Information (RFI) in July of 2018, the Department of Health (DOH) developed and presented an outline of regulations for the new public need methodology and standards for PHHPC to use when evaluating the Certificate of Need (CON) for LHCSA applicants. DOH has outlined the need methodology using a four prong approach as follows: *1) application of the public need methodology; 2) planning area designations; 3) need methodology in each planning area; and 4) additional considerations.*

There is currently a moratorium on the licensure of new LHCSAs in the State, with certain exceptions. These changes in the LHCSA application process are intended to better manage the number of LHCSAs approved by PHHPC and strengthen the role of LHCSAs in the health care continuum. The information and outline presented can be found [here](#).

PHHPC's Committee on Establishment and Project Review (EPRC) also met last week, click here for the [EPRC Agenda](#).

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## **New York State Court of Appeals Reverses Decision on 13-Hour Rule**

Last week, the New York Court of Appeals upheld the State Department of Labor's (DOL's) so-called "13-hour rule" governing the payment structure of home health care aides that work 24 hour shifts. This contentious and closely-watched matter posed a significant impact for the state's home health industry, and could be financially devastating to the industry. It was estimated that the financial impact to the industry would be between \$5 billion and \$7 billion.

This [recent opinion](#) confirms that New York home health care aides may be paid for 13 hours of a 24 hour shift, provided that the aides are allowed eight hours of sleep time (a minimum of five hours being uninterrupted) and three hours of meal breaks.

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## **Attorney General James Comments on Judge's Ruling**

Attorney General James recently [released a statement](#) regarding the [decision of a federal judge](#) in a comprehensive lawsuit led by New York and a coalition of 10 states and the District of Columbia which challenges the Department of Labor's Association Health Plan (AHP) Rule, which expands the criteria for forming AHPs.

In July 2018, the New York State Attorney General's Office [filed a lawsuit](#) alleging that the Department of Labor violated the Administrative Procedures Act when it promulgated the AHP rule. The lawsuit also argues that the Rule violates both the ACA and the Employment Retirement Income Security Act (ERISA). The Attorneys General contended that the AHP Rule be vacated.

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## **Medicaid Drug Utilization Review Board is Seeking New Members**

The Department of Health recently released a notice indicating that the Drug Utilization Review Board (DURB) is currently seeking new members to fill one open physician seat, one open pharmacist seat, and two open consumer-advocate seats. The DURB plays a major role in the State's Medicaid program by establishing medical standards and criteria for Drug Utilization Review programs, developing educational interventions for physicians and pharmacists, reviewing therapeutic classes in the Medicaid Fee-for-Service Preferred Drug Program (PDP), and making recommendations for supplemental rebates.

Any questions regarding membership and candidacy or interest in serving in one of these open seats, please submit questions and/or CV/resumes to [dur@health.ny.gov](mailto:dur@health.ny.gov).

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## **Medicaid Update – March 2019**

To view the March 2019 - Medicaid Update in its entirety, click [here](#). Here are a few highlights.

### **National Healthcare Decisions Day (NHDD) is April 16, 2019**

NHDD was created to "inspire, educate, and empower the public and providers about the importance of advance care planning." NHDD in New York is a day dedicated to helping people understand that advance care planning includes much more than filling out forms; it is a process focused first on conversations about your wishes with your loved ones.

### **Policy and Billing Updates:**

***Credentialed Alcoholism and Substance Abuse Counselor Now Approved for Billing within an Article 28 Setting for DSRIP*** – Effective January 1, 2019, an Article 28 facility that has been granted Integrated Outpatient Services (IOS) or Delivery System Reform Incentive Payment (DSRIP) Project 3.a.i authority may bill for services rendered by a Credentialed Alcoholism and Substance Abuse Counselor (CASAC). The CASAC must be properly supervised and medically directed. Clinics may bill for screening, individual and/or group counseling and other services, as applicable.

Effective September 1, 2019, CASAC providers rendering services in an Article 28 setting will need their own individual National Provider Identifier (NPI). Until September 1, 2019 CASAC providers may use the Office of Alcoholism and Substance Abuse Services (OASAS)

unlicensed practitioner ID number “02249145” consistent with OASAS policy. After September 1, 2019 billing will only be allowed using an NPI assigned to the specific provider rendering the service.

### **Pharmacy:**

The Commissioner of Health has approved a blanket waiver with respect to the electronic prescribing requirements, pursuant to Public Health Law (PHL) § 281 and Education Law § 6810, that are effective as of March 25, 2019, for exceptional circumstances in which electronic prescribing cannot be performed due to limitations in software functionality. The 10 exceptional circumstances for which this waiver applies can be found [here](#).

### **All Providers:**

***Medicaid Breast Cancer Surgery Centers*** – The Department of Health’s policy requires that Medicaid members receive mastectomy and lumpectomy procedures associated with a breast cancer diagnosis, at high-volume facilities defined as averaging 30 or more all-payer surgeries annually over a three-year period. Low-volume facilities will not be reimbursed for breast cancer surgeries provided to Medicaid members. This policy is based on research results that indicate a five-year survival increase for women who have had their breast cancer surgery performed at a high-volume facility. The Department has notified the list of low-volume facilities of these restricted re-imbursements and go in effect April 1, 2019. These lists are updated annually by the Department using SPARCS Data.

***C-YES: NYS’s Designated Independent Entity for Children’s HCBS*** - Children and Youth Evaluation Service (C-YES) was designated by the State to act as the Independent Entity for children’s Home and Community Based Services (HCBS). C-YES is responsible for conducting HCBS eligibility determinations of children prior to their enrollment in Medicaid and serves as the HCBS care coordination alternative to Medicaid-enrolled children/youth who decline Health Home (HH) care management. A Referral Packet, which is used to collect information about the child’s medical history can be obtained by contacting C-YES. Additional details can be found [here](#).

***Opioid Treatment Plan*** - Effective April 1, 2018, legislation signed in to law in the 2018-2019 State Fiscal Year Budget requires a written treatment plan in the patient’s medical records if a practitioner prescribes opioids for pain that has lasted more than 3 months or past normal periods of tissue healing. This plan must follow generally accepted national professional or governmental guidelines, of which some examples can be found [here](#).

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## **Rockland County Declares Measles State of Emergency**

Rockland County recently declared a state of emergency as the measles cases in the county have risen to 153 cases since October. The county has implemented a ban prohibiting those under the age of 18 and not vaccinated against the measles from being in public places, with the exclusion of children with medical exemptions.

The county is urging those with children not vaccinated to get vaccinated. County health officials held a free MMR vaccination clinic last week and plans to hold more clinics for residents.

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## **Regulatory Update**

## Office of Alcoholism and Substance Abuse Services (OASAS)

OASAS has issued notices of adopted rules as part of revisions to several OASAS regulations which are applicable to all programs, and to specific treatment modalities in response to the current and ongoing opioid crisis. Below are the specific treatment modalities impacted by the rule adoptions which are intended to remove regulatory obstacles at the admission stages of treatment to facilitate rapid access to care, and to remove residual biases reflected in regulatory language.

Substance Use Disorder (SUD) Withdrawal and Stabilization Services - OASAS has issued a [notice of adopted](#) rulemaking. The respective original notice of proposed rulemaking was posted in the [December 19, 2018](#) issue of the State Register. This regulation is effective as of 3/27/2019.

Substance Use Disorder Residential Rehabilitation Services for Youth - OASAS has issued a [notice of adopted](#) rulemaking. The original notice of proposed rulemaking was posted in the [December 19, 2018](#) issue of the State Register. This regulation is effective as of 3/27/2019.

Substance Use Disorder Inpatient Rehabilitation - OASAS has issued a [notice of adopted](#) rulemaking. The original notice of proposed rulemaking was posted in the [December 19, 2018](#) issue of the State Register. This regulation is effective as of 3/27/2019.

General Service Standards for Substance Use Disorder Outpatient Programs - OASAS has issued a [notice of adopted](#) rulemaking. The original notice of proposed rulemaking was posted in the [December 19, 2018](#) issue of the State Register. This regulation is effective as of 3/27/2019.

General Provisions - OASAS has issued a **revised** [notice of](#) rulemaking. This regulation makes changes to the role and certification requirements of the program's Medical Director, expands the definition of addiction services to include SUD or gambling disorder, and establishes certain requirements to provide access to Medication Assisted Treatment. The original notice of proposed rulemaking was posted in the [December 19, 2018](#) issue of the State Register. This revised rule contains substantial changes from its original version, and public comments will be accepted for 45 days beginning on 3/27/2019.

## Education Department

### Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Immunizations

The Department of Education has issued a notice of [emergency/proposed](#) rule-making that allows registered professional nurses (RNs) to immunize infants, children and adults against additional infectious diseases, in accordance with current recommendations from the United States Centers for Disease Control and Prevention (CDC). The intent of the emergency regulation is to expand access to seasonal influenza and measles immunizations, as well as other immunizations, in light of recent outbreaks of Measles within certain areas of the state.

This regulation is open to public comment for 60 days beginning on 3/27/2019, and the emergency rule will expire on June 9, 2019.

## Office for People with Developmental Disabilities

### Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD

The Office for People with Developmental Disabilities (OPWDD) has re-issued a notice of [emergency/proposed](#) rule that allows individuals to be enrolled in a Medicare Prescription Drug Plan and Fully Integrated Duals Advantage Plan for Individuals with Intellectual and Developmental Disabilities (FIDA –IDD) through certain parties, when the individuals lack capacity to enroll themselves. A similar regulation had expired on [March 11, 2019](#). This emergency rule is in effect as of 3/7/2019

This regulation is open to public comment for 60 days beginning on 3/27/2019, and the emergency rule will expire on 6/4/2019.

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## **Related Articles and Other News**

[Attorney General James' Health Care Helpline Recovers More Than \\$2 Million in Restitution and Savings for Consumers](#)

[Drone Delivery of Medical Samples](#)

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## **Legislative Update**

Both houses of the Legislature were scheduled to be in session Monday through Wednesday of this week; however, the Senate has adjourned until Monday, April 8 at 3:00 p.m.

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

- [A5616 \(Weinstein\) / S4486 \(Carlucci\)](#) - This Bill authorizes a resident of an ACF to commence an action in the supreme court of the county in which the facility is located for the appointment of a temporary operator when their health, safety, and welfare are at risk.

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## **Calendar**

Thursday, April, 11  
2019

Meeting of the Public Health and Health Planning Council  
Full Council Meeting  
10 a.m.  
Empire State Plaza, Concourse Level, Meeting Room 6, Albany

Friday April 12, 2019

Minority Health Council Meeting  
10 a.m.  
Empire State Plaza Convention Center, Meeting Room 1

Wednesday April 24,  
2019

Board of Examiners of Nursing Home Administrators  
(BENHA) Meeting (Public Session)  
10:30 a.m.

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**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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