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Governor Unveils SFY 2021 Executive Budget Proposal

Last week, Governor Cuomo presented the state's fiscal year ("SFY") 2021 Executive Budget proposal. The Governor proposes a $178 billion budget for SFY 2021, which increases state spending by approximately 1.2% over SFY 2020, while proposing to keep state agency spending under 2%. The budget plan includes an $826 million increase in state education aid and $1.25 billion in new Medicaid spending.

The Governor's proposal closes an estimated $6.1 billion budget gap made up of two major parts, the baseline budget gap of $4 billion and the Medicaid budget gap in excess of $2 billion, by implementing the FY 2021 Savings Plan. The gap closing savings plan is contingent on a $2 billion increase in projected tax receipts, and $2.5 billion in savings generated by the Medicaid Redesign Team II ("MRT II") as outlined in the State's FY 2021 Executive Financial Plan.

The Legislature will now begin their process of reviewing the detailed proposals and hold scheduled joint budget hearings in order to make their recommendations and suggested revisions.

Meeting of PHHPC's Committee on Establishment and Project Review

On January 23rd, the Public Health and Health Planning Council's Committee on Establishment and Project Review ("EPRC") met in New York City. A copy of the agenda and meeting materials can be found here.

The EPRC met to discuss a selection of CON applications of which all were recommended for approval with the exception of one application by St. Johnsville Rehabilitation and Nursing Center (Montgomery County). The Department of Health ("DOH") presented the CON application to the EPRC with a recommendation for disapproval, based on their review for character and competence of the applicant, and other factors. The EPRC ultimately voted to disapprove the CON application. This application sought to transfer 100% stock ownership along with real property interest from the current ownership company to a single proposed member.

The EPRC meeting also included a lengthy discussion regarding two CON applications submitted by Mount Sinai Hospital, requesting PHHPC approval to transform the healthcare services currently provided at Mount Sinai Beth Israel Hospital located at First Avenue and 16th Street and relocate the beds and services to two new locations. Public comments regarding these application raised concerns of reduced access to services including maternity services, challenges associated with travel to the new facilities, and a lack of sufficient regard to public comments and concerns through the application process. The EPRC ultimately recommended approval for the two applications with additional contingencies that require the applicant to study the opportunity of adding a birthing center, and to develop a community transition plan.

The remaining applications will go before the full Council at the next scheduled PPHPC full Council meeting to be held on February 6, 2020 in New York City.

DOH Issues "Dear Administrator Letters"

The DOH has issued the following "Dear Administrator Letters":

Adult Day Health Care Program Survey Report

DAL NH 19-18 – DOH informs nursing home administrators of the requirement to submit an Adult Day Health Care Program Survey Report ("PSR") for each Adult Day Health Care Program ("ADHC") operated by the respective facility. The PSR is used by the DOH as a resource document to determine regulatory compliance for the ADHCs. This PSR is for the period beginning 10/1/2018 through 9/30/2019 and must be completed and returned to the ADHC program's respective regional office by February 28, 2020. Any question

regarding completion of the PSR should be directed to the respective Regional Office Program Director.

Appropriate Setting for Cardiac Procedures

DHDTC DAL 20-04 – In response to a number of inquiries regarding whether it is permissible for PCI capable cardiac catheterization laboratories to perform certain non-surgical cardiac procedures without a licensed cardiac surgery program on the premises of the hospital, the DOH has issued guidance regarding the appropriate setting for certain cardiac procedures.

Extended Deadline for Submission of CDPAP Fiscal Intermediary Offers

The DOH has extended the deadline for submission of offers by all Fiscal Intermediaries ("FIs") operating on or before April 1, 2019, from February 18, 2020, now to ***March 3, 2020.*** Additionally, the DOH intends to release responses to the written questions on January 31, 2020, and maintains an anticipated contract start date of July 1st.

VBP Updates – Amendments to the Participating Provider Agreements for SNFs and LHCSAs

The DOH has posted updates to the Value Based Payment ("VBP") Library to include template documents for managed long-term care ("MLTC") plans, to use as an **optional** tool to assist plans who are getting started with VBP contracting. The template agreements were drafted for arrangements between MLTC plans and Licensed Home Care Services Agencies ("LHCSAs"), and MLTC plans and skilled nursing facilities ("SNFs"). The use of these templates is not mandatory, they may be modified if elected for use, should not be considered guidance, and are not inclusive of every possible VBP contracting arrangement between the parties.

The template agreements are available on the Department's VBP Library webpage, under "*VBP for Managed Long Term Care (MLTC) Plans*," and then "*VBP Template Provider Amendments*".

Regulatory Update

Department of Financial Services

Valuation of Life Insurance Reserves

The Department of Financial Services ("DFS") has issued a notice of emergency/proposed rulemaking to further extend the sunset provision for certain life insurance policies issued prior to January 1, 2020 with respect to calculation for reserves, and prescribes the ultimate form of the 2001

Commissioners Standard Ordinary ("CSO") Mortality Table as the minimum valuation standard for guaranteed issue life insurance policies issued on or after January 1, 2020.

Department of Health

Transitional Adult Home Admission Standards for Individuals with Serious Mental Illness

The Department of Health has *re-issued* a notice of emergency rulemaking requiring Transitional Adult Home (TAH) operators to request a pre-admission screening, conducted by the DOH in coordination with the Office for Mental Health, prior to the admission of persons with serious mental illness by the TAH. The regulation delineates a process for determining whether a prospective resident is a person with serious mental illness and thus not eligible for admission without a waiver.

This emergency rule will expire March 31, 2020.

Legislative Update

The Senate and Assembly will be in session Monday through Wednesday this week. The following bills of interest have been placed on committee agendas:

Assembly Health – (1:00 PM, Tuesday, January 28 - Room 823 LOB)

- A2788A (Gottfried) / S4972A (Rivera) – This Bill requires Medicaid managed care ("MMC") plans and Medicaid managed long-term care plans to amend existing contracts and future contracts with home care providers and Consumer Directed Personal Assistant Services ("CDPAS") fiscal intermediaries ("FIs"). Existing contracts would require amendment 90 days prior to the effective date of the impact to wages.

- A9012 (Gottfried) / S7109 (Hoylman): This Bill would establish a medication synchronization policy under Medicaid managed care. The Bill would require managed care plans to cover partial fills for prescription drugs and would prohibit pro-rating the pharmacy dispensing fee.

- A9133 (Richardson) / S7175 (Montgomery): This Bill repeals and replaces certain provisions of the Public Health Law to require the DOH to develop and update information on possible complications from pregnancy that can endanger the life or health of the newborn or the mother. Further this Bill requires hospitals providing maternity or women's wellness services along with and D&TCs offering prenatal services to disclose the information developed by DOH regarding pregnancy complications.

- A9134 (Lavine) / S7175 (Salazar): This Bill modifies current domestic violence training requirements within hospitals to be administered to those employees who have a greater likelihood to interact with a patient, rather than to be administered to all employees of the hospital.

- A9135 (Galef) / S7185 (Carlucci): This Bill repeals certain provisions of Public Health Law regarding caregiver instructions upon discharge of a patient that requires a central venous line, and requires hospitals to assess for additional care or services including home care services in the event the identified caregiver is unable or unwilling to provide proper care.

Senate Health – (12 Noon, Tuesday, January 28 - Room 124 CAP)

- S7241 (Rivera): This Bill requires Medicaid managed care plans to provide written notice of the contact information for the DOH designated independent consumer assistance program along with the independent substance use disorder and mental health ombudsman on all notices of adverse determinations, grievances and appeals.

- S4335 (Salazar) / A3077 (Gottfried): This Bill authorizes the implementation of a universal credentialing process of a health care provider for participation in a health care plan or at a hospital.

- S4972A (Rivera) / A2788A (Gottfried): This Bill requires Medicaid managed care ("MMC") plans and Medicaid managed long-term care plans to amend existing contracts and future contracts with home care providers and Consumer Directed Personal Assistant Services ("CDPAS") fiscal intermediaries ("FIs"). Existing contracts would require amendment 90 days prior to the effective date of the impact to wages.

- S7109 (Hoylman) / A9012 (Gottfried): This Bill would establish a medication synchronization policy under Medicaid and Medicaid managed care. The Bill would require managed care plans to cover partial fills for prescription drugs and would prohibit pro-rating the pharmacy dispensing fee.

- S6492A (Rivera): This Bill requires the Department of Health to develop a demonstration program to ensure access to insulin and other life sustaining, maintenance medications for the state's uninsured, or otherwise deemed eligible residents. This Bill also establishes a copayment cap of $100 per month for prescription insulin drugs.

- S1816 (Rivera) / A3836 (McDonald): This Bill requires the Department of Health to promote home care's integration into the state's health continuum strategies to address public health priorities in disease prevention, intervention, population health, associated health care costs and research.

Senate Insurance – (12:30 PM, Monday, January 27 - Room 124 CAP)

- S1603 (Breslin) / A157 (Cahill): This Bill removes the requirement that excess line brokers obtain a declination from the Medical Malpractice Insurance Pool (MMIP) before placing primary malpractice in the excess market.

- S3664A (Gianaris) / A3204A (Glick): This Bill prohibits any insurer providing disability insurance to charge different premium rates on the basis of the insured's gender.

Calendar

Tuesday January 28, 2020	January Meeting of the State Trauma Advisory Committee – 1:30 p.m. – 4:30 p.m.
Wednesday, January 29, 2020	Joint Legislative Hearing – Health Hearing Room B, Legislative Office Building, Albany 9:30 a.m.
Thursday January 30, 2020	New York State AIDS Advisory Council 10:30 a.m. – 1:00 p.m.
Thursday, February 6, 2020	Public Health and Health Planning Council Meeting - Annual Full Council Meeting and Codes Regulations and Legislation Committee Meeting – NYC 10:00 a.m. – 5:00 p.m.

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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