



121 STATE STREET
ALBANY, NEW YORK 12207-1693
TEL: 518-436-0751
FAX: 518-436-4751

TO: Memo Distribution List

FROM: Hinman Straub P.C.

RE: 2021-22 Final Health & Medicaid Budget Overview

DATE: April 5, 2021

NATURE OF THIS INFORMATION: This is general information you might find helpful or informative.

DATE FOR RESPONSE OR IMPLEMENTATION: None – this is for your information.

HINMAN STRAUB CONTACT PEOPLE: Sean Doolan, Caron Crummey, Wendy Saunders, Matthew Leonardo, David Previte, Stephanie Piel, Michael Paulsen, Cheryl Hogan, Estibaliz Alonso and Jonathan Graves

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
Category: #7 Legislature (NYS) Suggested Key Word(s):

©2021 Hinman Straub P.C.

As of April 5, 2021, a number of budget related items have been agreed to and released, including the statutory changes (i.e., Article VII) relating to the Health and Mental Hygiene bill. While a final Budget agreement appears to be close, Governor Andrew Cuomo and legislative leaders have yet to finalize the budget for State Fiscal Year (FY) 2022, covering 2021-22. Significant budget bills that remaining outstanding include the Revenue bill and all appropriation bills.

The following memorandum is a summary of the provisions of the budget that have been agreed to thus far, which includes the majority of any statutory changes contemplated by the Budget. Upon the release of the Revenue bill and all appropriation bills, a supplemental memorandum will be provided.

All provisions are effective as of April 1, 2021, unless otherwise noted below.

General Health/Medicaid Highlights

Included in the final Budget are the following items:

- **Medicaid Global Spending Cap.** The final Budget extends the Global Cap through FY 2022-2023 and reporting requirements will now be required on a quarterly basis (changed from a monthly basis).
- **Certificate of Public Advantage (COPA).** The final Budget extends the authorization for PHHPC to issue Certificates of Public Advantage until 2024.
- **Excess Medical Malpractice Insurance Program.** The final Budget extends the current excess medical malpractice insurance program for one year. It is unclear whether the Executive proposal to restructure payments and reduce state funding by 50% is in the final Budget (*it is addressed in the not yet finalized appropriations bill*).
- **Medical Indemnity Fund.** The final Budget extends enhanced payment rates for the Medical Indemnity Fund (MIF) program by one year through March 31, 2022.
- **Regional Global Budgeting Demonstration Programs.** The final Budget includes language to require that at least one of the regional global budgeting demonstration programs, which were authorized in last year's budget, be established in the Western, Central, Southern Tier, or Capital regions of the State, as proposed in the Assembly One House. The original language intended to authorize a pilot program to improve health outcomes and reduce costs, using a value-based model that pays providers an actuarially sound global, pre-paid and fully capitated amount for individuals in a designated region.
- **Extend DSRIP Regulatory Waiver Authority.** The final Budget modifies the Executive's to extend the regulatory waiver authority to allow providers who are involved in DSRIP projects, or who would like to scale and replicate the ideas coming out of the DSRIP program, to avoid duplicative requirements, through April 1, 2022.
- **New York Medical Supplies Act.** The final Budget accepts the Executive's proposal to require that State agencies and public authorities, for contracts over \$50,000 for personal protective equipment (PPE) and medical supply items, only purchase such items made in whole or substantial part in the United States. PPE is defined as equipment worn to minimize exposure to medical hazards, such as gloves, masks, face shields, eye protection, respirators and disposable coverings. Empire State Development (ESD) is authorized to promulgate rules and regulations to effectuate the provisions.

- **Marijuana Legalization.** The Legislature passed legislation legalizing the sale and recreational use by adults on March 31, 2021.

Rejected from the final Budget are the following items:

- **Workforce Retraining and Retention (WRR) Funding.** The final Budget rejects the Executive's proposal to reduce WRR funding for health care workers by up to 25%, or \$45 million annually.
- **Monetary Penalties for PHL Violations.** The final Budget rejects the Executive's proposal to increase the civil monetary penalties for a violation of the Public Health Law from the current \$2,000-\$10,000 range per violation to \$10,000-\$25,000 per violation. Legislation on this issue has been acted upon by both Houses of the Legislature
- **Digital Privacy.** The Final Budget **rejects** the proposal to implement a comprehensive law imposing new mandates intended to provide New Yorkers with transparency and control over their personal data.

Commercial Health Insurance

Included in the final Budget are the following items:

- **Essential Plan Premiums.** As proposed, the final Budget removes premium payments for Essential Plan 1 enrollees, as well as premiums for dental and vision coverage under Essential Plan 1 and 2. Prior to the change, individuals with household incomes between 150% and 200% of the FPL paid a \$20 monthly premium, as well as a separate premium for dental and vision coverage if such coverage was chosen. It also removes the cost sharing for dental and vision services that applied to Essential Plan 1 enrollees. Subject to federal approval, these changes are effective June 1, 2021.
- **Coverage of Mental Health and Substance Use Disorder Services Provided by Crisis Stabilization Centers.** The mental health and substance use disorder mandates under the Insurance Law are amended to include coverage of services at "crisis stabilization centers." Crisis stabilization centers are a new type of mental health and substance use disorder provider established as part of the Budget. These centers will be licensed under article 36 of the Mental Hygiene Law and serve as voluntary and urgent service providers for persons at risk of a mental health or substance abuse crisis or who are experiencing a crisis related to a psychiatric and/or substance use disorder who are in need of crisis stabilization services.

In addition to adding coverage of mental health and substance use disorder services at crisis stabilization centers, the Budget prohibits Plans from requiring preauthorization for these services when provided by participating crisis stabilization centers. The Budget explicitly permits Plans to conduct retrospective utilization review of these services, but is silent with respect to concurrent review. If coverage is denied retrospectively, the centers are prohibited from billing patients for the services.

The budget also adds services provided by crisis stabilization centers to the list of covered benefits available to Medicaid recipients. Crisis services are already included in the

managed care benefit package; it is expected that services provided by crisis stabilization centers will be included in those benefits.

These provisions apply to policies issued or renewed on and after January 1, 2022.

- **Extended Post-Partum Insurance Coverage.** The newly enacted federal American Rescue Plan Act permits states to expand Medicaid eligibility for pregnant women for up to a year following the birth of a child. Currently in New York, pregnant women retain Medicaid eligibility despite their income for 60 days following the end of a pregnancy. Rather than seeking to expand Medicaid, however, the Budget establishes a new 12 month “Extended Post-Partum Insurance Coverage” program. Eligible individuals include those with incomes between 200% and 233% FPL who were eligible for the extended 60-day coverage period under Medicaid. Eligibility begins at the end of the 60-day Medicaid extension and lasts until the end of the 12th month following the pregnancy; thus, the new QHP coverage is for 10 months. It appears that a new silver-level qualified health plan may be developed specifically for these individuals, although the language is not entirely clear. If an individual applies for coverage with the maximum premium tax credit available, enrollment in the QHP will begin the first day of the month following disenrollment from Medicaid. The state will pay any portion of the premium not covered by premium tax credits. Payment will be made directly to the health plan. Subsidized coverage will end at the end of the twelfth month following the end of the pregnancy, which will result in coverage under the QHP for 10 months.

These provisions take effect October 1, 2021. Although the Department of Health is directed to seek federal financial participation for the program, the provisions are not contingent upon receiving federal money.

- **Health Insurance Entertainment Workers Continuation Assistance Demonstration Program.** The final budget accepts the Assembly’s proposal to extend authorization for 1 additional year, until July 1, 2022.
- **Retitle “Family Health Plus Plan”.** The final Budget retitles Title 11-D of the Social Services Law from Family Health Plus Plan to “Basic Health Plan”.

Rejected from the final Budget are the following items:

- **Diabetes Insurance Mandate.** The final Budget rejects the Executive’s proposal to amend the diabetic mandate by including pharmacists among the types of providers who can provide and prescribe diabetes self-management education.
- **Medicare Part B Reimbursement Cap.** The final budget rejects the Executive’s proposal to standardize Medicare Part B reimbursement for all retirees at \$148.50 and cap state reimbursement at that level to eligible retirees and their dependents effective January 1, 2021.
- **Income Related Medicare Adjustment Amounts (IRMAA) Reimbursement.** The final budget rejects the Executive’s proposal to amend the Civil Service Law to eliminate reimbursement of additional IRMAA premiums paid by higher-income state retirees retroactive to January 1, 2021.

- **Sliding Scale Reimbursement for Health Care Costs.** The final budget rejects the Executive's proposal to require new civilian, non-disability State employees who begin their employment on or after October 1, 2021 and subsequently who retire with less than 30 years of service to receive health insurance coverage benefits calculated on a graduated scale based on years of service.
- **NYSHIP Amnesty.** The final budget rejects the Executive's proposal to reinstate for FY 21-22 the authority for the President of the Civil Service Commission to establish an amnesty period, to provide certain protections for employees who voluntarily identify ineligible dependents.

Telehealth

The final Budget makes permanent several changes to Medicaid telehealth coverage that began as a result of the pandemic. Changes were made to the Public Health Law to essentially remove all limitations on the location of where telehealth services can be provided and received under Medicaid. While coverage of telehealth services under commercial health insurance policies had no limits on where services could be provided and received, Medicaid restricted coverage to specific locations (i.e., "originating site" and "distant site"). The Budget amends the definitions of "distant site" and "originating site" to largely remove these limitations. "Distant site" is now defined as any site within the United States at which a telehealth provider is located while delivering telehealth services. Prior to this change, there had been questions about whether a provider located and licensed outside of New York could provide telehealth services to individuals located in New York. Note that while this change eliminates any risk for Plans covering services provided by out state providers, providers who are not licensed in New York still run the risk of practicing without a license, as no changes were made to the Education Law to permit this. The Governors originally proposed Executive Budget (and a current COVID-19 Executive Order) would have permitted providers who are not licensed in New York to provide telehealth services in the state. This provision was not included in the final Budget bill and, as a result, once the Executive Order expires, there is no exception to licensure requirements. "Originating site" now means any site at which an individual is located when telehealth services are delivered.

New providers able to deliver Medicaid telehealth services were also added. Specifically, telehealth services provided by care managers employed by or under contract to a health home program, patient centered medical home, Care Coordination Organization (CCO), hospice or certified and licensed voluntary foster care agency and certified peer recovery advocates, credentialed peer providers, and OMH-certified peers are now covered under Medicaid.

These provisions will be deemed to have been in force as of April 1, 2021.

Medicaid Managed Care (MMC), Managed Long Term Care (MLTC), and Child Health Plus (CHP)

Included in the final Budget are the following items:

- **Pharmacy Carve-Out.** The final Budget delays the implementation of removing the pharmacy benefit from managed care benefit package to the pharmacy benefit under the fee for service program until April 1, 2023.

- **Telehealth Location Expansion.** *For more information on this proposal, please see the “Telehealth” section of the memorandum.*
- **Extended Post- Partum Coverage.** *For more information on this proposal, please see the “Telehealth” section of the memorandum.*
- **Coverage at Crisis Stabilization Centers.** The budget adds services provided by crisis stabilization centers to the list of covered benefits available to Medicaid recipients. *For more information on this proposal, please see the “Commercial Insurance” section of the memorandum.*
- **Transportation Management in Medicaid Managed Care.** The final Budget modifies the Executive’s proposal to extend provisions for 6 years authorizing DOH to contract with Medicaid transportation vendors on behalf of local social services districts to achieve Medicaid cost savings and the authority to contract with one or more transportation managers to manage Medicaid transportation services.
- **School-Based Health Centers.** The final Budget delays the transition of school-based health center services into the Medicaid managed care benefit package until April 1, 2023. The Governor previously vetoed legislation that sought to permanently carve-out SBHC services from Medicaid managed care but agreed to delay the transition until at least January 1, 2021.
- **NHTD and TBI Waiver Program:** The final Budget delays the transition of the Nursing Home Transition and Diversion (NHTD) and Traumatic brain Injury (TBI) programs to managed care for an additional four years. The programs had been slated to be carved into managed care on January 1, 2022, but now will not be transitioned before January 1, 2026.
- **Adult Home Income Disregard.** The final Budget provides an expansion of the existing managed care adult home income disregard to include individuals who are discharged to the community; and are required to enroll in, and have initiated the process to enroll in, a Managed Long-term Care (MLTC) plan, effective January 1, 2022.

Hospitals

Included in the final Budget are the following items:

- **Hospital Capital Rate Add-On Reduction.** The final Budget accepts the Executive’s proposal to reduce the capital FFS rate add-on for inpatient services by an additional 5%, in addition to the 5% reduction in last year’s Budget for a total 10% add-on reduction.
- **Trend Factor for General Hospital Reimbursement.** The final Budget accepts the Executive’s proposal to extend the elimination of a trend factor for general hospital reimbursement through March 31, 2023.
- **Hospital Capital Methodology.** The final Budget accepts the Executive’s proposal to extend the current hospital capital methodology through March 31, 2023.

Rejected from the final Budget are the following items:

- **Public Indigent Care Pool.** The final budget rejects the Executive’s proposal to discontinue the Public Hospital Indigent Care Pool (\$65m in savings).
- **Hospital Resident Compliance Audits.** The final budget reject’s the Executive’s proposal to discontinue the requirement for annual hospital resident working hour audits.

Nursing Homes

Included in the final Budget are the following items:

- **Nursing Home Direct Resident Care Spending.** The Enacted Budget establishes a five percent (5%) profit cap and minimum direct care spending requirement on nursing homes for periods on and after January 1, 2022. Facilities excluded from these requirements include facilities that primarily care for: medically fragile children, persons with HIV/AIDS, persons requiring behavioral intervention, persons requiring neurodegenerative services, continuing care retirement communities (“CCRCs”), and other specialized populations deemed appropriate by the Commissioner.

Profit Cap. The “profit cap” requires a nursing home to remit to DOH the amount of “excess revenue” which is defined as the amount of total operating revenue exceeds total operating and non-operating expenses by more than five percent (5%), calculated on an annual basis. A facility that exceeds the profit cap must make a payment to DOH, in a manner determined by regulations, by November first of the following year. DOH is authorized to collect such payments through litigation or deductions or offsets of rates. Payments are to be deposited in the nursing home quality pool.

For purposes of this provision, “expenses” include all operating and non-operating expenses, before extraordinary gains, as reported in cost reports, except as expressly excluded by regulations. Such regulatory exclusions shall include, but not be limited to, any related party transaction or compensation in which the value of the transaction is in excess of fair market value. “Expenses” also excludes the payment of compensation for employees who are not actively engaged in or providing services at the facility.

Minimum Direct Care Spending. The “direct care spending” provisions require every nursing home to spend a minimum of seventy percent (70%) of revenue on “direct resident care”, and forty percent (40%) of revenue on “resident-facing staffing”; the amount spent on resident-facing staffing shall be included as a part of amounts spent on direct resident care. Fifteen percent (15%) of costs associated with resident facing staffing contracted out by a facility for services provided by RNs, LPNs or CNAs is deducted from the calculation of the amount spent on resident facing staffing and direct resident care.

“Revenue” is defined as total operating revenue from or on behalf of resident of the nursing home, all payers (government or third party) to pay for a resident’s occupancy, resident care and the operation of the nursing home, as reported on the nursing homes cost reports. The definition of revenue expressly excludes the average increase in the capital component of Medicaid rates from the prior three years.

“Direct resident care” includes the following categories of services (i.e. cost centers) as reported on the nursing home cost report: (i) “non-revenue support services”- plant operation and maintenance, laundry and linen, housekeeping, patient food service, nursing administration, activities program, non-physician education, medical education, Medical director’s office, housing, social service and transportation; (ii) “ancillary services”- lab services, electrocardiology, electroencephalography, radiology, inhalation therapy, podiatry,

dental, psychiatric, physical therapy, occupational therapy, speech/hearing therapy, pharmacy, central services supply, and medical staff services provided by licensed or certified professionals, including but not limited to, RNs, LPNs and CNAs; (iii) “program services”- residential health care facility, pediatric, TBI, AIDS, long term ventilator, respite, behavioral intervention, neurodegenerative, adult care facility, intermediate care facility, independent living, outpatient clinics, adult day health care, home health care, meals on wheels, barber and beauty shop and other similar programs that address the physical condition of residents. Direct resident care does not include, “at a minimum”, administrative costs (other than nurse administration), capital costs, debt service, taxes (other than sales and payroll taxes), capital depreciation, rent and leases, and fiscal services.

“Resident-facing staffing” is defined as all staffing expenses in the ancillary and program services categories on exhibit h of the cost report as in effect on 2/15/21.

Facilities that fail to meet the above thresholds must pay the Department the difference between the minimum spending requirement and the actual amount of spending on resident facing staff or direct care staff, respectively. Payment to DOH must be made by November first of the following year. DOH is authorized to collect such payments through litigation or deductions or offsets of rates. Payments are to be deposited in the nursing home quality pool.

The Commissioner is authorized to waive the five percent (5%) profit cap and minimum direct care spending requirements for nursing homes that demonstrate an unexpected or exceptional circumstance that prevents compliance. The Commissioner is also authorized to exclude, from revenues and expenses, extraordinary revenues and capital expenses incurred due to a natural disaster or other circumstance determined by the Commissioner. The Commissioner is required to notify the long-term care ombudsman and chairs of Senate and Assembly health committees at least thirty (30) days prior to any waiver.

- **Residential Health Care for Medically Fragile Children.** The final Budget includes a new Part MM authorizing the establishment of demonstration programs for two eligible pediatric nursing homes, to construct or repurpose a facility to operate as a young adult residential facility for individuals between 18 and 35 years of age with medical fragility. Individuals over the age of 21 who have lived in an eligible pediatric nursing home for at least 30 consecutive days can remain in the facility until the age of 35 or until the young residential facility is operational, whichever is sooner. The Department of Health will establish Medicaid reimbursement rates for young adults in pediatric nursing homes or in young adult facilities taking into account the pediatric rate methodology with an increase or decrease adjustment to account for these individuals’ distinct needs. The statutory authorization for the demonstration program is for a period of two (2) years.
- **Nursing Home Reimbursable Cash Assessment.** The final Budget accepts the Executive’s proposal to extend the health facility cash assessment program through March 31, 2023.

- **Trend Factor for Nursing Home Inpatient Services.** The final Budget accepts the Executive's proposal to extend the elimination of the trend factor for service for general hospital and nursing home reimbursement through March 31, 2023.

Rejected from the final Budget are the following items:

- **Nursing Home Independent Quality Monitors.** The final Budget rejects the Executive's proposal to require that nursing homes contract with an independent improvement organization or quality monitor where, in two consecutive inspections, a facility has been issued more than one deficiency citing violations of infection control requirements.
- **Nursing Home Management Salary Cap.** The final Budget rejects the Executive's proposal to establish a cap on the salary for any executive or managerial position which does not involve direct resident care to an amount limited by regulation based on the number of beds at a facility, provided that the salary cannot exceed \$250,000 annually.
- **Nursing Home Disclosures.** The final Budget rejects the Executive's proposal to require nursing home operators to publicly post the following information: (1) the maximum rates to be charged for facilities and services; (2) all owners; (3) the name and business address of any landlord of such facility's premises; and (4) provide a summary of all contracts for goods and services for which the facility pays any portion of Medicaid or Medicare funds within 30 days of the execution of such contract.
- **Nursing Home Emergency Receivership.** The final Budget rejects the Executive's proposal to authorize the Commissioner of Health to appoint an emergency receiver upon 24 hours' notice to the operator of a facility upon a determination that public health or safety is in imminent danger or that there exists any condition or practice, or pattern, that poses imminent danger to the health or safety of any resident of such facility.
- **Certificate of Need Applications.** The final Budget rejects the Executive's proposal to amend the requirements for establishment applications for residential health care facilities, including change of ownership applications, to include information pertaining to staffing, the source of staffing, and staffing skill mix.

Separate legislation on a number of these issues have been acted upon by both Houses of the Legislature and are awaiting action by the Governor.

Adult Home/Assisted Living

Included in the final Budget are the following items:

- **Supplemental Social Security (SSI).** The final Budget contains the traditional statutory authority to pass-through any Federal COLA that becomes effective on or after January 1, 2022.

Rejected from the final Budget are the following items:

- **EQUAL.** The final Budget rejects the Executive's proposal to eliminate EQUAL operational funding and statutory authorization by repealing § 461-s of the social services law, and restores \$6.53 million for the program.
- **Enriched Housing.** The final Budget rejects the Executive's proposal to eliminate the Enriched Housing Program ("EHP").

- **Justice Center Adult Home Advocacy Program.** The final Budget rejects the Executive's proposal to eliminate the Adult Home Advocacy (\$170,000) and adult home resident council programs (\$60,000) within the Justice Center for the Protection of People with Special Needs.
- **Monetary Penalties for Adult Care Facilities.** The final Budget rejects the Executive's proposal to increase the civil monetary penalties for regulatory violations by ACFs from the current amount of up to \$1,000 per day to up to \$10,000 per day and eliminates the existing ACF "rectification" process.
- **ACF Temporary Operator.** The final Budget rejects the Executive's proposal to amend the existing statute authorizing the Commissioner to appoint a temporary operator in ACFs by removing the requirement that the violations seriously endanger the life, health or safety of a resident, and would allow for a temporary operator to be appointed for violations that endanger life, health or safety.

Home Health Care

Included in the final Budget are the following items:

- **Fiscal Intermediary Reform.** The final Budget includes amendments to the Fiscal Intermediary (FI) contracting process to require the Department of Health ("DOH") to survey information from all qualified FIs in order to make additional contract awards. Specifically, the language provides for a 2-step process whereby the DOH first surveys for information from qualified applicants requesting whether:
 - The applicant is a not-for-profit organization;
 - Whether the applicant was an FI prior to 1/1/12;
 - Whether the applicant is authorized to provide home and community-based services to the developmentally disabled;
 - Whether the applicant has historically provided FI services to racial and ethnic minority residents or new Americans in such consumers primary language; and
 - Whether the FI is verified s as MWBE.

To be considered for an additional award, applicants must respond to the survey within 30 days. Following receipt of the survey, DOH is directed to make additional awards, to the extent necessary, based on the following criteria:

- Make awards to 1 or 2 additional applicants that are located in each county with a population of more than 200,000 but less than 500,000;
- Make awards to 1 or 2 additional applicants that are located in each county with a population of 500,000 or more;
- To provide geographic distribution to ensure access in different regions of the State, awards to at least 2 additional applicants who are either not for profit organizations or have provided FI services prior to 1/1/12 and that are currently authorized, funded, approved or certified to deliver state plan or home and community-based waiver supports to individuals with developmental disabilities;
- To provide geographic distribution to ensure access in different regions of the State, awards to at least 2 additional applicants who are either not for profit organizations or have provided FI services prior to 1/1/12 and that serve racial and ethnic minority residents, religious minority residents, or new Americans, as evidenced by

information and materials provided to consumers in the consumers' primary language;

- To provide geographic distribution to ensure access in different regions of the State, awards to at least 2 additional applicants that have been verified as a minority or woman-owned business enterprise.

Significantly, the language expressly precludes the DOH from rescoring the offers based on the survey responses, but instead shall make the awards based either the next highest scoring applicant **or** who meet the criteria cited above.

The amendments also clarify that the requirements related to FI closure apply to an FI that is acquired by, merges with, sells assets to, or engages in a similar type of transaction with a FI that was awarded a contract under the FI RFO process.

- **Bad Debt & Charity Care for Certified Home Health Agencies.** The final Budget accepts the proposal to extend authorization for certified home health agencies (CHHAs) to receive allowances for bad debt and charity care for 2 years, through June 30, 2023. Current eligibility for such funds is limited to voluntary non-profit, private propriety and publicly sponsored non-hospital based CHHAs.
- **CHHA Cap on Administrative and General Costs.** The final Budget accepts the Executive's proposal to extend the cap on reimbursement for CHHA administrative and general costs through March 31, 2023.

Rejected from the final Budget are the following items:

- **Fair Pay for Home Care.** The final Budget rejects the Senate's proposal to require payment for home care aides to be no less than 112% of the applicable minimum wage or other applicable wage requirement.
- **Home Care Competency Exams.** The final Budget rejects the Senate's proposal to require DOH to maintain a schedule setting forth when DOH will offer competency exams to qualified home care service workers residing out of state in order to fulfill any shortage of home care services workers.

Pharmacy

Included in the final Budget are the following items:

- **Prescription Drug Dispensing Fees.** The final Budget includes a new part requiring the Commissioner of Health to provide a report to the legislature by December 31, 2021 detailing the laws and rules that govern the calculation and payment of prescription drug dispensing fees to retail pharmacies by the Medicaid Program.
- **Transition of the Medicaid Pharmacy Benefit to FFS.** The final Budget delays the transition of the pharmacy benefits from mainstream Medicaid Managed Care to Fee for Service for two years, to April 1, 2023. Consistent with current statute, the Department of Health is directed to examine all reasonably available methods for determining actual acquisition cost of 340B drugs beginning April 1, 2023, and review and adjust

reimbursement for such drugs based on a method the commissioner determines utilizes actual acquisition cost and a professional dispensing fee beginning April 1, 2025.

Rejected from the final Budget are the following items:

- **Pharmacy Benefit Manager (PBM) Regulation.** The Legislature rejected the Executive's proposal to regulate and require the registration and licensure of PBMs. The Senate passed their stand-alone version of PBM licensure/registration and the Assembly has a same-as currently in the Codes committee. It is anticipated that the Assembly will pass their stand-alone bill post budget. This same bill was vetoed in December 2019.
- **340B Reinvestment for Community Health Centers.** The final Budget rejects the Executive's proposal to establish the 340B Reimbursement Fund. *For more information on this proposal, please see "Transition of the Medicaid Pharmacy Benefit to FFS".*
- **Prescriber Prevails.** The final Budget rejects the Executive's proposal to eliminate "prescriber prevails" in both the Fee-For-Service (FFS) and the Medicaid Managed Care (MMC) programs for all drug classes, without exception.
- **Non-Prescription (OTC) Drugs in Medicaid.** The final Budget rejects the Executive's proposal to allow "modifications" to the list of non-prescription drugs that may be covered by Medicaid.
- **Pharmacist Scope of Practice Expansion.** The final Budget rejects the Executive's proposal to authorize pharmacists to order direct limited-service labs and administer tests, and to act as a referring healthcare provider and prescriber for diabetes self-management and asthma self-management training.
- **Collaborative Drug Therapy Management (CDTM).** The final Budget rejects the Executive's proposal to extend the CDTM program to all Article 28 facilities or other entities that provide direct patient care under the auspices of a medical director, allow nurse practitioners to engage in CDTM agreements, and permanently authorize CDTM agreements.
- **Electronic Prescribing.** The final Budget rejects the Executive's proposal to eliminate exceptions for e-prescribing for veterinarians and for practitioners who have received limited waivers from e-prescribing.
- **Pharmacist Immunization Authority.** The final Budget rejects the Executive proposal permitting pharmacists and nurse practitioners to administer immunizations recommended by the CDC to adults and certain immunizations, for both adults and children.

Primary Care, Clinics, and other Providers

Included in the final Budget are the following items:

- **Nurse Practitioner Modernization Act.** The final Budget modifies the Executive's proposal to extend the Nurse Practitioner Modernization Act for one year, through June 30, 2022.
- **340B Reinvestment for Community Health Centers.** The final Budget rejects the Executive's proposal to establish the 340B Reimbursement Fund. *For more information on this proposal, please see "Transition of the Medicaid Pharmacy Benefit to FFS".*

Rejected from the final Budget are the following items:

The final Budget rejects the following reforms proposed by the Executive to the DOH oversight process for physicians:

- **Eliminates Indefinite Licensure:** Requires physicians to maintain registration over two consecutive registration periods to maintain licensure
- **Criminal Background Check:** Requires a fingerprint-based criminal history background check prior to licensure
- **Misconduct Definitions and Complaints:** Adds pre-adjudicatory complaints that are resolved by stipulation or agreement, harassment of a patient's caregiver or surrogate
- **DOH Commissioner's Authority.** Increase the time the Commissioner can take summary action against a physician who poses a threat to the public to a maximum of thirty days, from the current ten-day maximum. Clarifies that the Commissioner, not the Board for Professional Medical Conduct, is authorized promulgate rules and regulations and that the Board Executive Secretary serves at the Commissioner's discretion and direction
- **Hearings:** Extends hearing dates from ninety to one-hundred and eighty days and expands notice of hearing rules to allow 45-day notice with allow personal delivery, current residential/practice mailing, or certified mail to the most recent address
- **Notice Requirements:** Reduces the timeframe of a licensee failing to respond and information requests from 30 Days to 10 Days, with good cause exception.
- **Warrants:** Authorizes DOH to issue administrative inspection warrants to assist in investigations, if there is probable cause of misconduct
- **Physician Duty to Report:** Requires licensees charged with a crime or misconduct in any jurisdiction to notify OPMC within 24 hours
- **Reporting Quality Concerns:** Requires hospitals to notify DOH when they determine a licensee should not be assigned to the hospital due to quality-of-care concerns
- **Public Disclosure:** Eliminates current 90-day requirement, allowing DOH to immediately publish charges and convene investigative committees. Allows DOH to disclose information about high-profile OPMC investigations, eliminating current requirement for disclosure to cases that pose a public health threat. Allows DOH to publish Administrative Warnings and Consultations.
- **DOH Physician Profiles:** Allows DOH to require the collection of additional information, authorize streamline the collection of certain information and require the submission of additional information. Allows physicians to authorize a designee to submit information on their behalf. Links the Profile and the Licensure/Registration Process.

Health Planning, Medical Education and Public Health**Included in the final Budget:**

- **Medical Respite Pilot Program.** The final Budget authorizes the establishment of certified medical respite programs to provide care to homeless patients, who are too sick to be on the street or in a traditional shelter, but not sick enough to necessitate admission in an inpatient setting. The programs will provide temporary room and board to arrange for

health care and support services to improve the health of medically impacted homeless individuals while decreasing hospital use.

The final Budget agreement modifies the proposal to authorize certification of programs, differing from the original Executive proposal which provided DOH with an option to license or certify. It also includes provisions to protect recipients from claims of recovery and to clarify that these services would not be considered a public benefit in a manner that would affect a recipient's immigration status. Finally, the final Budget agreement allows for program rectification to correct deficiencies prior to a DOH determination to revoke, suspended, limit, annul or deny a certification.

Rejected from the final Budget are the following items:

- **Empire Clinical Research Investigator Program (ECRIP).** The final Budget rejects the elimination of the Empire Clinical Research Investigator Program (ECRIP).
- **General Public Health Works (GPHW).** The final Budget rejects the Executive's proposal to limit the state aid reimbursement rate provided to New York City under the 'General Public Health Works' program to 10%.

Mental Health & Human Services

Included in the final Budget are the following items:

- **OMH Facility Directors as Representative Payees.** The final Budget accepts the Executive's proposal to extend for three years, through March 31, 2024, the authority of OMH and OPWDD facility directors to act as representative payees to use funds for the cost of a resident's care and treatment.
- **Crisis Stabilization Services.** The final Budget accepts the Executive's proposal to create a new Article 36 in Mental Hygiene Law to authorize the Commissioners of OMH and OASAS to jointly license and operate Crisis Stabilization Centers to serve as voluntary and urgent service providers to individuals with psychiatric or substance use disorder, who need crisis stabilization services. The final Budget also requires training of law enforcement, first responders and other entities located within the catchment area of a crisis stabilization center. *For more information on regarding Medicaid and commercial insurance coverage of services provided by crisis stabilization centers, please see the "Commercial Insurance" section of this memorandum.*
- **Developmental Disabilities Planning Council.** The final Budget accepts the Executive's proposal to amend the membership of the Council to include specific ex officio members of the Council and at least 60% of the members appointed by the Governor to consist of developmentally disabled persons or their parents or guardians.
- **OMH Application Fees.** The final Budget accepts the Executive's proposal to allow the Commissioner of OMH to establish a schedule of fees for the purpose of processing applications for the issuance of operating certificates. All fees pursuant to this legislation would be payable to the General Fund.

- **Temporary Operators for OPWDD and OMH Facilities.** The final Budget modifies a proposal to extend the authority for the Office of Mental Health (OMH) and the Office for People With Developmental Disabilities (OPWDD) to appoint temporary operators to run a program, services or facility when necessary to protect the health and safety of patients or maintain a program's viability. While the Executive Budget sought to extend the proposal for five years, the Final Budget only includes a one-year extension (until March 31, 2022).
- **Extension of Inpatient Psychiatric Services Demonstration Programs.** The final Budget modifies the Governor's proposal to extend, for three years through March 2024, the current authority of the Commissioners within the Office of Mental Health (OMH) to develop and implement three or more demonstration programs that test and evaluate new methods or arrangements of inpatient psychiatric services.

The final Budget also adds an annual deadline of November 15th for the submission of quarterly evaluations and final reports on the demonstration programs. Additionally, the final reports will be required to be included in the relevant Statewide Comprehensive Plans of Services for Persons with Mental Disabilities.

Rejected from the final Budget are the following items:

- **Suspend Notification and Community Reinvestment Requirements for OMH facility closures.** The final Budget rejects the Governor's proposal to suspend the notification requirements for OMH facility closures, but modifies the Governor's proposal to suspend the community reinvestment of state savings achieved as a result of such closures, such that OMH is not required to allocate such funding for the Community Reinvestment Program for the fiscal year 2021-2022. This action eliminates estimated savings to the State of approximately \$30M in FY 2022.
- **Office of Addiction and Mental Health Services.** The final Budget rejects the proposal to create a new Office of Addiction and Mental Health Services, consolidating the Office of Mental Health (OMH) and Office of Addiction Services and Supports (OASAS).
- **Comprehensive Outpatient Service Centers.** The final Budget rejects a proposal to allow the licensure of Comprehensive Outpatient Service Centers.
- **Penalties for MHL Violations.** The final Budget rejects the Executive's proposal to enhance OMH's ability to impose sanctions due to a provider's failure to comply with the terms of their operating certificate or applicable law.
- **OASAS Standards for Addiction Professionals.** The final Budget rejects provisions authorizing OASAS to establish standards for Addiction Professionals.
- **Kendra's Law Assisted Outpatient Treatment (AOT).** The final Budget rejects the Executive's proposal to amend MHL § 9.60 to authorize AOT order renewals when an individual subject to the order cannot be immediately located, or when an individual has experienced substantial increase in symptoms within six months of the expiration of the order.
- **Involuntary Commitment.** The final Budget rejects the Executive's proposal to amend MHL §§ 9.01 and 9.39 to add new criteria to the definition of "likelihood to result in serious harm" or "likely to result in serious harm", to allow for involuntary commitment upon a finding that an individual is experiencing such complete neglect of basic needs for food,

clothing, shelter or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken

- **Combine the Institute for Basic Research with the New York State Psychiatric Institute.** The enacted budget rejects the Executive's proposal to combine the OPWDD New York State Institute for Basic Research in Developmental Disabilities (IBR) with NYSPI.
- **Integrated Licensure for Comprehensive Outpatient Services for Addiction.** The final Budget rejects the Executive's proposal to establish comprehensive outpatient services centers, which would provide integrated physical health, mental health, and addiction services at a single location.

Bioscience Funding

- **Spinal Cord Injury Research Fund Account.** The final Budget rejects the Executive's proposal to phase out the spinal cord injury research program.
- **Stem Cell Funding.** The final budget accepts the Executive's proposal to eliminate program funding with no grants authorized after April 1, 2021, and to phase out the program by 2025.