



TO: MEMBERS OF THE NYS CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS
FROM: COURTNEY DAVID, DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: FEBRUARY 3, 2020
SUBJECT: SFY 2020-21 PROPOSED EXECUTIVE BUDGET ANALYSIS

GENERAL OVERVIEW

On January 21, 2020, Governor Cuomo released his State Fiscal Year (SFY) 2020-21 Executive Budget proposal entitled, “Making Progress Happen” that puts forth a total spending plan of \$178 billion, in the wake of an estimated \$6 billion deficit which is being attributed to the State’s \$4 billion overspend in Medicaid.

In preparation of these anticipated deficits, the State’s Department of Health issued notice on December 31st of a 1% across the board cut in State-share Medicaid payments from January 1, 2020 to March 31, 2020 and which will continue every State fiscal year thereafter, when fully-annualized will reach \$496 million. Fee-for-service payments will also be decreased by 1% while Managed Care payments to MCOs will see a 1% reduction to the premium rates. Payments based on federal law prohibitions such as FQHCs, those pursuant under mental hygiene law (Article 31s, 32s, and 16s) and those funded exclusively with federal or local funds are exempt.

Additionally, the Governor’s Health and Mental Hygiene Article VII Budget Proposal includes Medicaid spending reform provisions imposed on localities that would authorize a shift of Medicaid costs back to the counties if the following thresholds are exceeded:

- 2% property tax cap or in the case of NYC, the tax cap if it had applied to the City; and
- 3% Medicaid local share cap

Social services districts, providers and other recipients of Medicaid program funds would also be required to share with the Department of Health or the Division of Budget, all fiscal records necessary for managing the Medicaid program.

Several initiatives that failed to advance during 2019 budget negotiations are up again for consideration, including the legalization of adult-use recreational marijuana and various tax reform measures to support small businesses and the middle class.

The Governor's cannabis legalization proposal mimics last year's language by establishing a three-tiered tax system for the distribution and sale of cannabis and is expected to derive \$20 million in revenue in the first year. Opt-out provisions have been included for counties, or cities with a population of 100,000 or more. It remains to be seen whether these proposals will be negotiated through the budget or taken up as a stand-alone legislation.

Additionally, in the wake of the legalization discussion the Administration continues its push for various tobacco control policies by including several proposals that focus on efforts to curb vaping and e-cigarette usage.

On bail reform, discussions continue in Albany as law enforcement and other criminal justice stakeholders meet on potential changes to the law and what resources may be needed going forward.

THE BUDGET PROCESS UNTIL APRIL 1, 2020

21 and 30 day Executive Budget Amendments

The Governor has the ability to make amendments to any of his proposed budget bills within thirty days post release. The "21-day amendments" (due by February 11th) and "30-day amendments" (due February 20th) usually will include changes that are technical in nature, correcting slight additions/deletions to misprints or errors in the printed language. Only rarely do these amendments add new funding or policy priorities.

February 3rd: Mental Hygiene Legislative Fiscal/Program Committee Budget Hearing

Members of the Senate Finance Committee, Assembly Ways and Means Committee and the Chairs and members of the Mental Health, Developmental Disabilities, and Alcoholism and Drug Abuse Committees host the Mental Hygiene Budget Hearing, scheduled for February 3, 2020.

Agency Commissioners and dozens of statewide associations, unions, and members of the public testify on the various budget proposals. The Mental Hygiene hearing includes testimony from each of the OMH, OASAS, OPWDD Commissioners and the Director of the Justice Center. CLMHD is slated to testify and will provide written testimony that will incorporate a thorough outline of CLMHD's budget priorities. All witnesses, except for the Agency heads, are allotted 5 minutes to present testimony. The Budget Hearing is also live streamed.

Mid-March: Senate and Assembly One House Budget Proposals

After the budget hearings, the Senate and Assembly will each introduce their own One House versions of the budget (based on the Executive Budget framework). The One House budgets indicate the Senate and Assembly Majority positions on the Executive's proposals by indicating which to support, oppose, amend, or to add/cut funding.

Mid-March: Budget Conference Committees and Final Budget Agreements

The Governor, Assembly Speaker and Senate Majority Leader come to an agreement on the amount of revenue available and negotiate the final budget using budget conference committees. The State Fiscal Year begins on April 1, 2020.

CLMHD BUDGET PRIORITIES FOR SFY 2020-21

Continued Funding for Substance Use Disorder (SUD) Treatment and Transition Services in County Jails

CLMHD's ongoing advocacy efforts with the Governor's office, Division of Budget and OASAS were successful and have resulted in the Executive's inclusion of another \$3.75M allocation to support jail-based SUD programs. The appropriation mirrors the 2019-20 enacted budget language which requires consultation with the LGUs and Sheriffs on program and will allow for the continuance of existing programs funded last year. CLMHD staff will continue advocating for an additional \$3.25M in State Aid funding in SFY 2020-21 to support programs in unfunded counties, expand services in facilities with existing programs, and continue funding to the 24 awarded counties for the cost of medications for MAT.

Bring it Home Campaign/OMH Supported Housing

The Executive Budget proposal includes \$20M for existing OMH supported housing rates in SFY 2020-21. CLMHD will continue to advocate on behalf of the Bring It Home Campaign for to address the remaining \$165 million deficit by adding an additional \$20 million to match the Governor's proposal, and develop a multiyear sustainability plan.

#3for#5 Campaign – Human Services Sector Investment

The Executive Budget proposal defers SFY 2020-21 COLA payment, saving \$3.6 million and continues the direct service provider targeted 2% salary increase for the remainder of this fiscal year and continues a 2% direct service provider and clinical care salary increase April 1, 2020.

CLMHD is working together with other behavioral health advocates for the statewide #3for#5 campaign that calls for a 3% percent increase in funding for all not for profits in the human services sector every year for the next five years. This campaign is unprecedented in its scope through the inclusion of every major Statewide not for profit agency in the mental health, addiction disorder, developmental disabilities, child welfare, foster care and aging community.

SFY 2020-21 Financial Plan – Mental Hygiene

The Executive's financial plan outlines several mental hygiene proposals directly impacting local governments:

- 10% reduction in OASAS program administration funding
- 10% reduction in OMH program administration funding
- Requiring 100% County payment of forensic 730.20 costs (\$12 million fully annualized)

Behavioral Health Parity Compliance Fund

The Executive Budget proposal includes \$1.5M for compliance efforts related to the State and Federal Behavioral Health Parity Laws by requiring the Department of Health (DOH) and Department of Financial Services (DFS) to develop compliance regulations and establishing a special revenue fund for the penalty fines levied on insurers for violations.

Voluntary Jail-Based Competency Restoration Programs

The Executive Budget proposal again to establish voluntary jail-based competency restoration programs in SFY 2020-21 (\$1.7M in savings). Authorizes volunteering counties (outside NYC) to develop specialized residential mental health units within their local jails to house, treat and restore felony level defendants to competency as they await trial. The fiscal impact is calculated with the assumption that only one county opens a restoration unit. If two or more counties opens units, then OMH would achieve additional savings.

FULL ANALYSIS –AGENCY PROPOSALS

Department of Health (DOH)/Medicaid

ALL FUNDS APPROPRIATIONS (dollars)

Category	Available SFY 2019-20	Appropriations Recommended SFY 2020-21	Change From SFY 2019-20	Reappropriations Recommended SFY 2020-21
State Operations	3,605,713,400	2,506,470,000	(1,099,243,400)	3,784,346,438
Aid To Localities	156,439,208,171	85,795,089,100	(70,644,119,071)	163,118,716,000
Capital Projects	202,904,000	206,170,000	3,266,000	3,513,225,000
Total	160,247,825,571	88,507,729,100	(71,740,096,471)	170,416,287,438

The Executive Budget proposal recommends \$88.5 billion for DOH, including \$76.7 billion for Medicaid, including \$5.3 billion for the Essential Plan, and \$6.5 billion for remaining health program spending. This reflects a decrease of \$71.7 billion from the SFY 2019-20 Enacted Budget due to the discontinuation of two-year appropriations for Medicaid.

Reforming Medicaid

Reforming Medicaid through the Medicaid Redesign Team (MRT) II initiative. The SFY 2020-21 Budget reconstitutes the MRT, bringing stakeholders, who bring experience as health care providers, and representatives from the Legislature back to the table to find solutions that will once again contain spending growth so that this critical program that provides health care to more than 6 million New Yorkers remains financially sustainable for the future.

The 2020 MRT II must report back before the April 1 deadline to enact a Budget with a plan to deliver \$2.5 billion in recurring savings. The Governor is directing the members of MRT II to develop a plan that doesn't rely on local governments as a funding sources and has minimal impact on beneficiaries. Instead, MRT II must once again find solutions through industry efficiencies and/or by relying on new resources provided by the industry itself.

Requiring Enhanced Local District Medicaid Controls - Local governments administer and monitor programs and determine eligibility and they must also find efficiencies and savings, as well as root out waste, fraud and abuse in the Medicaid program. Because the State takeover of 100% of the growth in local Medicaid costs was intended to assist counties to stay within the two percent property tax cap, the

Budget proposes that counties that adhere to the two percent property tax growth cap continue to receive full benefit of the State takeover of Medicaid spending growth while penalizing those that don't by limiting the State's financing of growth in Local Medicaid expenditures to 3 percent annually. Additionally, the DOH Commissioner and the Director of the Division of the Budget are empowered to access any data necessary to manage the Medicaid program. Estimated State Share savings in SFY 2020-21 and SFY 2021-22 is \$150M.

Medicaid Global Cap - The Executive Budget proposal maintains the statutory growth cap at 3%.

DSRIP Waiver Authority Extension – The Executive Budget proposal extends regulatory waiver authority for the Commissioners of DOH, and the “O” agencies through April 1, 2024 to allow providers who are involved in projects, or who would like to scale and replicate projects to continue work under DSRIP.

Enhancing Program Integrity and Efficiency - The Executive Budget proposal includes a comprehensive plan to ensure that the Office of the Medicaid Inspector General (OMIG) and DOH have the tools necessary to expand program integrity efforts to weed out programmatic fraud, waste and abuse within the Medicaid program and enhance program efficiency. OMIG will add 69 staff to promote program integrity, including the establishment of a dedicated unit responsible for monitoring and investigating Medicaid Managed Care payments. Further, DOH and OMIG will collaborate to explore opportunities to improve program efficiency and take advantage of new data tools to further inform Medicaid policies and procedures and recover improper payments.

Certificate of Need Surcharge - The Executive Budget proposal seeks to impose a 3% surcharge on Article 28 Certificate of Need construction project applications. State grant funded projects would be exempt. Payment of the fee would not be reimbursable by the State, including the Medicaid program. Estimated revenue \$70M.

Early Intervention Program (0-3 year olds) - The Executive Budget proposal includes a series of reforms designed to ensure commercial insurers pay their share including:

- Conduct examinations led jointly by DOH and DFS to ensure insurers are enforcing current rules and regulations and that providers are complying with current requirement
- Clarifications of benefit coverage that specify coverage rules, including that insurers cannot offset coverage limits for therapies
- Updated billing codes to allow for more accurate billing
- Streamlined provider agreement process to accept existing Insurance Plan credentialed/approved practitioners as approved EIP providers

New regulations on network adequacy to specify that plans that have an adequate network must also have an adequate Early Intervention network. State savings fully annualized is estimated at \$400K.

Continuing capital investments for essential health care providers - The Executive Budget proposal includes \$3.8 billion for capital support provided to health care providers for transformation efforts.

Prescription Drug Pricing and Accountability Board – The Executive proposal makes statutory changes necessary to implement investigations into prescription drug pricing, and creates the drug accountability board to assist with those investigations. If the price of a drug increases by more than 100% within one-

year time period, DFS Superintendent has the authority to investigate and provides subpoena power for imposing civil penalties.

Regulation of Pharmacy Benefit Managers - The Executive proposal includes provisions to regulate the registration and licensure of PBMs.

Comprehensive nicotine vaping agenda – The Executive Budget proposal includes provisions to reduce nicotine and tobacco use in New York. This includes addressing the public health crisis of youth nicotine vaping and the use of electronic cigarettes by banning the sale of flavored nicotine products and tobacco sales in pharmacies. The Executive Budget raises minimum fines for underage sales from \$300 to \$1000 and requires the disclosure of vaping product ingredients. Estimated revenue, \$25M SFY 2020-21 and \$33M the following fiscal year.

Justice Center for the Protection of People with Special Needs (Justice Center) – The Executive Budget proposal eliminates the requirement of Statewide Central Registry (SCR) checks while maintaining the Center’s ability to conduct SCR checks when determined to be relevant to an investigation. Estimated savings, \$64K.

Office of Mental Health (OMH)

ALL FUNDS APPROPRIATIONS (dollars)

Category	Available SFY 2019-20	Appropriations Recommended SFY 2020-21	Change From SFY 2019-20	Reappropriations Recommended SFY 2020-21
State Operations	2,286,733,000	2,274,533,000	(12,200,000)	3,648,000
Aid To Localities	1,582,571,500	1,645,317,000	62,745,500	59,926,500
Capital Projects	534,472,000	534,472,000	0	3,127,979,000
Total	4,403,776,500	4,454,322,000	50,545,500	3,191,553,500

The Executive Budget proposal provides \$4.5 billion All Funds appropriations, a net increase of \$50 million (1.1%), reflecting the investment in community-based services, targeted salary increases for direct care and clinical staff (\$21.1M), and residential stipend enhancements. There has also been a discontinuation of approximately \$6.2M in legislative adds.

Minimum Wage – The Executive Budget proposal includes \$4M to support the costs of the move to \$15 p/hr minimum wage.

Enhance Support for Existing OMH Residential Programs- The Executive Budget proposal provides an additional \$20 million for existing community-based residential housing programs and an additional \$10 million in capital funding.

Transform Kingsboro Psychiatric Center into a Recovery Hub – The Executive Budget proposal includes \$2.5M for a plan to develop a voluntary-operated, step-down transition to community residence program on the Kingsboro PC campus and transform the campus into a "Recovery Hub Facility", focused on shortening lengths of stay and providing centralized community support services. This new service delivery model will be supported by new revenue generated through a federal Institutions for Mental Disease (IMD) Medicaid waiver.

Suicide Prevention Efforts - The Executive Budget proposal includes \$1M for suicide prevention efforts for veterans, first responders, law enforcement and corrections officers.

Extend Comprehensive Psychiatric Emergency Programs (CPEP) - The Executive Budget proposal extends statutory authority for CPEP until July 1, 2024 and amends MHL to allow for the implementation of satellite sites in CPEPs. Technical changes also included clarifying scope of practice for NPPs and timeframes for when clients are received.

Streamline the Pre-Admission Certifications Committee (PACC) eligibility Process for Children’s Residential Treatment Facilities (RTFs) – The Executive Budget proposal makes statutory changes necessary to streamline the current PAC process for RTFs for children and youth. Estimated savings, \$2M.

NYC Transitional Adult Homes - The Executive Budget proposal provides an additional \$12.5 million for up to 500 additional adult home housing beds and services in New York City who wish to transition to more integrated settings in the community.

Continue Rebuild Mid-Hudson Forensic Psychiatric Center - The Executive Budget proposal includes an additional \$100 million in appropriation authority to support the replacement of the 275 bed Mid-Hudson Forensic Psychiatric Center in Orange County.

State Psychiatric Center Downsizing and Community Reinvestment

Currently, there are approximately 3,840 State psychiatric beds still in operation, 2,620 of which are civil adult and children’s beds and 1,220 are forensic and Sex Offender Management and Treatment (SOMTA) beds. OMH is not projecting any new bed closure targets at this time.

Office of Addiction Services and Supports (OASAS)

ALL FUNDS APPROPRIATIONS (dollars)

Category	Available SFY 2019-20	Appropriations Recommended SFY 2020-21	Change From SFY 2019-20	Reappropriations Recommended SFY 2020-21
State Operations	138,287,000	139,623,000	1,336,000	4,247,000
Aid To Localities	580,206,000	591,464,000	11,258,000	121,922,000
Capital Projects	90,000,000	90,000,000	0	608,778,000
Total	808,493,000	821,087,000	12,594,000	734,947,000

The SFY 2020-21 Executive Budget proposal recommends \$821 million in All Funds appropriations, including \$591 million for Aid to Localities, \$140 million for State Operations and \$90 million for Capital Projects. This represents an increase of nearly \$13 million from last fiscal year, mostly attributable to the targeted salary increases in SFY 2019-2020 and SFY 2020-2021 for direct care and clinical staff (\$8.9M), and continued community-based service development. There has also been a discontinuation of approximately \$5.5M in legislative adds.

Minimum Wage – The Executive Budget proposal includes \$1.4M to support the costs associated with the move to \$15 p/hr minimum wage.

Banning Fentanyl Analogs – The Executive Budget proposal makes statutory changes necessary to update the State’s Schedule I and II lists of controlled substances by adding 26 additional synthetic Fentanyl Analogs.

Combat Heroin/Opioid Abuse Initiatives

The Executive Budget proposal includes the following OASAS investments:

- \$3.75M appropriation for jail-based SUD treatment and transition services in SFY 2020-21
- Residential Treatment Beds – 200 new beds are expected to open by next fiscal year.
- MH/SUD Ombudsman Program - \$1.5M in annual funding to support the State’s new Ombudsman Program, established in 2018

Office of People with Developmental Disabilities (OPWDD)

ALL FUNDS APPROPRIATIONS (dollars)

Category	Available SFY 2019-20	Appropriations Recommended SFY 2020-21	Change From SFY 2019-20	Reappropriations Recommended SFY 2020-21
State Operations	2,244,027,000	2,244,149,000	122,000	2,929,000
Aid To Localities	2,487,307,000	2,649,282,000	161,975,000	2,235,152,000
Capital Projects	99,400,000	108,600,000	9,200,000	557,287,000
Total	4,830,734,000	5,002,031,000	171,297,000	2,795,368,000

The SFY 2020-21 Executive Budget proposal recommends, in total, approximately \$5 billion in All Funds appropriations, including \$2.6 billion for Aid to Localities, \$2.2 billion for State Operations and \$109 million for Capital Projects, which represents a \$171 million increase from last fiscal year. The increase supports new investments in OPWDD program priorities, expansion of supportive housing capacity, increased costs related to the minimum wage, funding to support targeted direct care compensation increases (\$66.4M), and anticipated agency operating costs. There has also been a discontinuation of approximately \$590,000 in legislative adds.

OPWDD will utilize this funding to support a comprehensive system of care that serves 140,000 New Yorkers and their families. These resources will continue to support OPWDD's person-centered model, which delivers services through a network of State-operated and NFP-operated settings.

Minimum Wage: The Executive Budget proposal includes \$23.7M to support the costs associated with the move to \$15 per hour minimum wage.

Expansion of Housing Supports - The Executive Budget proposal includes \$15 million for independent living and supports for IDD/DD individuals.

Transition to Managed Care - The Executive Budget proposal does not include any new funding to support the OPWDD transition into Managed Care. OPWDD and DOH expect to release guidance for public comment in the near future regarding the requirements and standards to service IDD/DD individuals in Provider-Led Specialized IDD Plans.

Administrative Actions:

- **Authority to Issue Operating Certificates** - The Executive Budget proposal provides OPWDD authority to issue operating certificates to providers of certain State Plan Medicaid services that are targeted to providing services to individuals with intellectual and developmental disabilities. This is a technical amendment to conform state law with the OPWDD Medicaid Waiver State Plan Amendment which references “services” to individuals. The current MHL references “facilities.” The authority to issue operating certificates will ensure that the highest quality supports are being provided in accordance with programmatic requirements through data reporting and other means.

- **Streamlining of Criminal History Record Checks for CCOs** – The Executive Budget proposal seeks to remove duplicative criminal background check requirements for prospective employees of Health Homes or their subcontractors that serve individuals with developmental disabilities. The Executive proposes removing the reimbursement for Health Homes conducting criminal background checks on prospective employees. The Executive also proposes removing the ability of Health Homes serving individuals with developmental disabilities to temporarily approve a prospective employee while the employee is undergoing a criminal background check.

There is an estimated \$100,000 savings over 3 years associated with implementation of this proposal.