



TO: MEMBERS OF THE NYS CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS
FROM: COURTNEY DAVID, DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: JANUARY 24, 2019
SUBJECT: SFY 2019-20 PROPOSED EXECUTIVE BUDGET ANALYSIS

GENERAL OVERVIEW

On January 15, 2019, Governor Cuomo released his State Fiscal Year (SFY) 2019-20 Executive Budget Proposal. For 2019-20, the Governor proposes a total spending plan of \$178 billion, a \$6 billion increase in state operating funds from 2018-19. The proposal continues the Governor's commitment to hold down spending at two percent and closes a \$3.1 billion deficit, while backing the legalization of adult use marijuana for those over the age of 21, increasing education spending by \$956 million, and seeking to codify aspects of the Affordable Care Act (ACA) into State law.

The Governor's recreational marijuana proposal would establish a three-tiered tax system for the distribution and sale of cannabis, and create a new State Office of Cannabis Management charged with overseeing the recreational, medical and hemp markets. While the Governor has consistently publicized this program as a massive revenue generator, up to \$300M annually the budget bill indicates a zero revenue stream for this coming fiscal year, and books the 2020-21 revenue at only \$83M.

The three-tiered tax plan is as follows:

- \$1 per dry weight gram of cannabis and 25 cents per dry weight of cannabis trim
- 20% tax applied to the wholesaler's invoiced price to a retail dispensary – revenue to the State
- 2% tax applied to the wholesaler's invoiced price to a retail dispensary – revenue to the County in which the retailer is located.

Counties and large cities (population of 100,000 or more) would have an opt-out option, however if invoked the county/municipality would not receive any of the revenue collected.

The Governor plans to use the State's tax revenue for administration of the program, data gathering, monitoring and reporting, his traffic safety committee, small business development, substance abuse, harm reduction and mental health treatment and prevention, public health intervention and education and any other identified purpose recommended by the Executive Director of the Office of Cannabis Management and approved by the Budget Director.

Other priorities identified as part of the Governor's Budget proposal include, a five-year extension of the Millionaire's tax, making permanent the 2% cap on local property taxes, and a new congestion toll for

NYC travelers into Manhattan said to raise \$15 billion to be spent on capital improvements to the MTA's transit systems. As expected, no significant plan was included around universal health care. Instead, the Executive calls for a study to determine the fiscal impact to the State, and in turn has included \$575M to support the continuance of the State's Health Benefit Exchange.

Additionally, the Executive Budget puts forth comprehensive criminal justice reforms that include, but are not limited to, ending the cash bail system, amending the discovery process to require prosecutors and the defense to share information in a multi-stage time frame prior to the start of trial, and expanding access to speedy trials.

Unlike in years past, the Governor has opted to run the remainder of his progressive policy priorities through the Democratic-controlled Legislature, rather than incorporating his proposals into the Budget. Post Budget, we expect to see the Legislature take up issues related to stronger gun control, support for undocumented immigrants, and the strengthening of LGBTQ rights, all of which are expected to easily pass the Democratic majorities in both the Senate and Assembly.

THE BUDGET PROCESS UNTIL APRIL 1, 2019

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 2nd) and "30-day amendments" (due February 14th) 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 7th: 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 7, 2019.

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, 2019. The Governor will have minimal political barriers to contend with this year as he works to negotiate his progressive policy agenda. Therefore, we expect an on-time budget.

CLMHD BUDGET PRIORITIES FOR SFY 2019-20

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 a new \$3.75M allocation to support jail-based SUD programs. The appropriation mirrors the 2018-19 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 additional funding in SFY 2019-20 to support more comprehensive services in facilities with existing programs, and to increase the number of county-wide jail programs.

Bring it Home Campaign/OMH Supported Housing

The Executive proposal includes \$10M in additional funding for existing OMH supported housing rates and \$60M in new capital funding in SFY 2019-20. LCRs and Treatment Apartment programs will not be supported under the new \$10M allocation. CLMHD will continue to advocate on behalf of the Bring It Home Campaign for existing mental health housing program providers to receive the reimbursement rate increases they so desperately need to maintain access to housing.

OPWDD, OMH and OASAS Workforce COLA

The Executive's proposal continues to defer the statutory COLA for Human Service workers through March 31, 2020. The inclusion of a 2.9% COLA for SFY 2019-20 would have allocated \$120M in funding for Mental Hygiene workforce. CLMHD remains committed to working alongside the coalition of other behavioral health colleagues to advocate for the 2.9% COLA in the final enacted budget.

OTHER HIGHLIGHTS

Extension of OMH/OASAS Clinic APG Rates

The Executive Budget proposal amends statutory provisions to extend until March 31, 2022 the requirements for MCOs to pay the APG reimbursement rates for Article 31 and 32 outpatient ambulatory services covered by for Medicaid and Child Health Plus (CHP).

Raise the Age

The Executive proposal provides \$200M in funding to support continued implementation of Raise the Age Initiative, an increase of \$100M from SFY 2018-19.

Behavioral Health Parity Reforms

The Executive proposal includes provisions to increase access to behavioral health services.

Provisions are as follows:

- Requiring minimum coverage standards;
- Removing certain benefit limitations;
- Prohibiting denial of medically necessary care;
- Prohibiting multiple co-payments per day and requiring behavioral health copayments be equal to a primary care office visit;
- Requiring naloxone coverage;

- Prohibiting prior authorization for medication assisted treatment;
- Prohibiting preauthorization and concurrent utilization review of SUD services during the initial 21 days of treatment (expanded from 14 days);
- Prohibiting preauthorization and concurrent utilization review of inpatient psychiatric services for youth services during the initial 14 days of treatment;
- Requiring MH utilization review staff to have subject matter expertise;
- Allowing OASAS to designate a standard utilization review tool for in-State SUD treatment;
- Prohibiting insurers from retaliating against providers that report insurance law violations to State agencies;
- Requiring insurers to post additional detail regarding their behavioral health provider networks;
- Requiring insurers to provide their most recent comparative analysis for insureds;
- Allowing OMH to review and approve clinical review criteria; and
- Codifying parity standards in State law for both MH and SUD.

Additionally, the proposal requires hospital emergency departments to have policies and procedures in place for providing medication assisted-treatment (MAT) prior to patient discharge. The Executive Budget proposal also requires EDs to establish protocols around SUD screening, education, and treatment if appropriate, and seeks to mandate coverage of court-ordered treatment only when provided by an OASAS certified program under Medicaid Managed Care.

Voluntary Jail-Based Competency Restoration Programs

The Executive Budget proposal again seeks to allocate \$850,000 to establish voluntary jail-based competency restoration programs in SFY 2019-20 (\$1.7M in savings). This year’s proposal has been modified from last year’s proposals by limiting the program as a two-county demonstration project. Funding would support capital improvements for the creation of separate housing units.

FULL ANALYSIS –AGENCY PROPOSALS

Department of Health (DOH)/Medicaid

ALL FUNDS APPROPRIATIONS (dollars)

	Available FY 2019	Appropriations Recommended FY 2020	Change From FY 2019	Reappropriations Recommended FY 2020
State Operations	3,872,502,000	3,595,371,400	(277,130,600)	4,002,177,000
Capital Projects	727,904,000	202,904,000	(525,000,000)	3,618,359,000
Aid To Localities	148,077,792,100	156,382,819,100	8,305,027,000	157,969,701,000
Total	152,678,198,100	160,181,094,500	7,502,896,400	165,590,237,000

The Executive Budget proposal recommends \$160 billion for DOH, including \$148 billion for Medicaid (representing two-year appropriation authority), including \$5 billion for the Essential Plan, and \$7 billion for remaining health program spending. This reflects an increase of \$8 billion from the SFY 2018-19 Budget due to the continuation of two-year appropriations for Medicaid, additional Federal Medicaid

funding associated with projected programmatic growth, the Affordable Care Act, and minimum wage increases.

The State's federal DSRIP waiver has been extended through March 31, 2021 and will allow PPSs to continue with value-based payment arrangements in order to reach the goal of 25% reduction in hospital use over the next two years.

Codifying ACA rules into State Law

In direct response to the Federal government's uncertainty around the continuance of the ACA, the Executive Budget seeks to establish a Commission jointly led by the Department of Health (DOH) and the Department of Financial Services (DFA) to develop a study on the fiscal impacts of having a universal health care system in NY. If approved, the Commission would have less than nine months deliver its findings to the Governor, with a deadline of December 1, 2019.

Statewide Health Care Facility Transformation Program

The Executive Budget permits DOH to use up to \$300M of the \$525M capital funding appropriated in the 2018-19 Statewide Facility Transformation III program to fund additional applicants that applied for funding under the Statewide II program.

- \$225M in re-appropriated funding will carry over for Statewide III. Sixty million (\$60M) of the \$525M will be allocated to community based providers including Art. 31 and 32 clinics.

Medicaid-Specific Proposals:

- **Minimum Wage** - The Executive Budget includes \$8.4 million support the continuance of direct costs related to minimum wage increases for certain health care providers. \$107M has been allocated for OMH, OASAS and OPWDD providers.
- **Medicaid Drug Cap Extension** - The Executive Budget extends the Medicaid Drug Cap for two years and includes provisions to accelerate manufacturer rebates on drugs identified as high-cost.
- **Applied Behavioral Analysis** - The Executive seeks to include Applied Behavioral Health Analysis treatment as a covered Medicaid benefit. The proposal removes the current benefit cap and expands this list of covered service providers.
- **Health Homes** - The Executive proposal appropriates \$656M for the continued administration of the Health Homes program. This represents a \$5 million state share cut (\$10 million all-funds) to the program. DOH anticipates that savings would result from incentivizing care managers to enroll new members in programs and connect them to the services they require while dis-incentivizing intense care management over an extended period. This is reflected in \$5M in state share savings through rate reductions in SFY 2019-20.
- **Federal Medicaid Waiver Applications** - The Executive Budget includes provisions directing DOH to apply for two federal Medicaid waivers which would add supportive housing services and health care treatment for inmates 30 days prior to reentry to the list of services covered under Medicaid.
- **Prescriber Prevails** - The Executive proposal repeals the prescriber's right of final determination in both FFS and managed care when the justification for use is not clinically supported. Medications to treat mental illness would be impacted under this proposal.

However, the Executive has included this proposal every year and has been unsuccessful in securing its enactment. The Legislature has consistently opposed any repeal of this provision.

- **Regulation of Pharmacy Benefit Managers** - The Executive proposal includes provisions to regulate the registration and licensure of PBMs.
- **Extend Medicaid Coverage for Children Over 18** - The Executive proposal extends Medicaid coverage to children who are 19 or 20 years old living with parents who meet certain criteria through October 1, 2024.
- **Prohibits prior authorization for children’s inpatient behavioral health services** - The Executive proposal seeks to prohibit prior authorization and concurrent utilization review of youth inpatient psychiatric services during the initial 14 days of treatment.
- **OMH Commissioner Authority to Certify Special Needs Plans** - The Executive proposal extends the Commissioner of Mental Health’s authority, in consultation with the Commissioner of Health, to certify Special Needs Plans through March 31, 2025.

Public Health:

- **Tobacco Control:** The Executive Budget seeks to implement a more advanced tobacco control agenda to help continue the State’s efforts to reduce use among New Yorkers. The purchase age would be raised from 18 to 21, pharmacy sales would be prohibited, as well as all smoking of tobacco or e-cigarettes in or around state Psychiatric hospitals. The proposal also would seek to impose a 20% tax on the sale of vapor products.

Office of Mental Health (OMH)

ALL FUNDS APPROPRIATIONS (dollars)

	Available FY 2019	Appropriations Recommended FY 2020	Change From FY 2019	Reappropriations Recommended FY 2020
State Operations	2,285,758,000	2,285,033,000	(725,000)	1,815,000
Aid To Localities	1,544,514,000	1,576,049,000	31,535,000	33,792,000
Capital Projects	434,472,000	534,472,000	100,000,000	2,857,910,000
Total	4,264,744,000	4,395,554,000	130,810,000	2,893,517,000

The SFY 2019-20 Executive Budget proposal provides \$4.4 billion in All Funds appropriations, a net increase of \$131 million (3.1%), reflecting increased capital authority, investment in community-based services, minimum wage and residential stipend enhancements.

Children’s Behavioral Health

The Executive supports the inclusion of \$21.5M for CFTSS provider services from April 1, 2019 - March 31, 2020 and funding of the existing Foster Care per diem, B2H waiver services, and SED HCBS this fiscal year.

A total of \$20M in capital funding reappropriated from 2017 and 2018 will be available to support those children’s behavioral health providers that applied for capital funding in 2018.

State Psychiatric Center Downsizing and Community Reinvestment

In SFY 2019-20, the Executive proposal reinvests \$5.5 million in projected revenue through 2021. This funding proposal represents a reinvestment of \$110,000 into the community for every inpatient bed that is unfilled for 90 days. Reinvestments would be made prior to any bed closures, and before any reduction in bed capacity is implemented, a bed must be vacant for 90 days. Notwithstanding our reinvestment.

In December 2018, there were approximately 320 children's state psychiatric beds still in operation. OMH Commissioner Ann Sullivan has publicly stated she does not predict more capacity reductions will be achieved at CPCs in the future.

Community-Based Supports for High-Needs Individuals in Adult Homes

The Executive Budget proposal provides an additional \$10 million for specialized supports, such as peer support and in-reach, to engage individuals with mental illness who require a higher level of care to transition and live successfully in the community. These resources will be utilized for individuals currently residing in impacted adult homes.

Mid-Hudson Forensic Psychiatric Center Revitalization

The Executive Budget proposal provides an additional appropriation of \$100 million to support the replacement of the Mid-Hudson Forensic Psychiatric Center in Orange County.

Office of Alcoholism and Substance Abuse Services (OASAS)

ALL FUNDS APPROPRIATIONS (dollars)

	Available FY 2019	Appropriations Recommended FY 2020	Change From FY 2019	Reappropriations Recommended FY 2020
State Operations	135,359,000	138,287,000	2,928,000	3,685,000
Capital Projects	100,000,000	90,000,000	(10,000,000)	531,553,000
Aid To Localities	573,405,000	574,051,000	646,000	126,670,000
Total	808,764,000	802,338,000	(6,426,000)	661,908,000

The SFY 2019-2020 Executive Budget proposal recommends \$802 million in All Funds appropriations, including \$574 million for Aid to Localities, \$138 million for State Operations and \$90 million for Capital Projects. This represents a decrease of \$6 million from FY 2019, mainly due to the expiration of legislative one-time appropriations.

Combat Heroin/Opioid Abuse Initiatives

The Executive Budget proposal includes a new \$26M appropriation to support ongoing operational and capital expenditures. The Budget Overview includes an update on the status of OASAS investments:

- An additional \$3.75M appropriation for jail-based SUD treatment and transition services in SFY 2019-20. OASAS also seeks to leverage federal funding to expand MAT in three state prison systems.
- Residential Treatment Beds – 200 new beds came online last year. An additional 260 beds are in development and expected to open over three fiscal years.
- OTP slots – 1,200 OTP slots were in operation last 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

ALL FUNDS APPROPRIATIONS (dollars)

Category	Available FY 2019	Appropriations Recommended FY 2020	Change From FY 2019	Reappropriations Recommended FY 2020
State Operations	2,197,639,000	2,244,027,000	46,388,000	2,380,000
Aid To Localities	2,405,835,000	2,478,267,000	72,432,000	2,117,841,000
Capital Projects	96,400,000	99,400,000	3,000,000	545,648,000
Total	4,699,874,000	4,821,694,000	121,820,000	2,665,869,000

The SFY 2019-20 Executive Budget proposal recommends, in total, approximately \$4.8 billion in All Funds appropriations, including \$2.5 billion for Aid to Localities, \$2.2 billion for State Operations and \$99 million for Capital Projects, which represents a \$121 million increase from last year. The increase supports new investments in OPWDD program priorities, expansion of supportive housing capacity, increased costs related to the minimum wage, investments to support OPWDD’s transition to managed care and anticipated agency operating costs.

Expansion of Housing Supports

The Executive Budget proposal includes \$15M in capital funding to support the development of independent living housing opportunities for IDD/DD individuals.

Transition to Managed Care

The Executive Budget proposal includes provisions to apply Global Cap investments towards costs related to the transition of OPWDD services from FFS to Managed Care. The Executive anticipates an additional \$5M investment will be made available through savings realized through managed care plans.

Elimination of Duplicate Licensure Requirements for OPWDD Providers

The Executive Budget proposal seeks to expand last year’s enacted budget provision eliminating duplicative licensure requirements for providers of integrated services under oversight of DOH, OMH and OASAS at Art. 28, 31 or 32 clinics by including OPWDD and Art. 16 clinics.

Minimum Wage Increase

The Executive Budget proposal supports the annual increase of \$88M to support the minimum wage and related fringe benefit cost increases for OPWDD providers.