TO: MEMBERS OF THE NYS CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS, INC.
FROM: JEREMY DARMAN
DATE: THURSDAY MARCH 28, 2013
SUBJECT: ENACTED BUDGET FOR STATE FISCAL YEAR 2013-2014

Introduction

Today, Thursday March 28, 2013, the State Assembly will be passing all remaining state budget bills, which completes the State Budget process for the 2013-14 State Fiscal Year, which begins this Monday (the Senate passed the final budget bills yesterday). The overall size of the enacted budget is about the same as what the Governor proposed in January, at about $135 billion without counting several billion in one-time federal aid relating to Hurricane Sandy.

There are few major surprises in this budget deal, perhaps with the exception of a provision indefinitely suspending the firearm magazine limit in the NY SAFE Act. At the end of the day there were no changes to any of the mental health provisions of this law.

On the health and mental hygiene side, as you will see, the Legislature restored $30 out of $120 million in cuts to state-share Medicaid funding for OPWDD. It is unknown at this time whether the federal government will match these restored state-share funds; this will determine the actual cash/percentage reduction to Medicaid services in OPWDD settings. The Legislature also restored $25 million to OMH State Operations, to reject the Executive proposal for additional state-operated hospital downsizing in the upcoming fiscal year ($20 million were booked as state hospital savings with another $5 million set aside for reinvestment of closure savings). There was also a major victory in the expansion of prescriber prevails for several drug classes (including antidepressants and atypical antipsychotics) under Medicaid Managed Care, and in the ultimate rejection of the proposal to eliminate prescriber prevails in fee for service.

A victory on the local government unit side was the approval in the final budget of language formally authorizing the continuation of the existing OASAS State Aid Funding Authorization process through State Aid Letters, averting the conversion of this process to 5-year contracts as had been proposed in spring 2012. Many thanks go out to the tireless staff at OASAS, the Division of Budget, Governor's Office, the Senate, and the Assembly for working with the Conference on this item (and many others).

Below I have outlined the final budget status of all Executive Proposals and One-house additions identified in earlier memos this year.

Cross-Agency Items, Healthcare Reform, and Medicaid Redesign

Human Services COLA Deferral

The enacted budget accepts the deferral of the human services agency Cost of Living Allowance for an additional year, until April 1, 2014.

Social Work and Mental Health Practitioner Licensure and Corporate Practice Exemption

The enacted budget extends the exemption for those entities currently covered by the social work and mental health practitioner licensure exemption until **July 1, 2016;** scaling back the Executive proposal for a permanent exemption. This exemption applies to "the activities or services of any person in the employ of a program or service operated, certified, regulated, funded or approved" by OASAS, OMH, OPWDD, DOH, DOCCS, SOFA, OCFS, a local governmental unit, or a local services district. The final budget also **adds the State Office of Temporary and Disability Assistance (OTDA)** and the programs it funds and oversees, to the above list of exempt entities.

In addition to extending the practice exemption, final budget language requires impacted state agencies to develop another report on the unlicensed workforce practicing activities within scope-of-practice, and to submit such report to the State Education Department by September 1, 2014. SED must then develop recommendations for changes to law and regulation, in consultation with the impacted agencies and other stakeholders, to submit to the Legislature by January 1, 2015. The enacted budget also attempts to clarify some activities that are permanently exempt from licensure, including:

a) Non-clinical assessments that are unrelated to a diagnosis or treatment plan. This will most likely not apply to any Medicaid settings which require all care to be based on the diagnosis and treatment plan. However it may help in clarifying general assessments in social services settings.
b) Team-based care, particularly the team-based implementation of a treatment plan, on the condition that such teams include some duly licensed practitioners (e.g., physicians, licensed social workers, psychologists, or mental health practitioners.

Final appropriations bill language exempts any of the above practice-exempt entities from the corporate practice waiver requirement. While current law already exempts such entities from the corporate practice waiver requirements, since they are "otherwise authorized" to provide professional services, there had been some confusion around the intent and potential expiration this corporate practice exemption under to Chapters 130 and 132 of 2010 (the laws that created Education Law 6503-a for the registry, and created exemptions from this waiver in both consolidated and unconsolidated law).

The enacted budget **rejects** the Senate and Assembly One-house proposals for mandatory continuing education of licensed social workers and mental health practitioners, and also rejects their proposal to grant LMSWs to persons with MSWs who have been practicing under supervision.

Medicaid Managed Care Carve-ins and Conforming Language

The enacted budget includes conforming and technical amendments to Public Health and Social Services Law around additional carve-ins to (and conversely, elimination of exemptions from) Medicaid managed care. The final bill has additional requirements around the oversight and monitoring of the transition to managed behavioral healthcare, and requires a study to be performed, as recommended in the Senate and Assembly One-house bills.

- The term "mental health special needs plan" is replaced with "special needs managed care plans" to provide for broader or more diverse SNP possibilities in the future. The Article VII also removes references to "specialty behavioral health plans" in sections of law that first created the "BHO" concept. References to "integrated provider systems" are also removed as an option for specialty managed care designations; this would not otherwise preclude the formation of ACOs authorized under separate sections of law.

- Enacted budget includes language for integrated mental health, substance abuse, developmental disability, and health care treatment to be added as Medicaid covered services, when such services are provided at a "single location or service site." Please note the DOH has also submitted a State Plan Amendment seeking permission for the billing of such integrated treatment services. *This provision is delayed to become effective on April 1, 2014 (rather than 2013) to achieve some DD overpayment plan savings.*

- Enacted budget includes provisions clarifying that OASAS services that are otherwise Medicaid reimbursable and are provided by a CASAC, must be covered by Medicaid Managed Care; and that MCOs must provide enrollees access to OASAS certified facilities even if such services would not be covered outside of the clinic (e.g., CASAC services, which are limited to OASAS settings).

- Enacted budget extends the deadline for the initial designation by DOH/OMH/OASAS of special needs managed care plans on a regional basis ("Phase 2" managed care) from April 1, 2013 to April 1, 2014.

Medicaid Managed Care APG-equivalent Payments for OMH and OASAS Clinics to 2016

The enacted budget extends the OMH APG-equivalency payment (for Medicaid Managed Care) requirement sunset date from March 31, 2015 (Executive proposed) to March 31, 2016. The final budget also approves APG-equivalent rates to OASAS licensed clinics whenever such time that OASAS clinic services are carved into Medicaid Managed Care, and through March 31, 2016.

Health Home Infrastructure

The final budget maintains language authorizing $15 million for health home infrastructure spending; however funding is subject to availability of additional federal revenues during the upcoming fiscal year (e.g. through the still-pending MRT Reinvestment Waiver). DOH will distribute funds based on a formula that will consider factors including "prior access to similar funding, geographic and demographic factors…and prevalence of qualifying conditions, connectivity to providers," and other criteria within their discretion.

Health Home Plus

Funding for specially designated ("Health Home Plus") health homes serving high need health home enrollees including those under Assisted Outpatient Treatment, enhanced voluntary agreements, or being discharged from State psychiatric hospitals, are also subject to currently unavailable federal sources. OMH and DOH continue to work on this model in the event that cash becomes available to implement prior to 2014.

Long Term Care Ombudsman

Funding for Ombudsman implementation is also delayed to April 1, 2014, pending availability of other funds before this time.

Prescriber Prevails for Managed Care and Fee for Service

The final budget rejects the Executive proposal to eliminate "prescriber prevails" for atypical antipsychotics under Medicaid Managed Care, and actually **expands prescriber prevails to several additional drug classes**, including antidepressants, beginning July 1, 2013[1]. Atypical antipsychotics are currently, and will remain, protected under prescriber prevails. The enacted budget also rejects the proposed elimination of prescriber prevails under Medicaid fee-for-service.

The Justice Center for the Protection of People with Special Needs

The enacted budget includes appropriations for the establishment and operation of the Justice Center and the transfer of funds from other state agencies to support the Justice Center. The Justice Center was signed into law at the end of 2012, and must begin operating in July of this year. The Governor has at this point appointed an Acting Executive Director who must now be confirmed by the Senate, and staff are being hired currently under other agency lines. Appropriations for the current oversight agency, the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC) were reduced, as CQC funding and operations will ultimately subsumed by the Justice Center.

Licensed Social Work Psychotherapy Services

The final budget **rejects** the Executive proposal adding individual psychotherapy services provided by "licensed social workers" to persons under the age of twenty one and those requiring those services "as a result of pregnancy or giving birth" to the list of covered Medicaid services.

Adult Homes

The enacted budget includes Executive language authorizing the development of 4,500 ALP beds across the State for existing adult home providers who will be required to reduce the percentage of people with serious mental illness and/or their overall bed census as a result of regulations requiring the phase-out of these "transitional adult homes."[2] While the Senate and Assembly One-house bills added language that would potentially delay the implementation of the Part 580 and 582 regulations and create reports and working groups on these matters, the final budget rejects these One-house proposals.

[1] Covered by prescriber prevails in Medicaid Managed Care in this budget provision are: anti-depressants, anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic classes, including non-formulary drugs.

[2] See Parts 580 and 582 of Title 14, NYCRR as amended in the State Register Volume XXXV, Issue 3 (2013).

Other Items of Interest

Long-term Stable Pension Contributions

The Legislature ultimately rejected provisions in the Governor's Economic Development Budget bill that would have provided the State Comptroller and NYS Retirement System Board the authority to allow local governments and school districts, respectively, to lower their immediate pension contributions by locking in to "long-term stable pension contribution" options. However, the final budget includes a compromise plan for pension contribution stabilization in the Education Labor and Family Assistance bill.

Elimination of Local Reporting

The enacted budget **rejects** the Executive proposal for the elimination of all non-required or unnecessary local reports to the State.

OCFS Closures and Close to Home Initiative

The final budget **rejects** the expansion of the "close to home initiative" to the entire State of New York. "Close to home" currently allows New York City youths in the juvenile justice system to be redirected to receive supports and treatment in their home communities, rather than in OCFS facilities often hundreds of miles from home. The final budget also **rejects** the Executive proposal to authorize the closure of all OCFS non-secure facilities with a 60-day notice, and to eliminate all OCFS operated non-secure facilities by March 31, 2014.

Ethics Ban Exemption for Some Direct Care Professionals Leaving State Service

The final budget **rejects** the Executive amendment to Public Officers Law to provide an exemption from the two-year and lifetime bans by former State employee direct care professionals who move from public to private sector direct care jobs, serving the same individuals.

Agency-Specific Budgets

Office of Alcoholism and Substance Abuse Services (OASAS)

	Executive Proposed	Enacted
State Operations	$117,866,000	$117,866,000
Aid to Localities	$457,496,000	$457,696,000
Capital	$97,606,000	$97,606,000
TOTAL	**$672,968,000**	**$673,168,000**

The enacted budget includes an increase of $200,000 in local assistance, which is a "legislative addition" for the *Queen's Village Committee for Mental Health for J-CAP, Inc.* In addition, the final bill earmarks $14.86 million in existing appropriations for the NYC Department of Education for prevention programs, pursuant to the One-house recommendations. Funds in all other areas remain the same as the Executive proposed.

OASAS-related Article VII Items:

State Aid Funding Authorization (SAFA)
The enacted budget accepts, with some modification, language authorizing the continuation of State Aid Funding Authorizations under the current LGU State Aid Letter process. In addition, Mental Hygiene Law Section 26 is repealed, and Section 25 renamed and amended to include most provisions previously included in Section 26. The SAFA provisions would address the ongoing issues raised by the State Comptroller's Office, which nearly led to OASAS converting SAFAs to 5-year local contracts in 2012; something many localities identified as nearly impracticable. The main modification in the final language would be to allow for provider corrective-action plans to be implemented prior to state aid reductions related to program performance issues.

Inpatient Rate-setting
The enacted budget accepts the modification of rate-setting by DRGs (diagnostic related groups) for hospital-based inpatient detoxification and withdrawal services, which are currently identified in Public Health Law. Final budget language would eliminate specific DRGs from statute, thus allowing DOH to set rates administratively and publish them on their website.

State Methadone Registry
The enacted budget accepts changes to Mental Hygiene Law for the methadone registry maintained by OASAS to record dosage information, so that other providers could access it in the event that a natural disaster or other emergency limits a patient's access to their main methadone program. During Hurricane Sandy, some methadone programs took on many patients from clinics that were forced to close. These "host" clinics were able to verify a person's enrollment in a methadone program through the patient registry but were not able to know or verify the proper dosage.

Temporary Operators

The enacted budget accepts, with modifications, the inclusion of a new section 32.20 of Mental Hygiene Law to establish criteria and protocol for temporary operators of OASAS certified programs, when there are serious programmatic deficiencies or financial instabilities that could threaten access to necessary OASAS services in a community. The budget also includes a similar section for adult care facilities in similar circumstances (amending Public Health Law). The final budget language limits the criteria under which OASAS could propose temporary operatorship.

Office of Mental Health

	Executive Proposed	Enacted
State Operations	$2,077,130,000	$2,102,130,000
Aid to Localities	$1,298,434,000	$1,297,244,000
Capital	$196,955,000	$196,955,000
TOTAL	**$3,572,519,000**	**$3,596,329,000**

Enacted appropriations for the Office of Mental Health include several modifications from the Executive proposal:

- Adds $25 million to state operations to "buy" their rejection of hospital closures and the notwithstanding of community reinvestment and one-year notice requirements.
- Cuts $5 million in local assistance which the Executive had appropriated for targeted reinvestment associated with state bed closures (which now cannot take place within one fiscal year under the enacted budget language).
- Adds $3.8 million in "legislative additions" to local assistance (thus the $1.2 million net reduction in local assistance):
    - $350,000 for counties impacted by state bed closures in the 2011-12 fiscal year;
    - $175,000 for the Nathan S. Kline Institute for Psychiatric Research;
    - $50,000 for the Mental Health Association of New York State;
    - $100,000 for the North Country Behavioral Healthcare Network;
    - $300,000 for the NLP Research and Recognition Project;
    - $2,285,000 for veteran peer-to-peer pilot programs;
    - $150,000 for Unlimited Potential, Inc.;
    - $100,000 for Warrior Salute program;
    - $300,000 for FarmNet.

Housing

The final budget maintains the $27 million in appropriations for housing those persons impacted by the DAI v. Paterson and Joseph v. Hogan lawsuits, addressing adult home and nursing home resident with serious mental illness, respectively. Development and funding of supportive housing continues across the State, with budget documents outlining OMH housing development as follows:

- 1,000 supported housing units (400 by end of 2014) for current nursing home residents
- 4,000 supported housing units (1,400 by end of 2014) for current adult home residents
- 3,400 beds (634 by end of 2014) for the homeless housing program in NYC

OMH Facility and Ward Closures/Consolidations
The enacted budget **rejects** the Executive proposal for the Office of Mental Health to "close, consolidate, reduce, transfer or otherwise redesign" OMH-operated services, and to implement any other measures necessary for more cost-effective and efficient state-operated care of people with psychiatric disabilities. The final budget also **rejects** the proposal to "notwithstand" community reinvestment and closure notification requirements. *This will not necessarily preclude the Executive proposal to develop Regional Centers of Excellence, but it will impede the OMH's ability to downsize in the current fiscal year.*

Mental Health Incident Review Panels
The enacted budget modifies the Executive proposal to create a new Section 31.37 Mental Hygiene Law to allow for the creation and operation of "Mental Health Incident Review Panels," which would convene after a serious incident involving a person with mental illness takes place in the community. Such incidents would involve a person with a serious mental illness being either the alleged perpetrator **or** the victim of an incident leading to physical injury, a serious and preventable medical complication, or a criminal incident involving violence. The panels would include local governmental units, OMH staff, and other potential representatives from the community (at the discretion of OMH; however LGUs have a guaranteed seat). These panels would review incidents and their potential causes, and work on quality improvement measures to prevent such incidents from occurring in the future. Findings could lead to further investigations and sanctions by OMH in certain instances.

One change in the final language allows for a panel to be established pursuant to the recommendation of a local governmental unit, which goes beyond the Executive language which only recognized the convening of a panel at the direction of the State Office of Mental Health; however even with the LGU recommendation, OMH would still make the final determination of whether to establish a panel.

Exempt Income Recovery from Family Based Treatment Programs
The enacted budget modifies the Executive proposal to make permanent the authority to recover exempt Medicaid income from community residence providers. Final language extends OMH authority to recover these funds for an additional year, to April 2014.

OMH Central Office Appointment Authority
The enacted budget accepts provisions giving the OMH Central Office (the Commissioner) full appointment authority over the agency's workforce. Currently, the director of each state-operated psychiatric facility has his or her own authority to appoint and transfer staff. Language was added to the final bill to clarify that the expanded Central Office authority would not impair existing civil service or union agreements.

SOMTA Examination Technical Amendments
The final budget **rejects** technical amendments around the timeframe for performing examinations of inmates committed under the Sex Offender Management and Treatment Act.

Community Reinvestment and Community Services Board Extensions
The final budget extends to March 31, 2015 (one year longer than the Executive proposal) several provisions of Mental Hygiene Law that were due to expire. This includes the Community Reinvestment Law and provisions of Article 41 relating to the composition of Community Services Boards and their subcommittees.

Office for People With Developmental Disabilities

	Executive Proposed	Enacted
State Operations	$2,083,756,000	$2,083,756,000
Aid to Localities	$2,360,091,000	$2,390,141,000
Capital	$168,950,000	$168,950,000
TOTAL	**$4,612,797,000**	**$4,642,847,000**

FIDA, DISCOs, and Managed Care of Developmental Disabilities
The final budget accepts language authorizing the Fully Integrated Duals Advantage, or "FIDA" program for Medicare/Medicaid dual-eligibles with developmental disabilities who will be enrolled into up to three existing Managed Long Term Care Programs that would be permitted to exclusively enroll people with developmental disabilities. The pending federal waiver for FIDA would permit New York to share in some of the federal Medicare savings for duals, which it has not been able to do up to this point.

The Article VII bill also contains enabling statute for DISCOS, which stands for "developmental disability individual support and care coordination organization," which for those unfamiliar with the concept are essentially risk-bearing provider networks. The DISCO language is extensive and detailed, including specific criteria for provider eligibility, operating standards, and financial reserves.

A final managed care provision would amend the Public Health Law to permit HMOs to expand their "comprehensive health services plan[s]" to include developmental disability services and supports. Such HMOs would be required to demonstrate their ability to provide and/or coordinate care for individuals with developmental disabilities in accordance with criteria to be established by DOH and OPWDD.

In addition to accepting much of the Executive proposal, the enacted budget includes an additional section outlining the legislative intent for a **People First Waiver**, and the principles under which any sort of managed developmental disabilities care should be delivered and overseen. Further, a Mental Hygiene Law 13.40 will establish a **Joint Advisory Council** charged with advising OPWDD and DOH on the oversight of DISCOs, HMOs, and Managed Long Term Care Plans for people with developmental disabilities. Three members of this new advisory council will also be appointed to the existing Special Advisory Review Panel on Medicaid Managed Care.