



TO: MEMBERS OF THE NYS CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS
FROM: COURTNEY DAVID, DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: April 17, 2020
SUBJECT: NYS SFY 2020-21 ENACTED BUDGET ANALYSIS

GENERAL OVERVIEW

On April 3rd, two days past the start of the State's new fiscal year, the Legislature approved a \$177 billion "crisis" budget amidst a pending revenue shortfall estimated at \$10-\$15 billion due to the COVID-19 outbreak.

Several of the Governor's priorities outlined in his Executive Budget proposal were not approved as part of the Enacted Budget, including cannabis legalization and the authorization to shift Medicaid costs on to the counties.

The last few weeks leading up to final negotiations, the Governor and Legislature had suggested moving towards a bare bones/fiscal only budget in the wake of the financial uncertainty created by the COVID-19 virus. However, just days before the budget was due, lawmakers pivoted and agreed to include several policy initiatives that included various changes to bail reform, a ban on vaping products, and a single statewide formulary for opioid addiction medications, just to name a few. Final negotiations also resulted with the Governor obtaining sole authority for the Division of Budget to implement any mid-year spending cuts "as deemed necessary" to adjust for any additional revenue losses from COVID-19 that would not be sufficiently supplanted by federal stimulus funds.

Additionally, the final budget included millions in funding for continued programs and various new initiatives including, Raise the Age implementation, \$5 million to expand homeless housing for veterans through the Homeless Housing Assistance Program (HHAP) and \$2 million for the continuation of the Joseph Dwyer Peer to Peer Veterans Programs. Lawmakers also agreed to move forward with implementation of several of the MRT II team's recommendations for various structural changes to the State's Medicaid Program.

As the State remains in a holding pattern with COVID-19, it remains to be seen whether or not the Legislature will reconvene after April break, be it remotely or back at the Capitol to finish out the rest of the Regular Legislative Session scheduled to conclude on May 27th.

CLMHD BUDGET PRIORITIES FOR SFY 2020-21

100% cost shift to counties of 730.20 CPL competency restoration costs

CLMHD strongly advocated for amendments to the Mental Hygiene Law (MHL) Section 43.03 to reverse the Governor's proposal of a 100% cost shift to counties for costs associated with Criminal Procedure Law (CPL) 730.20 competency restoration at OMH Forensic Psychiatric Centers. Existing law allows the State to bill counties for the full cost of 730.20 CPL competency restorations, however a 50/50 cost share has been in place since the enactment of the statute several decades ago. This year, the Executive through an administrative action by OMH proposed a full shift of these costs on to the counties. Despite our best efforts and garnering wide ranging support from numerous majority Senators and Assembly members, in the final hours of negotiations we were unsuccessful and the administrative action was included as part of the final Enacted Budget.

Effective April 1, 2020, Counties and NYC will be billed for 100% of the per diem cost of 730.20 competency restoration at OMH PCs.

10% Reduction in OASAS & OMH Administration Funding to the LGUs

CLMHD efforts to reject this proposal were defeated in the final Enacted Budget.

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, OASAS and the Legislature were successful and have resulted in a \$3.75M allocation in the Enacted Budget to support the continuation of jail-based SUD programs. The appropriation language mirrors that of 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.

Bring it Home Campaign/OMH Supported Housing

The Enacted Budget includes \$20 million for existing OMH supported housing rates in SFY 2020-21 and includes another \$60 million in OMH housing preservation capital funding to maintain and preserve community-based residential housing.

#3for#5 Campaign – Human Services Sector Investment

CLMHD was proud to be a part of the #3for#5 campaign comprised of over 40 human services and behavioral health advocacy groups. The 3for5 Campaign advocated for a 3% percent funding increase every year for the next five years in funding to support the growing and unsustainable costs of operations of all not for profits in the human services sector. Despite our best efforts the increase was not included in the Enacted Budget, however the Executive's proposal to provide direct service providers with a targeted 2% salary increase, effective April 1, 2020 was accepted.

OTHER AREAS OF INTEREST

Behavioral Health Parity Compliance Fund

The Enacted Budget accepts the Executive's proposal and 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 Enacted Budget rejects the Executive’s proposal to establish voluntary jail-based competency restoration programs in SFY 2020-21.

Homeless Housing and Assistance Program (HHAP)

The Enacted Budget accepts the Executive’s proposal to increase HHAP funding from \$64M to \$128M.

Homeless Veteran Housing

The Enacted Budget accepts the Executive’s proposal to include \$5M for the expansion of permanent supportive housing for homeless veterans through HHAP.

FULL ANALYSIS –AGENCY PROPOSALS

Department of Health (DOH)/Medicaid

ALL FUNDS APPROPRIATIONS (dollars)

	Executive Proposed	Enacted	Difference
State Operations	\$2,506,470,000	\$3,505,297,000	\$998,827,000
Aid to Localities	\$85,795,089,100	0	(\$85,795,089,100)
Capital	\$206,170,000	\$212,170,000	\$6,000,000
TOTAL	\$88,507,729,100	\$3,717,467,000	(\$84,790,262,100)

(The Enacted Budget did not include new DOH appropriations as part of the Aid To Localities bill. CLMHD staff is seeking further clarification and will update you as soon as more information is available.)

Reforming Medicaid

Medicaid through the Medicaid Redesign Team (MRT) II initiative.

The Enacted Budget accepts several of the MRT II recommendations put forth and approved by the MRT II Team on March 19th, focused on restoring financial sustainability to the Medicaid program which was already experiencing a \$4 billion deficit, and makes various structural changes and cuts in order to generate billions of dollars in savings.

- The Enacted Budget includes expansion to increase access to telehealth services, including behavioral health and includes, but is not limited to, audio-only telephone communications, online portals and survey applications. These changes are part of federal waivers related to COVID-19.
- The Enacted Budget includes pilot programs for medically tailored meals (MTM) for those with highly prevalent and costly conditions, medical respite programs for homeless individuals, and a street medicine proposal that allows hospitals to provide services to chronically ill individuals outside of a clinical setting.

- Subject to federal participation and effective April 1, 2021, the Enacted Budget authorizes the Commissioner of Health to contract with one or more transportation management brokers to provide non-emergency Medicaid transportation (NEMT) services. NEMT transportation is currently provided through a transportation “manager” as opposed to a transportation broker. The Transportation Broker(s) would be selected through a competitive bid.
- The Enacted Budget includes a carve-out of the Medicaid pharmacy benefit from managed care to fee-for-service. Prescriber prevails which applies to Medicaid fee-for-services enrollees and requires Medicaid to approve prior authorization of a prescription drug regardless of whether clinical criteria is met remains intact, which includes atypical antipsychotics, and anti-depressant medications. Additionally, a single State formulary will be created for Medication Assisted Treatment (MAT) for opioid use disorder (OUD). Medications added to this formulary will not be subject to prior authorization.

Health Homes

The Enacted Budget provides \$558,705,000 in funding for the Health Home program which represents a \$32 million (state share) cut to the program. This is in addition to DOH’s 1% Across the Board cut (ATB) to Medicaid providers effective January 1, 2020 and the additional .5% ATB reduction in the Enacted Budget.

As with the January 1, 2020, the additional ATB cuts to Medicaid providers in Art. 31 and 32 clinics will not apply. Health Homes Serving Children (HHSC) were subject to the 1% ATB for the first quarter of 2020, however will not be subject to the cuts going forward.

Requiring Enhanced Local District Medicaid Controls

The Enacted Budget rejects the Executive’s proposal to increase the cost to localities by \$150 million. Defeating this proposal was NYSAC’s top budget priority which resulted in a major win for the counties.

Medicaid Global Cap

The Enacted Budget maintains the statutory growth cap and increases to 4% through SFY 2020-21.

Expands Authority of the Office of Medicaid Inspector General (OMIG)

The Enacted Budget approves the Executive’s proposal to allow the OMIG to issue penalties for failure to comply with medical standards in a “substantial number of cases” or for “grossly and flagrantly” violating those standards. Penalties will also be issued where the OMIG was not granted timely access to records on reasonable notice, when a provider fails to report overpayments, or when a provider contracts with a person or entity that has been suspended or excluded from Medicaid.

Prescription Drug Pricing and Accountability Board

The Enacted Budget accepts the Executive’s proposal to 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 Enacted Budget rejects the Executive’s proposal includes provisions to regulate the registration and licensure of PBMs.

Comprehensive Nicotine Vaping Agenda

The Enacted Budget accepts the Executive’s proposal to include provisions to reduce nicotine and tobacco use in New York.

Office of Mental Health (OMH)

ALL FUNDS APPROPRIATIONS (dollars)

	Executive Proposed	Enacted	Difference
State Operations	\$2,274,533,000	\$2,276,233,000	\$1,700,000
Aid to Localities	\$1,645,317,000	\$1,647,509,500	\$2,192,500
Capital	\$534,472,000	\$534,472,000	0
TOTAL	\$4,454,322,000	\$4,458,214,500	\$3,892,500

The Enacted Budget includes \$4,458,214,500 in All Funds spending in SFY 2020-21

Funding is continued for the following programs approved in last year’s budget:

Local Appropriations:

- \$118K for comprehensive care centers for eating disorders
- \$1M for Suicide Prevention Efforts for Veterans, First Responders, Law Enforcement and Correction Officers
- \$175K for the South Fork Behavioral Health Initiative
- \$2M for the Joseph P Dwyer Veteran Peer to Peer Program

Sub Schedule:

Broome County	92,500
Cattaraugus County	67,500
Chautauqua County.....	92,500
Columbia County	50,000
Dutchess County	92,500
Erie County	92,500
Genesee, Orleans, and Wyoming Counties	92,500

Jefferson County	92,500
Monroe County	92,500
Nassau County	92,500
Niagara County	92,500
Onondaga County	92,500
Orange County	92,500
Putnam County	92,500
Rensselaer County	72,500
Rockland County	92,500
Saratoga County	92,500
Suffolk County	92,500
Warren and Washington Counties	92,500
Westchester County	92,500
University at Albany School of Social Welfare	105,000
New York City	150,000

Enhance Support for Existing OMH Residential Programs

The Enacted Budget provides an additional \$20 million for existing community-based residential housing programs.

Streamline the Pre-Admission Certifications Committee (PACC) eligibility Process for Children’s Residential Treatment Facilities (RTFs)

The Enacted Budget amends the Mental Hygiene Law to eliminate the outdated and burdensome Pre-Admission Certification Committee (PACC) process for determining admission to a Residential Treatment Facility (RTF) for youth under age 21. The Office of Mental Health (OMH), in consultation with Office of Children and Family Services (OCFS) and State Education Commissioner have the authority to establish in regulation the standards and priorities for admission to an RTF. The law takes effect on July 1, 2020.

The law also creates a new Advisory Board established by the OMH Commissioner, in consultation with the Executive Director of the Council on Children and Families (CCF). The Advisory Board will include various stakeholders, and will work closely with the Commissioners of both OCFS and OMH as a cross systems oversight entity to track trends and lead cross systems efforts to better meet the needs of complex children, youth, and families.

CLMHD staff has confirmed that SPOA and the LGUs will continue to have a key role in eligibility determination.

OMH Employees to Secure Treatment Rehab Center

The Enacted Budget accepts the Executive’s proposal to require OMH to establish a separate appointing authority of secure treatment and rehab center for the care and treatment of dangerous sex offenders requiring confinement, and all OMH employees treating such sex offenders will be transferred to the secure treatment and rehab center.

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)

	Executive Proposed	Enacted	Difference
State Operations	\$139,623,000	\$139,623,000	0
Aid to Localities	\$591,464,000	\$594,064,000	\$2,600,000
Capital	\$90,000,000	\$90,000,000	0
TOTAL	\$821,087,000	\$823,687,000	\$2,600,000

The Enacted Budget includes \$823,687,000 in All Funds spending for SFY 2020-21

Banning Fentanyl Analogs

The Enacted Budget modifies the Executive’s proposal to makes statutory changes necessary to update the State’s Schedule I and II lists of controlled substances by restricting automatic scheduling of related substances.

Combat Heroin/Opioid Abuse Initiatives

The Enacted Budget includes the following OASAS investments:

- \$3.75M appropriation for jail-based SUD treatment and transition services in SFY 2020-21
- MH/SUD Ombudsman Program - \$1.5M in annual funding to support the State’s new Ombudsman Program, established in 2018
- \$350,000 Recovery & Outreach Center
- \$250,000 for an additional Adolescent Clubhouse
- \$2M for NYC Ed hiring of SUD specialists
- \$600K for Family and Children’s Association

Office of People with Developmental Disabilities (OPWDD)

ALL FUNDS APPROPRIATIONS (dollars)

	Executive Proposed	Enacted	Difference
State Operations	\$2,244,149,000	\$2,244,149,000	0
Aid to Localities	\$2,649,282,000	\$2,649,282,000	0
Capital	\$108,600,000	\$108,600,000	0
TOTAL	\$5,002,031,000	\$5,002,031,000	0

The Enacted Budget includes \$5,002,031,000 in All Funds spending in SFY 2020-21

Funding for local initiatives:

- \$8.7M for services related to hepatitis B, Care at Home waiver, epilepsy services, Special Olympics NY and voluntary fingerprinting

Changes to Requirements for Home Care Developmental Disability Providers.

The Enacted Budget makes changes to requirements for health home providers of services to those with a developmental disability, including provisional credentialing pending a criminal background check.

Extends Residential Alternative Law

The Enacted Budget extends current law related to closure or transfer of a state-operated individualized residential alternative (IRAs) to 2022.

Expansion of Housing Supports

The Enacted Budget accepts the Executive’s proposal and includes \$15 million for independent living and supports for IDD/DD individuals.

Authority to Issue Operating Certificates

The Enacted Budget 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.