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Governor's Cuomo's Executive Budget Proposal for FY 2021-22

A Framework Built on Federal Relief To Avoid Major Cuts, Tax Increases & Borrowing

Facing a deficit of \$15 billion, Governor Cuomo announced his FY 2021-22 Executive Budget on Tuesday, January 19 where he outlined two options: one that advances an aggressive post-COVID plan focused on reconstruction and one that provides for a much less optimistic scenario should the federal government fail to provide \$15 billion in relief funding. Absent such assistance the State would be forced to raise revenue, cut expenses, and borrow. With adequate Federal support, however, the Executive Budget would advance the Governor's plan to reimagine, rebuild, and renew New York.

As the timing and amount of new Federal aid, if any, was still unknown when the FY 2022 Executive Budget was released, the Executive has taken a very conservative approach to the State's Financial Plan. While the Governor has asked Congress for \$15 billion in COVID relief, the Executive Budget (and accompanying summary) assumes only \$6 billion in new aid, a number the Division of the Budget (DOB) pegs at the lower end of the spectrum of need. The aid in the Financial Plan is apportioned evenly over two years, with \$3 billion in both FY 2021-22 and FY 2022-23. If the federal aid comes in at lower level than expected, the FY 2021-22 Executive Budget proposal includes difficult spending cuts in local aid and agency operations as well as tax increases which the Executive asserts will slow the State's economic and fiscal recovery.

Spending Cuts and Tax Increases that could potentially befall the state include:

- Spending reductions in planned local aid spending are expected to provide savings of \$2.2 billion in FY 2020-21 and \$3.4 billion in FY 2021-22 compared to the base forecast.
- School Aid: State funding for school districts is reduced, largely through the consolidation and reduction of certain expense-based School Aid categories and a Local District Funding Adjustment against other reimbursements to districts. However, due to the significant additional federal aid for school districts through the Coronavirus Response and Relief Supplemental Appropriations Act, total district support increases by approximately 7.1 percent in FY 2021-22. (FY 2021: \$0; FY 2022: \$1.5 billion).
- Medicaid: Savings in FY 2020-21 are achieved by reducing rates paid to managed care and long-term care insurance carriers based on lower health care utilization due to the pandemic, the use of available balances, and revisions to estimated costs. In FY 2021-22, savings are mainly achieved from across-the-board reductions and the use of available resources to support spending. Spending under the Global Cap is expected to increase at the indexed rate.
- A PIT Temporary High-Income Surcharge on taxable income over \$5 million, effective tax years 2021 through 2023. Affected taxpayers may opt to prepay Tax Years 2022 and 2023 through 2021 estimated payments. If they select this option, they will receive a repayment via a tax deduction in Tax Years 2024 and 2025.

- Delaying the Middle-Class Tax cut for 1 year by maintaining the 2020 tax rate for 2021. The 2021 tax rate would take effect in 2022, the 2022 tax rate in 2023 and so on until fully phased in by 2026, instead of 2025 as originally scheduled.
- The authorization of mobile sports betting is expected to bring in new revenue for education.
- The legalization of adult use of recreational marijuana is anticipated to raise \$20 million in tax revenue in FY 2021-22. (detailed overview of the proposal enclosed)
- Impose a DMV Convenience Fee. In an effort to limit the number of required DMV office visits per the COVID-19 safety protocols, the Budget would impose a \$1 per transaction fee for each license and registration transaction executed. Revenues from this fee would be used to maintain and improve DMV's technology systems and infrastructure to ensure customer access to online transactions.

Should the federal government come through for the state and approve the Governor's full request for \$15 billion in federal aid it would enable the State to reverse or modify many of these difficult proposals. In anticipation of this possibility, the Executive Budget includes a contingency appropriation to enable restorations.

Summary of Health & Mental Hygiene Article VII/Appropriations (Covers Pertinent Parts of Budget Bill)

PART A- Extend the Medicaid Global Cap

Extends the Medicaid Global Spending cap through March 31, 2023 and continues to tie growth in the Cap amount to the 10 year rolling average of the Medicaid Consumer Price Index. The executive budget caps SFY 2021-22 DOH Medicaid expenditures at \$23.17 billion and SFY 2022-23 expenditures at \$25.23 billion.

Medicaid

The number of individuals added to Medicaid grew by more than 950,000 due to the large increase in unemployment. Medicaid Savings in FY 2020-21 are achieved by reducing rates paid to managed care and long-term care insurance carriers based on lower health care utilization due to the pandemic, the use of available balances, and revisions to estimated costs. Other Medicaid provisions of note:

- implement a one percent across-the-board reduction (\$94 million);
- Reduce Medicaid rates for the Office for People with Developmental Disabilities (OPWDD) programs by one percent (\$6.98 million);

PART B- Pharmaceutical-Related Recommendations

- (1) Bill makes statutory changes to Social Services Law to better align non-prescription drugs with Federal Medicare Part D program and gives the commissioner authority to modify the reimbursable drug lists through regulation change without prior notice or comment. Projected budget savings: \$8.7 million.
- (2) Repeal of prescriber prevails under Medicaid Fee-for-Service and Medicaid Managed Care (Part B, Lines 14-27 on page 8, 1-2 on page 9). Projected savings: \$6.7 million.

Part F - Telehealth

- Removes the restriction that patient receiving health care services via telehealth be at a health care setting such as clinic, physician's office, diagnostic and treatment center etc.
- Establishes interoperability of health information exchanges with SHIN-NY and requires qualified entities to permit access to all of a patient's information by all SHIN-NY participants or anyone else

authorized to access such information after consent is obtained using a single statewide SHIN-NY consent form approved by DOH and published by DOH on its website.

- Requires the State Education Commissioner in consultation with the commissioners of DOH, OMH, OASAS, and OPWDD to promulgate regulations establishing an interstate licensing program authorizing practitioners licensed contiguous to New York or in the northeast region to provide telehealth services to individuals located in New York. Emergency regulations can be promulgated but final must be issued no later than March 31, 2022 and must take "...into consideration the need for specialty practice areas with historical access issues."
- Amend the insurance law to require insurers and health plans to have an adequate network to provide telehealth for services covered under the policy.
- Requires physicians and other health care professionals, group practices, hospitals and diagnostic and treatment centers to disclose on their website if they offer telehealth services.
- Budget projects telehealth proposals will yield \$39.5 million in state share savings in FY 2022 and \$58.0 million in FY 2023.
- Noticeable components not included:
 - Reconciliation of differing definitions of telehealth under Public Health Law and Insurance Law in order to preserve audio-only
 - Payment parity with in-office visits
 - Authorization to use out-of-network benefits for telehealth

Part G - Authorization & Implementation of Medical Respite Pilot Programs

-Amends the Public Health Law to authorize implementation of medical respite pilot programs. The program is designed to assist individuals who lack access to housing, are at increased risk of adverse health outcomes and who would otherwise "...require a hospital stay." The goal of the pilot program is to reduce unnecessary "...hospital inpatient admissions and lengths of stay, hospital readmission and emergency room use."

-Highlights of the pilot program:

- DOH Commissioner is authorized to license or certify a not-for-profit corporation as medical respite program.
- Medical respite program would be required to provide: (1) temporary room and board; and, (2) provide, or arrange health care and support.
- Authorizes DOH Commissioner to promulgate rules and regulations regarding review and approval of applications to be a medical respite program and also allows Commissioner to inquire about operations and conduct periodic inspections. The regulations would also specify the following: (1) recipient eligibility, (2) mandatory services that must be provided; (3) physical environment; (4) staffing; and (5) policies and procedures governing health, safety, length of stay, referrals, discharge and coordination of care.

-Budget projects medical respite program would yield \$1.3 million in state share savings in FY2022 and \$1.7 million in state share savings in FY 2023, mainly through lower hospitalization costs.

Part H- Eliminate Essential Plan Premiums

This part of the bill changes the title of the Family Health Plus Plan to the Basic Health Plan.

The bill eliminates the \$20 monthly premium requirement for enrollees with an income level between 150 and 200 percent of the Federal Poverty level, eliminating most if not all, premiums for members in the Essential Plan.

PART I- NYS of HEALTH Marketplace Federal Waiver Authorization

This part of the bill amends section 268-c of the PHL to add language authorizing the Commissioner to apply for federal waiver authority for the New York State Marketplace.

Part J- Authorizes Provisions to Protect Consumers From High Drug Prices and Surprise Billing

This part of the bill amends New York state Insurance Law by adding a new Article 29 which would regulate the registration and licensure of Pharmacy benefit Managers (PBM). Key elements Article 29 addresses are:

- PBM registration requirements
- PBM licensure
- Examination of a PBM's practices by the superintendent
- PBM reporting requirements regarding pricing discounts and other PBM benefits received by the PBM.
- Penalties for PBM violations

Costs for DOH implementing the regulation of PBM's would be supported by assessments charged to Pharmacy benefit managers.

Part K – 50% Reduction in State Support for Physicians Excess Medical Malpractice Program Along with One Year Extension of Program

The budget proposes extending the Excess Medical Malpractice Insurance Program for one year but would require physicians to pay 50% of the cost of the policy, which was recommended last year by the Medicaid Redesign Team but not adopted in final budget. The change is expected to yield \$51.1 million in total net savings in FY 2022 and \$25.5 million in FY 2023.

Part L – Modify General Public Health Works (GPHW) Reimbursement

-Amends the Public Health Law to limit State reimbursement to NYC under the "General Public Health Works" program to 10 percent, which would yield \$20 million in total net savings for FY 2022 and \$38.5 million when fully annualized.

Part N – Elimination of E-Prescribing Exemptions

- Eliminates the exemption from e-prescribing mandate for those who received waiver or certified he or she only issues 25 or fewer prescriptions during 12-month period. Veterinarians would also no longer be exempted from e-prescribing. If adopted, this change would take effect on November 1, 2021.

Part P – Pharmacist Scope of Practice; Collaborative Drug Management & Immunizations

- Adds pharmacists to list of qualified professionals able to order certain lab tests.
- Authorizes pharmacists and nurse practitioners to administer immunizations recommended by CDC to adults.
- Codifies Executive Order authorizing NPs may prescribe and order any patient specific or non-specific immunization recommended by the ACIP for patients 18 years or older (codifying EO)
- Authorize pharmacist to serve as a referring healthcare provider for diabetes self-management education and asthma self-management training.
- Repeals the expiration of the hospital-based collaborative drug therapy demonstration and expands it to include nurse practitioners as well as authorizing pharmacists to prescribe in order to adjust drug regimen.

Part Q – Office of Professional Conduct

- Clarifies circumstances under which indefinite licensure of physicians would no longer apply such as instances where licensee is stricken from roster by Board of Regents on order of OPMC or licensee failed to register for two consecutive registration periods;
- Requires finger printing prior to licensure;

- Expands and clarifies the definition of professional misconduct to include: failure to respond to written communications from DOH within 10 days; willfully harassing, abusing or intimidating a patient's caregiver or surrogate; failure to notify DOH within 24 hours of being charged with a crime in ANY jurisdiction.
- Executive Secretary of the Board for Professional Medical Conduct serve at the direction of the DOH Commissioner instead of the chairperson. The Commissioner will appoint, direct, and fix the annual salary of the Executive Secretary.
- Allows DOH to immediately publish physician charges upon investigative requests, and the immediate convening of an investigative committee, eliminating the current ninety-day threshold; grants DOH discretion in disclosing certain OPMC investigations.
- Hospital must provide notification to any entity providing personnel to perform professional services at such hospital that a particular individual may not be assigned due to alleged mental or physical impairment, incompetence, malpractice or misconduct or impairment of patient safety or welfare.
- Administrative warnings shall be made public.
- Expands grounds for summary action to stop physician from practicing if DOH commissioner in his or opinion finds there is "a risk" present.
- Expands the information required to be included in physician profile to include hours of operation, availability of assistive technology and whether he or she is accepting new patients. Physician may authorize a designee who is employed by the physician or practice update the physician profile.

Part R – Elimination of Barriers for Gender Recognition on Identity Documents & Name Changes for Transgender and Gender Non-Conforming New Yorkers

- Amends the Civil Rights Law to remove the requirement that applications for name changes be accompanied by a designated newspaper.
- Amends Civil Right Law to establish a process for petitioning court to change sex designation or gender designation.
- Effective 180 days after enactment.

Part S- Extend Various Provisions of the Public Health and Social Services Laws

This part of the bill would provide extensions to various expiring statute and maintain provisions intended to provide Medicaid and health savings. Key elements are as follows:

- The Nurse Practitioner Modernization Act is extended through June 30, 2027. This allows Nurse practitioners in the first 3,600 hours of practice to maintain written practice agreement with physician and those over to 3,600 hours to self-attest and maintain a record of collaborative relationships.

Part T- Representative Payee

- Extends for three years the authority of OMH and OPWDD facility directors to served as representative payees and use funds for the cost of a resident's care and treatment.
- Enactment of this extension avoids a revenue loss of \$7 million from OMH and \$63 million from OPWDD on an annual basis.

Part U – Extend authority of OMH & OPWDD to appoint temporary operators

- Extends for five years the law authoring OMH and OPWDD to appoint temporary operators in instances where it may be necessary to maintain a program's viability and protect health and safety.

Part V – Extend demonstration programs for inpatient psychiatry units

- Extends demonstration programs providing children and adults with specialized inpatient psychiatry units through March 31, 2024.

Part W – Community Reinvestment

- Extends for three years (through FY 2024) current law requiring OMH to reinvest savings from inpatient bed closures for community mental health services.

Part X – Reduction in inpatient psychiatric beds, Rockland Psychiatric Center

- Authorization to make additional reductions in beds in state psychiatric facilities in FY 2021-22.
- Authorize the conversion of Rockland Children's Psychiatric Center into a "Comprehensive Children's Center"
- Suspend for one year the requirement to reinvest savings from facility closures into community-based services. Executive budget proposes reduction of 200 inpatient OMH beds generating a savings of \$22 million that would not be reinvested.

Part Y - OASAS

- Authorizes OASAS to set licensing standards and scopes of practice for credentialed alcoholism and substance abuse counselors and certified peer recovery advocates and allows OASAS to set fee for establishment, certification and recertification of addition programs and services.
- Effective April 1, 2021.

Part Z – Fines By OMH

- Amend OMH's Commissioner authority to impose a fine, which is currently not to exceed \$1,00 per day for \$15,000 per violation to instead authorize commissioner to develop a schedule of sanctions.
- Authorizes OMH Commissioner to establish a schedule of fees for processing applications for the issuance of operating certificates.

Part AA – Comprehensive Crisis Reform

Subpart A – Crisis Reform

- Authorizes OMH and OASAS to jointly license crisis stabilization centers.
- Authorize law enforcement, directors of community services or the courts to take or order individuals into crisis stabilization centers.
- Crisis stabilization centers would serve as emergency service provider for individuals with psychiatric or substance use disorder who are in need of "crisis stabilization services." These centers shall provide OR contract to provide services 24/7 including: (a) engagement, triage and assessment; (b) continuous observation; (c) mild to moderate detoxification; (d) sobering services; (e) therapeutic intervention; (f) discharge and after care planning; (g) telemedicine; (h) peer support services; and (i) medication assisted treatment.
- Each crisis stabilization center would be required to submit plan prior to receiving operating certificate addressing the following: (a) center's catchment area; (b) description of center's crisis stabilization services; (c) agreements or affiliations with state psychiatric hospitals; (d) agreements or affiliations with general hospitals or law enforcement to receive persons; (e) description of local resources available to prevent unnecessary hospitalizations; (f) description of linkages to local police agencies, emergency medical services, ambulance services and other transportation agencies; (h) description of resources available to crisis center to provide appropriate services upon release; (i) written criteria and guidelines for development of appropriate planning for persons in need of post community treatment or services ; and (j) statement indicating center has been included in approved local services plan.
- Each crisis stabilization is to be staffed with "a multidisciplinary team" but have at least one psychiatrist or psychiatric nurse practitioner, a credentialed alcoholism and substance abuse counselor and one peer support specialist on duty and available at all times with ability for

commissioner to issue a waiver "...when the volume of service a center does not require such level of staff coverage."

Subpart B – Kendra’s Law – Amends section 9.60 of the Mental Hygiene Law with respect to Kendra's Law and renewals of assisted outpatient treatment orders. The changes would expand the grounds for renewal of an AOT to include:

- When the individual of an AOT cannot be located, and
- When the individual has experienced substantial increase in symptoms within 6 months of the expiration.

Other changes to Kendra's Law

- Authorize the examining physician to testify remotely at AOT hearing.
- Greater clarity the grounds for the appropriate director to petition court for additional period of treatment under AOT to include: "as a result of his or her mental illness, the outpatient is unlikely to voluntarily participate in the outpatient treatment that would enable him or her to live safely in the community; and in view of his or treatment history and current behavior, is need of assisted outpatient treatment in order to prevent a relapse or deterioration which would likely result in serious harm to the person or others as defined in section 9.01 of this article; and (c) the outpatient is likely to benefit from continued assisted outpatient treatment."

Subpart C – Involuntary Commitment

- Expands the definition of "likelihood to result in serious harm" or "likely to result in serious harm," to include, under Sections 9.01 and 9.39 of the Mental Hygiene Law, "a substantial risk of physical harm to the person arising from such complete neglect of basic needs for food, clothing, shelter or personal safety as to render serious accident, illness, or death is highly probable if care by another is not taken." If enacted, this would take effect on October 1, 2021.

Subpart A, B and C of Part AA would take effect October 1, 2021.

Part BB – Combining Institute for Basic Research with NYS Psychiatric Institute

- Amend Mental Hygiene Law to authorize the OPWDD's Institute for Basic Research in Developmental Disabilities to become a sub-entity of The New York State Psychiatric Institute (NYSPI).
- Authorize the transfer of employees from Institute for Basic Research in Developmental Disabilities to NYSPI.
- \$1 million in projected savings in FY 2022 and \$2 million thereafter on recurring basis.

Part CC – Merger of OMH & OASAS to Establish Office of Addiction and Mental Health Services

- New office would be codified into section 5.01 of the Mental Hygiene Law.
- On or January 1, 2022 or prior Governor would nominate individual to serve as Commissioner of Office of Addiction and Mental Health Services. Until the new commissioner is nominated by Governor and confirmed by Senate, the commissioner of OMH and OASAS shall continue.
- Transfer of all employees of OMH and OASAS into new office.
- On or before October 1, 2021 and annually thereafter Office of Addiction and Mental Health Services, in consultation with Department of Health, to prepare report that details office's expenditures for mental health and addiction services including total Medicaid spending. This report would be posted on agency's website.
- Merger would be effective January 1, 2022 with commissioner authorized to promulgate any necessary regulation for implementation of the merger.

Part DD - Authorize Integrated Licensure for Comprehensive Outpatient Services

- Amends Social Services Law to authorize the Commissioners of DOH, OMH, and OASAS to jointly establish a single set of licensing standards and requirements for the construction, operation, reporting and surveillance of comprehensive outpatient centers.
- The standards and requirements include: (a) scope of services; (b) creation of application review process; (c) facilitation of integrated treatment records that comply with applicable federal and state laws; (d) optimal use of clinical resources; (e) development of billing and reimbursement structures; (f) reasonable physical plan standards to foster proper care and treatment; (g) standards for adverse event reports; (h) experience in the delivery of physical, mental health and addiction services; (i) capacity to offer comprehensive outpatient services; and, (j) compliance with established standards and requirements.
- Comprehensive outpatient services is defined as "...the systemic coordination of evidence-based health care services, to include preventative, diagnostic, therapeutic and rehabilitative care and treatment of mental illness, addiction and the provision of physical health services.
- The goal of comprehensive outpatient centers "...is to promote health and better outcomes for the recipients, particularly patients at risk."
- Physical health services means services provided by a physician, physician assistant, nurse practitioner, or midwife who is practicing in primary care specialty.
- Medical director is the physician who would be responsible for services delivered by comprehensive outpatient service provider and direct supervision of medical staff.
- Effective January 1, 2022 but authorization for aforementioned commissioners to promulgate regulations before such date.

PART EE- Eliminate requirement to administer an Adult Home Advocacy Program within the Justice Center

This part of the bill would eliminate the Justice Center for the Protection of People with Special Needs, from administering the Adult Home Advocacy and Adult Home Resident Council Programs. Projected savings; \$230,000.

Child Welfare / Juvenile Justice Provisions

Authorizes the closure of four underutilized OCFS Youth Facilities in 2021 (Part H of ELFA, page 12) - Article VII language repeals section 507-a (requiring that one year notice be given) and creates authority for OCFS to close four underutilized detention facilities (Brentwood Residential Center, Red Hook Residential Center, Columbia Girls Secure Center and Goshen Secure Center). The language requires OCFS to give notice to the Speaker of the Assembly and the Temporary President of the Senate, six months notification of such closures *and* they shall post such notice upon its public website. There appears to be no reinvestment of dollars accrued through the closures.

Family First Transition Fund - pages 257-258 of the Aid to Localities Budget Bill appropriates \$3 million be used to provide post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter into foster care in accordance with federal requirements. The funding appropriated shall be available to social services districts, including the city of New York, for services to support, recruit, and retain current and prospective foster families including kinship caregivers, in accordance with a plan developed by the office of children and family services. In addition, page 321 and 335 re-appropriates Transition Fund dollars unspent in the Fiscal Years 2020-21 and 2019-20.

Requiring Differential Response Programs for Child Protection and Assessments or Investigations (Part M of ELFA, page 17) - If enacted, language would mandate local social services districts to establish "differential response programs" as an alternative to child protective services for select allegations of maltreatment.

Each social services district shall submit a plan to the Office of Children and Family Services on or before January first, 2023 for authorization to operate a program prior to January 1, 2024. Criteria shall include protocols to remove implicit bias in the decision-making process.

Expanding Child Care Affordability and Ease Administrative Burdens on Child Care Providers, (Part Z, Subpart A and Subpart B, of ELFA, beginning on page 28) Language amends social services law in relation to families eligible for child-care assistance or family share percentage and codifies that no such family will be required to contribute more than twenty percent of their income exceeding the state income standard. In addition, provisions are included to allow individuals to become approved childcare providers despite active criminal charges, if conviction of such a crime would not preclude them from approval.

Family First Transition Fund (pages 257-258) of the Aid to Localities Budget Bill appropriates \$3 million be used to provide post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter into foster care in accordance with federal requirements. The funding appropriated shall be available to social services districts, including the city of New York, for services to support, recruit, and retain current and prospective foster families including kinship caregivers, in accordance with a plan developed by the Office of Children and Family Services. In addition, page 391, provides for a reappropriation of \$25 million for services and expenses related to implementation of the family first prevention services act pursuant to the federal family first transition act. We are seeking clarity on the allowable use for these funds and if they include last year's Transition Fund appropriation of \$3 million.

Appropriates \$6 million for FY 2021/22 and Reappropriates \$6 million from 2020 and \$1.5 million from 2019 for the foster care youth initiative transition to college, (pages 128, 173 and 174 of Aid to Localities bill). The initiative is designed to assist foster care youth with expenses of a post-secondary education such as tuition and fees, books, transportation, housing.

Consolidation of the Community Optional Preventive Services (COPS, a program that serves children identified as being "at risk" of entering the foster care program) and the Supervision and Treatment Services for Juveniles Program (STSJP, a diversion program for at risk youth), page 265 of the Aid to Localities Budget allocates \$16.4 million in total for joint program, a 20 percent overall reduction.

Raise The Age – page 844 of the Aid to Localities Bill includes language to provide for \$250 million for services and expenses related to raising the age of juvenile jurisdiction, including but not limited to, juvenile delinquency prevention services, law enforcement services, transportation services, including transportation provided by sheriffs, court operational expenses and services, adolescent offender facilities, detention and specialized secure detention services, probation services, placement services, specialized housing services, aftercare services, program oversight and monitoring services, local presentment agency costs, costs of local governments within a county and the city of New York, and other applicable county and city of New York costs.

Public Protection

Transform the Office for the Prevention of Domestic Violence to the Office to End Domestic and Gender-Based Violence (Section B, page of the Public Protection Bill) includes language to mitigate the rising instances (33.5% increase over last year) of domestic violence in the context of COVID-19. The bill creates the first agency addressing gender-based violence in the nation and will encourage collaboration among agencies and service providers, eliminate redundant processes, and simplify survivor interactions with the State. In addition, the language authorizes the new office to administer grant funds for the campus-based "Enough is Enough" statewide program.

Establishment of a Domestic Violence Misdemeanor Label, (Section C, page 59 of Public Protection) -- Article VII language to ensure that domestic abusers do not have access to (legal) guns in New York state by creating a domestic violence misdemeanor label in Penal Law. This initiative, if passed, closes the

domestic violence gun-purchasing loophole in instances when a misdemeanor is committed against a family or household member.

Eliminating the Discriminatory Policing of Transgender New Yorkers, (Section G, page 70 of the Public Protection Bill) – Provides language to repeal the section of Penal Law that criminalizes “loitering for the purposes of prostitution.” Advocates have long decried this section of New York State’s Penal Law that criminalizes the act of loitering for the purposes of prostitution, denoting that it has routinely been used “to unfairly target transgender individuals.

Removes the Label of “Incorrigible” as it relates to youth, (Section H of the Public Protection Bill on page 75) – Amends the Family Court and Education Laws to remove the word incorrigible. Such provisions seek to advance the State’s efforts to eliminate discrimination in the juvenile justice, family welfare, mental health and education systems by removing the use of the word “incorrigible” in State Laws, ensuring young individuals are not labeled as someone who cannot be corrected by court proceedings that are aimed at reform and rehabilitation.

Strengthening New York’s Policing Profession, (Section K, page 81) – Provides for Article VII Language, outlining the State’s intent on promoting strengthening the hiring standards for all police officers by requiring law enforcement agencies to comply with background check standards that include a criminal history check, a mental health exam, prior employment histories, and review of previous police officer misconduct. If enacted, all law enforcement agencies will be required to comply with such background check standards. The bill also requires law enforcement agencies to become accredited for the purpose of standardizing background checks to ensure that only those most qualified can serve as a law enforcement officer. The bill also creates a backstop and accountability mechanism to ensure that no bad actors may serve as police officers by clearly defining conduct that results in permanent decertification, mandating reporting of misconduct, and requiring information sharing of serious misconduct by officers.

Arrest Warrant Prohibitor, (Section N, page 98 of the Public Protection Bill) – Amends the penal law to include prohibiting individuals that are the subject of an outstanding arrest warrant from purchasing, possessing, or disposing of firearms. Specifically, this language amends Section 265.17 of the penal law to prohibit the purchase or acquisition of a rifle, shotgun, or firearm by any person who is subject to an active arrest warrant for a felony or serious misdemeanor offense. In 2017, the U.S. Department of Justice reinterpreted the meaning of the federal National Instant Background Check System (NICS) “fugitive from justice” gun purchase prohibitor to include only those individuals who have fled from one state to another for the purpose of evading prosecution for a crime while subject to an active or imminent arrest warrant versus those subject to any arrest warrant. This legislation will allow these types of arrest warrants to be entered into the (NICS) database as a state-specific prohibitor, whether the individual has fled New York State or not, ensuring that those individuals wanted in New York for a serious crime cannot acquire new guns.

Sharing of Crime Gun Data (Section O, page 99 of Public Protection bill) – Amends Executive Law to mandate law enforcement agencies report seized and recovered firearms to the criminal gun clearinghouse. The bill requires all law enforcement agencies in New York State to share information on firearms and ballistic evidence with federal databases. Seized and recovered guns that were abandoned, discarded, unlawfully possessed, recovered from a crime scene, or associated with the commission of a crime would be required to be reported to the criminal gun clearinghouse within 24 hours. Every report made will result in the submission of a request to the National Tracing Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which will be directed to provide Gun Trace Data to the Division of State Police and the Law Enforcement agency that submitted the clearinghouse report. These actions will provide the State’s law enforcement agencies with more robust data to supplement their investigations into firearm-involved crimes, and they will help law enforcement in other states apprehend gun traffickers before they bring illegal firearms to New York.

Ensure Statewide Access to Veterans Treatment Court (Section N, page 153 of the ELFA) – Bill seeks to expand access to veteran’s treatment courts by allowing a transfer of a case to a court in an adjoining county.

State Ops Appropriations

- \$3 million in loan forgiveness for psychiatrists who agree to work for a period of at least five years in one or more hospitals or outpatient programs operated by the Office of Mental Health (OMH) or deemed to be in one or more underserved areas as determined by the OMH Commissioner.

Aid to Localities

State Education Local Assistance Program Funding

- \$500,000 School Mental Health Resource and Training Center

OASAS Local Assistance Program Funding

The Executive Budget provides OASAS with a total of \$682 million in all funds spending, a \$25 million increase from last year. Highlights include:

- \$1.5 million for the substance use disorder and mental health ombudsman
- \$1.875 million for jail-based substance use disorder treatment and transition services, including the provision of Medication Assisted Treatment where available.
- \$250,000 for adolescent club houses
- \$30 million in federal grants for expenses and services associated with prevention, treatment and recovery and other opioid-related programming and activities.
- 160 new residential treatment beds by the end of the FY 2022.

OMH Local Assistance Program Funding

The Executive Budget allocates \$1.68 billion in all funds spending to OMH. Highlights include:

- \$12 million for care coordination, supported housing, and services necessary to support mentally ill people in nursing homes and those that are transitioning out of nursing homes.
- \$6.4 million in federal PATH grants to help people transition from homelessness.
- \$99 million to support the expansion of state community hubs and voluntary operated services for adults and children.
- \$9.7 million to support high-need individuals.
- Converts the Rockland Children's Psychiatric Center to a voluntary operated center for children and youth in need of short-term community-based or residential care.
- Reports indicate budget authorizes up to 200 more OMH inpatient beds to be closed generating a savings of \$22 million, which would not be reinvested pursuant to provision in Article VII budget bill.

DOB Authority

- Authority provided for Budget Direct to withhold local assistance appropriations when the budget is out of balance, or if the state receives less than \$3B in Federal Aid by August 31, 2021. "The following types of appropriations shall be exempt from withholds made pursuant to this provision: (a) public assistance payments for families and individuals and payments for eligible aged, blind and disabled persons related to supplemental social security; (b) any reductions that would violate federal law; (c) payments of debt service and related expenses for which the state is constitutionally obligated to pay debt service or is contractually obligated to pay debt service, subject to an appropriation, including where the state has a contingent contractual obligation; (d) payments for school aid, and (e) payments the state is obligated to make pursuant to court orders or judgments."

Legalization of Recreational Cannabis

- Enactment of the Cannabis Regulation and Taxation Act to regulate and control the production, distribution, transportation, and sale of cannabis, cannabis related products, and medical cannabis within NYS.
 - A wholesale THC-based tax at various rates according to the potency level or THC content of different product categories: "edibles would be taxed at a rate of \$0.04 per milligram of THC, concentrates would be taxed at \$0.01 per of milligram of THC, and cannabis flower would be taxed at rate of \$0.007 per milligram of THC;"
 - The sale of adult-use cannabis products by a retail dispensary to a consumer would be subject to a surcharge at a rate of 10.25 percent of the final retail sale price; and
 - The applicable State and local sales tax rates would be imposed on the same retail sale by a retail dispensary to a consumer. The THC-based tax, retail surcharge, and any license fees, the first \$10 million in FY 2023, \$20 million in FY 2024, \$30 million in FY 2025, \$40 million in FY 2026, and \$50 million annually thereafter are directed for social equity purposes, with the remainder directed to the newly established New York State Cannabis Revenue Fund.
 - The funds in the Cannabis Revenue Fund would be allocated towards: administration of the regulated cannabis program, data gathering, monitoring and reporting; "the Governor's Traffic Safety Committee; initiatives and programs of the social and economic equity plan of OCM; substance abuse, harm reduction and mental health treatment and prevention; public health education and intervention; research on cannabis uses and applications; program evaluation and improvements; and any other identified purpose recommended by the director of OCM and approved by the Division of Budget," per the Assembly Yellow Book.
- Act would establish the Office of Cannabis Management, which would oversee medical, adult-use cannabis and hemp programs. The sale of cannabis would be limited to those over the age of twenty-one. The office would be housed within the Division of Alcohol Beverage Control with a five-member Cannabis Control board.
- The definition of serious condition for which a patient could be certified or medical cannabis would be expanded to include, "...Alzheimer's, muscular dystrophy, dystonia, rheumatoid arthritis, autism, any condition authorized as part of a cannabis research license, or any other condition as added by the executive director."

Update on the 20% Withholds (Per Division of Budget)

- Background: In June 2020, the Division of Budget began to temporarily withholding 20% from most local aid payments to ensure that up to \$8.2 billion could be withheld permanently, if needed, by the end of FY 2021 (March 31).
- \$2.9 billion withheld through December 2020
- Improved receipts picture, availability of Coronavirus Relief Resources, and eFMAP through June 30, 2021 has reduced the need for local assistance reductions.
- DOB now expects to reduce most local aid payments by a total of 5% from the enacted budget
- Payments that have been withheld will be reconciled and repaid in the final quarter in FY 2021.
- NOTE: Under the Executive budget proposal, the 5% withholds will continue to be applied during FY 2021-22.

Contingency Plan If \$15 Billion Provided to NY

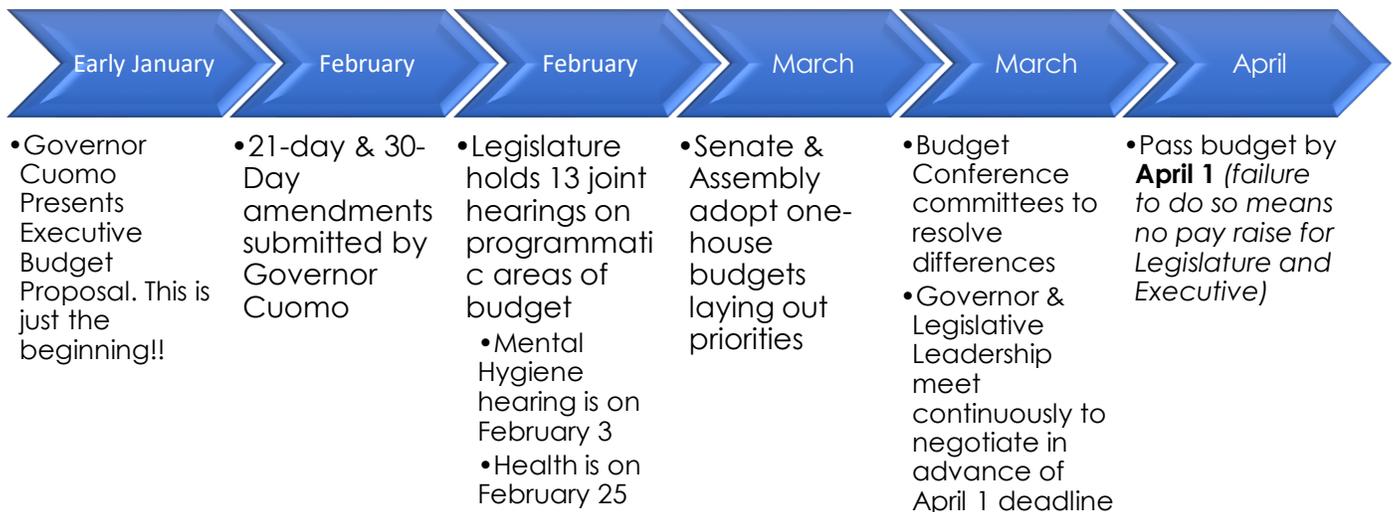
Should the federal government come through for the state and approve the Governor's full request for \$15 billion in federal aid it would enable the State to reverse or modify many of these difficult proposals. In anticipation of this possibility, the Executive Budget includes a contingency appropriation to enable restorations. According to the Governor's Executive Budget Briefing Book, such restorations would include:

- State Operating Funds spending is \$103.4 billion
- All Funds spending \$192.9 billion for FY 2022
- Provides \$31.7 billion in School Aid
- Provides \$7.5 billion in State support for higher education in New York

In addition, receipt of the \$15 billion would allow for the following investments:

- \$306 billion infrastructure plan,
- \$29 billion to transition to green economy,
- \$1.3 billion rent relief program,
- Continue to invest in \$20 billion program to create or preserve 100,000 affordable homes,
- \$128 million for homeless housing and assistance,
- \$15 cap on broadband for low-income families,
- \$150 million to address food insecurity,
- \$10 million investment in the Liberty Defense Fund providing free legal consultations and assistance to undocumented New Yorkers.
- \$130 million Pandemic Recovery and Restoration Program to support small businesses as well as industries that were hurt by COVID (restaurant, arts and entertainment),
- \$40 million Infectious Disease Resiliency Commercialization Fund to fast-track innovations and address emerging health threats.
- Create a public health corps that will assist in supporting COVID-19 vaccination operations, establishing a best-in-the-nation emergency response public health capacity.

Budget Process & Timeline



Next Steps

The presentation of the Executive budget proposal is the opening foray into the four month three-way negotiating process between Governor Cuomo and the Legislature as they work to enact a budget by the April 1 deadline. In between the Governor Cuomo's presentation and submission of the budget, there will be 30-day amendments, thirteen joint legislative budget hearings examining the programmatic and appropriation proposals, one-house budget proposals released in early March laying out the priorities of each which then culminates in a few weeks of around the clock negotiations.