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I. GOVERNOR'S EXECUTIVE BUDGET PROPOSAL FOR FY 2018-19

Yesterday (Tuesday, January 16, 2018), Governor Cuomo released his Executive budget proposal for fiscal years 2018-19, totaling \$168.2 billion (all funds), keeping the rate of growth in spending for state operating funds below 2 percent at 1.9 percent, while providing for a 3 percent increase in education aid and 3.2 percent increase in State Medicaid spending pursuant to the Medicaid Global Spending Cab. Meanwhile, the Executive budget proposal also includes a plan to close the \$4.4 billion budget deficit through \$2.7 billion in spending changes, \$0.7 million in resource changes, and \$1 billion in revenue raisers (i.e. new taxes and fees). Budgets for state agencies are reportedly flat with NYS Budget Director Robert Mujica indicating no layoffs are planned.

A. ADDRESSING FEDERAL TAX CHANGES

Although the State is planning to sue over the recently enacted federal tax plan and lead an effort to repeal and replace it, the Governor's budget proposal includes the New York State Taxpayer Protection Act, shifting the State's income tax system from an employee paid system to an employer paid system. The Governor indicated this major change would not cost businesses and hold employees harmless. Governor Cuomo provided this example of how the new payroll tax system would work:

FOR EXAMPLE...		
PREVIOUS LAW 2017	NEW LAW 2018	PROPOSED ALTERNATIVE
INDIVIDUAL	INDIVIDUAL	INDIVIDUAL
Employee Wages \$100	Employee Wages \$100	Employee Wages \$95
State Income Tax \$5	State Income Tax \$5	State Income Tax \$0
Taxable Federal Income \$95	Taxable Federal Income \$100	Taxable Federal Income \$95
EMPLOYER	EMPLOYER	EMPLOYER
Wages \$100	Wages \$100	Wages \$95
Tax \$0	Tax \$0	Tax (Deductible) \$5
Employer Cost \$100	Employer Cost \$100	Employer Cost \$100

Regarding the loss of deductibility for property taxes (under the federal tax plan over \$10,000), the State is also considering a plan for the establishment of charitable funds. The Governor in his budget address explained, "... the contribution to the charitable fund would be tax deductible for federal purposes, and you could get a state tax credit for the amount that you

actually paid into the fund. This is an avenue that California is looking at. It shows promise. It's more cumbersome, the tax credit would probably not be dollar for dollar. You wouldn't actually get every dollar back on your taxes but it's something that we're working on and we should explore.”

The Executive budget also seeks to close the so-called “carried interest” loophole by treating such as ordinary income for New York State tax purposes and establishing a fairness fee. This particular plan would have to be adopted by surrounding states, including Connecticut, Massachusetts, Pennsylvania, and New Jersey.

After consulting with a number of experts, the State Department of Taxation and Finance is releasing a report today that examines these potential changes to the tax code.

B. MENTAL HYGIENE

As far as the mental hygiene agencies, which includes the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), Office of Alcoholism and Substance Abuse Services (OASAS), as well as the Developmental Disabilities Planning Council (DDPC), Justice Center for the Protection of People with Special Needs, the Executive Budget proposes **\$7.2 billion in funding, an annual spending growth of \$254 million or 3.7 percent. The breakdown as provided in the budget briefing materials:**

Category	FY 2018 (millions)	FY 2019 (millions)	Change	
			Dollar (in millions)	Percent
OPWDD	3,515.8	3,646.0	130.2	3.7
OMH	2,805.2	2,901.2	96.0	3.4
OASAS	578.0	603.9	25.9	4.5
Justice Center	42.3	44.3	2.0	4.7
DDPC	4.2	4.2	0.0	0.0
Subtotal	6,945.5	7,199.6	254.1	3.7
Adjustments¹	(1,268.6)	(1,761.0)	(492.4)	N/A
Total²	5,676.9	5,438.6	(238.3)	(4.2)

¹ Adjustments reflect OPWDD programmatic spending in FY2018 and FY2019 that are reflected in DOH Medicaid spending. In addition to these amounts, Federal MA spending for these agencies is reflected in the DOH budget.

² FY2018 spending totals do not include \$1.4 billion in Fringe Benefits (\$696 million for OPWDD; \$656 million for OMH; and \$37 million for OASAS) or Indirect Costs (\$30 million for OPWDD; \$29 million for OMH; and \$2 million for OASAS) reported under the Mental Hygiene Program Fund and Patient Income Account structure prior to General Fund consolidation in the FY 2019 Executive Budget.

OMH & MENTAL HYGIENE-RELATED PROVISIONS OF INTEREST:

- Closure of an additional 100 inpatient hospital beds, providing for \$11 million for reinvestment into community-based services (\$110,000 per bed).
- \$3 million in new funding in 2018-19 fiscal year for making physician loan repayment awards to psychiatrists who are licensed to practice in New York State and who agree to work for a period of at least five years in one or more hospitals or outpatient programs operated by OMH or deemed to be in one or more underserved areas as determined by the OMH Commissioner. The budget also includes a re-appropriation of \$3 million carried over from previous years for contracts that have not been executed.
- Funding for 20 new Assertive Community Treatment teams, 10 in the New York City area, focusing on homeless individuals and homeless shelters, and 10 for the rest of the State.
- \$10 million in additional funding for supported housing and single residence occupancy programs
- \$50 million in capital funding to expand community crisis respite capacity
- \$5 million for peer support and engagement, particularly focused on individuals transitioning to the community from adult homes.

- Jail-Based Restoration to Competency Program – The Executive budget includes a proposal for OMH to establish jail-based restoration-to-competency programs within locally-operated jails and State prisons operated by the Department of Corrections and Community Supervision. Restoration to competency would be authorized in mental health units at such facilities with the budget appropriating \$850,000 to OMH to provide grants to county jails to assist with infrastructure improvements. Under current law, defendants deemed incompetent to stand trial are treated at OMH inpatient psychiatric units. (Note: This has been proposed in previous years and has been rejected in the past because of opposition from counties and advocacy groups).
- Funding for Raises for OMH/OPWDD/OASAS Direct Care Workers: \$262 million to support the 6.5 percent salary increase provided to direct care professionals (3.25 percent in January 1, 2018 and 3.25 percent in April 1, 2018). This funding will also provide agreed upon 3.25 percent salary increase for clinical workers employed by not-for-profit organizations rendering mental hygiene services on behalf of OPWDD, OMH or OASAS, which is effective April 1, 2018.
- OMH and OPWDD will collaborate on the development of a specialized program for dually-diagnosed individuals, which will be housed at the Bernard Fineson Campus in Queens. The program, “...will support people who are discharged from an OMH-certified inpatient setting, while they await access to appropriate OPWDD services in the community.”
- For OASAS, the 4.5 percent increase (\$26 million) in operating and capital support will be used in part to provide for:
 - 200 new residential treatment beds
 - 350 new opioid treatment program slots
 - Funding for 14 recovery and community outreach centers
 - 250 new peer advocates

C. MEDICAID/HEALTHCARE PROVISIONS OF INTEREST

- Overall, State Medicaid spending would grow by \$593 million, or 3.2 percent pursuant to the Medicaid Global Spending Cap, to \$18.9 billion. Total Medicaid spending (including federal funds) would rise 2.5 percent to \$70.1 billion.
- \$1 billion Healthcare Shortfall Fund to be established to handle the potential loss of \$2 billion in federal funds for the Children’s Health Insurance Plan or Essential Plan. Revenue for the fund would be derived in part from the pending sale or mergers of several not-for-profit healthcare insurance companies to for-profit entities. One current and pending example: for-profit Centene’s purchase of Fidelis Care.
- Elimination of prescriber prevails in Medicaid Fee-for-Service and Medicaid Managed Care – no exception for mental health medications.
- Expansion of Medicaid coverage for care provided by licensed social workers in Article 28 settings. (Currently, Medicaid coverage for services provided by licensed social workers in these settings is limited to individuals under the age of 21 and to pregnant mothers).
- One-year extension of Physician Excess Medical Malpractice Program, with funding maintained at \$127.4 million.
- Comprehensive Medication Management Protocols – Proposal is similar to last year’s allowing physicians or nurse practitioners to enter into comprehensive medication management protocols with pharmacists to manage patients who have chronic diseases and who have not met the clinical goals of treatment and are at risk for hospitalization. ***Key difference from previous proposal: pharmacist could not substitute or select drug that differs from that initially prescribed unless such is authorized in the written protocol.***
- Requiring treatment plan and patient-prescriber agreement when opioids are prescribed for pain that has lasted longer than three months or past the time of normal tissue healing.
- Authorization of for-profit retail clinics in big box stores and retail spaces. One of the services that could be provided: “limited screening and referral for behavioral health conditions.” Another difference from past proposals: retail clinics are to be staffed at all times by one or more of the following: physicians, physician assistant and/or nurse practitioner. Budget projects \$5 million in savings for fiscal year 2019 and fiscal year 2020.
- Expand and statutorily define a scope of practice for certified nurse anesthetists, requiring collaborative agreement with anesthesiologist for those in the first 3,600 hours of practice and collaborative relationship for those in practice thereafter.

- Budget also includes initiatives and recommendations of DOH’s Regulatory Modernization Initiative, including:
 - Community Paramedicine Program – The collaborative program would include a hospital, nursing home or diagnostic and treatment center along with a physician, emergency medical services provider where the emergency medical services provider could provide non-emergency care at the patient’s home.
 - Integration of Primary Care/Mental Health/SUD Services – To allow for the integration of primary care, mental health and substance use disorder care and treatment, providers that have already received a license from DOH, OMH or OASAS would not be required to seek a separate license to add such integrated services.
 - Expanding Telehealth Coverage Under Medicaid – Expand the definition of originating site (where the patient is) to include patient’s home or any other location patient is located. The list of authorized providers of telehealth would also be expanded to include: certified alcoholism and substance abuse counselors, early intervention providers, and any other provider determined by the Commissioner of Health in consultation with OMH, OASAS and OPWDD.
- **Social Work/Psychology/Mental Health Practitioner Licensure Exemption** – The budget further clarifies the services that do and do not require licensure. The proposal would permit those who have been employed or obtained employment on or before July 1, 2020 to continue employment under the existing exemption, while any person employed after July 1, 2020 would need to meet the requirements for licensure. (Note: We are carefully reviewing the bill language and will provide a further update/clarification on this particular proposal).
- **Study on Legalization of Marijuana** – Regarding the potential legalization of marijuana, the Governor proposed DOH conduct a study on the potential regulation of it, assessing the health impact, economic impact, criminal justice impact and consequences of legalization given the action taken in surrounding states and on the federal level.

D. REVENUE RAISERS

Among others, the \$1 billion in proposed new taxes and fees includes:

- \$127 million from a 2 cents-per-milligram tax on opioid manufacturers
- \$80 million from the Internet Fairness Conformity Tax (collecting sales tax on internet sales)
- \$140 million - Recouping the windfall health insurance companies received as a result of the federal tax plan. This consists of applying a 14 percent surcharge on the underwriting gains from insurance policies.
- \$96 million from discontinuing the energy services sales tax exemption
- \$3 million from extending the statute of limitations on amended tax returns
- \$3 million to allow warrantless tax debt to be assessed against unclaimed funds
- \$12 million from enhanced cigar tax enforcement
- \$82 million from federal of business related tax-credit claims
- \$3 million from imposing health tax on vapor products
- \$22 million from simplifying video lottery gaming rate and other provisions
- \$3 million from a vehicle inspection fees, which would apply to privately operated passenger carries, such as motor coaches.

E. OTHER PROVISIONS OF NOTE

- \$100 million for raise the age implementation
- 3 percent growth for education, representing a \$769 million increase, for a total of \$26.4 billion
- Sexual harassment proposals unveiled as part of the State of the State included in the budget. Budget proposal includes funding for the Joint Commission on Public Ethics to establish a special unit trained in handling such cases.

Meanwhile, the Governor noted that the Legislature, Attorney General, and State Comptroller all submitted budgets with a 2 percent or below increase in spending. The Judiciary submitted a request for a 2.5 percent increase in spending, which the Governor indicated he would support so long as judges certify courts will remain open on weekdays from at least 9 a.m. to 5 p.m.

Budget Hearings:

- Start Tuesday, January 23 with Higher Education.
- Health/Medicaid budget hearing is Monday, February 12 at 10 a.m.
- Mental Hygiene budget hearing is Tuesday, February 13 at 9:30 a.m.

Budget season is compressed as Passover starts March 30 and ends on April 7. The Easter holiday falls on Sunday, April 1. The budget must be adopted by April 1, 2018 to be on-time.

II. UPDATE ON PENDING LEGISLATION

Telepsychiatry (S.7173, Serino/A.8888, Gunther) – Sponsored by Senator Sue Serino, Chair of the Senate Aging Committee, and Senator Robert Ort, Chair of the Senate Mental Health and Developmental Disabilities Committee, and Assemblymember Aileen Gunther, Chair of the Assembly Mental Health Committee, the bill would codify the Office of Mental Health’s regulations for telepsychiatry into the Mental Hygiene Law. One of the notable differences between the current regulations and this proposed legislation is individuals could receive telepsychiatry services in their home if there is “... sufficient written demonstration that the patient is home bound and socially isolated and that services are being requested because they are necessary to provide care to the individual.” Similar to the regulations, the legislation outlines the process for obtaining approval to provide telepsychiatry services. *STATUS: The bill is in the Senate and Assembly Mental Health Committees.*

Generic Drugs (A.236, Paulin/S.5471, Lanza) – The bill requires the Commissioner of Health to establish and maintain a list of generic drug products on its website, which have been evaluated and approved by the Federal Food and Drug Administration (FDA) as the “pharmaceutically and therapeutically” bioequivalent of the brand name drug. The list would not include generic drug products where the Commissioner of the FDA has raised actual or potential concerns related to a product’s bioequivalence. In addition, the legislation requires the manufacturer of a generic drug product to make certain information available to the Department of Health, which would also be available to the public at no cost, including among others biopharmaceutic studies and summaries, bioequivalence data, incidence of adverse events, and analytical methods. The Assembly sponsor, Assemblymember Amy Paulin (D-Scarsdale) has met with a number of the medical specialty societies to request their support for the bill. *STATUS: The bill has passed the Assembly and remains in the Senate Health Committee.*

Maternal Depression (A.8953, Richardson/S.7409, Krueger) – Pursuant to an agreement, Assemblymember Richardson and Senator Krueger have proposed a chapter amendment for a bill enacted last year regarding maternal depression. While the law would have required the Commissioner of Health to establish an online database (searchable by zip code) of mental health professionals, not-for-profit corporations and community resources that provide care or support for maternal depression, the chapter amendment will require the Office of Mental Health’s website to have information on how to locate providers and community resources.

III. UPDATE ON NYSPA’S PRO-ACTIVE PRIORITIES FOR 2018

An update on our pro-active priorities:

Mental Health and Substance Use Disorder Parity Report (S.1156-A, Ort/A.3694-A, Gunther) – We are continuing to work with Assembly Program & Counsel staff and attorneys on refining elements of the bill. We hope to have an amended bill introduced shortly, while we continue to engage and collaborate with the New York State Psychological Association, New York Society for Clinical Social Work, and New York State and New York City Chapters of the National Association of Social Workers, all of whom have prioritized the bill and broader issue of parity enforcement and transparency for 2018.

Legislation to prohibit so-called “conversion therapy” for minors (A.3977, Glick/S.263, Hoylman) – We will continue to advocate for legislation that would prohibit licensed mental health professionals from engaging in efforts to change a minor’s sexual orientation and defining such efforts as professional misconduct. The legislation is also a priority of the New York State Psychological Association, New York Society for Clinical Social Work, and New York State and New York City Chapters of the National Association of Social Workers among others towards this effort. It is an uphill climb for a number of reasons, recognizing the current makeup of the Senate where there are currently two vacancies for seats held by Democrats.

NYC Law Enacted on December 31, 2017: Since New York City Mayor de Blasio did not sign or veto the bill within 30 days of receipt, the measure passed by the New York City Council to prohibit so-called “conversion therapy” was enacted on

December 31, 2017 and takes effect 120 days from such date. The law will prohibit persons from offering or providing services to change a person's sexual orientation or gender identity in exchange for a fee and carries civil penalties ranging from \$1,000 for the first offense, \$5,000 for a second offense, and \$10,000 for each subsequent offense.