New York State Senate
Standing Committee on Health

2017-18 SFY

Health and Mental Hygiene
Budget Highlights
(S.2007-B)

Index

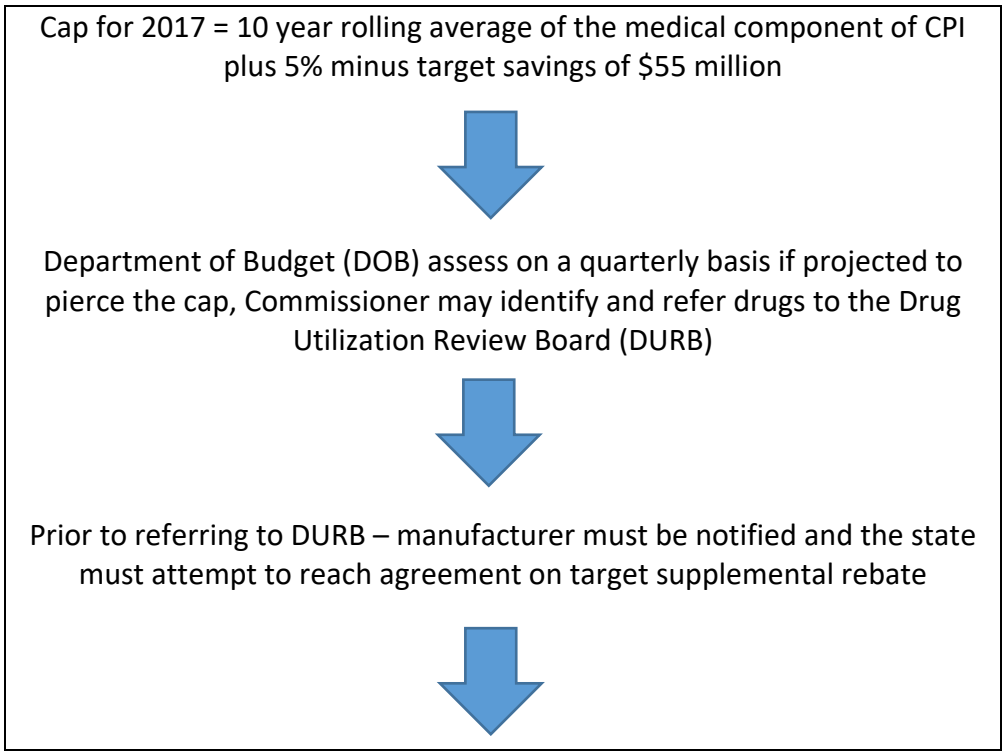
HEALTH AND MENTAL HYGIENE
BUDGET HIGHLIGHTS

MEDICAID

Global Cap – the Budget extends the Global Cap through fiscal year 2018-19 (FY 2019). Senate language aimed at increasing transparency in Global Cap spending by codifying all spending included thereunder was rejected by the Executive, but the enacted budget aims to achieve greater transparency by discretely lining out programs under the Global Cap in the Aid to Localities appropriation bill. The Executive also agreed to hold monthly meetings with the Legislature to provide updates on actual spending and potential changes during the fiscal year. Global Cap reports, which are publicly available, must also include all non-Medicaid expenditures included in the Cap and any material changes made within the previous month.

State Response to Federal Medicaid Reductions – given uncertainties in Washington D.C., the budget establishes a process whereby the Budget Director submits a plan to the Legislature should federal financial participation in Medicaid funding be reduced by $850 million or more during federal fiscal years 2017 or 2018. The plan must provide detailed information on the reductions proposed and affected programs and activities. Upon submission of the plan, the Legislature has 90 days to prepare and adopt its own plan by concurrent resolution passed by both houses. Failure to act within the 90-day timeframe, shall result in the Budget Director's plan going into effect automatically (S.2009-C).

Medicaid Drug Cap – in order to reign in prescription drug costs and protect consumers from unjustifiably high priced pharmaceuticals, the Senate advanced several proposals, one of which was to establish a drug cap within the Medicaid Global cap. This approach, ultimately adopted as part of the final budget, is aimed at achieving savings of $55 million to the Medicaid program this fiscal year, meanwhile, allowing for flexibility, negotiations, and input from experts. The flow chart below demonstrates how the cap works:



DURB must first determine whether to recommend a target supplemental rebate based on factors such as actual cost of the drug, impact and value, recent unjustified price increases, and therapeutic benefits. In setting any such target rebate, DURB may consider factors such as price, value, seriousness and prevalence of disease, utilization, effectiveness, and reduction of other care needed

If a target supplemental is recommended, and DOH is unable to negotiate a rebate, the Commissioner can require a manufacturer provide the DOH cost/pricing information including research and development, distribution and marketing costs, and can impose the recommended target rebate

If, after taking into account all rebates received by DOH, Medicaid drug expenditures are still projected to pierce cap, Commissioner superpowers take effect. These powers include tools such as prior approval, accelerated rebate payments, and changes in Medicaid formularies.

Direct Care Worker Wages – the Legislature provided nearly $14 million in FY 2018, $55 million annually, to provide a 3.25% salary enhancement for direct care workers caring for those with developmental disabilities, mental health diagnosis and substance use disorders beginning on January 1, 2018. A second salary enhancement of 3.25%, which would also include clinical staff, is scheduled for April 1, 2018, providing an additional $90 million in funding.

Pharmacy – the Legislature rejected the elimination of prescriber prevails for another year, and also rejected the reduction in coverage of over-the-counter medications as well as the increase in over-the-counter co-payments. The Legislature also rejected the Executive proposal on comprehensive Medication Management. The enacted budget does include changes to the generic drug CPI penalty, changes to lower the early refill to seven days, changes to conform pharmacy reimbursement with federal regulations, and provisions making it an unacceptable practice within Medicaid to prescribe opioids in violation of other statutory provisions.

Donor Breast Milk – the Senate advanced provisions that were vetoed last year, on the basis that they should be addressed in the budget, to require Medicaid coverage of donor breast milk on an inpatient basis for certain pre-mature infants that would benefit from the nutrients of breast milk but the mother is unable to provide, or the baby is unable to receive such milk from the mother. This provision was ultimately adopted in the final budget.

Spousal Refusal – the Legislature again rejected the Executive proposal to require spousal contribution and responsibilities for spouses residing together in the community be considered for Medicaid eligibility, and restored the $10 claimed by the Executive as purported savings.

Essential Plan – the Legislature rejected changes to Essential Plan premiums, thus maintaining current law requiring only individuals at 150% of poverty and above to pay a $20.00 premium.

Managed Long Term Care Eligibility – the Legislature rejected the Executive's proposal to change the eligibility threshold from the current 120-day standard to the nursing home eligibility standard and restored the $2.75 million in funding.

Managed Long Term Care Rate Cells – although the Executive was unwilling to adopt Article VII language advanced by the Legislature creating high need rate cells, DOH committed to explore, with the federal Centers for Medicare and Medicaid Services (CMS), separate rate cells/reimbursement methodologies for nursing homes, high cost/high need populations and Health and Recovery Plan (HARP) populations.

Nursing Home Rates – the Legislature extended provisions to benchmark the reimbursement rates paid to nursing home providers (by managed care organizations) at the fee-for-service rate through at least December 31, 2020, and authorizes the implementation of alternative value payment methodologies.

Behavioral Health Care Provider Rates – the Legislature accepted the Executive's proposal to extend the APG rates managed care plans must pay behavioral health care providers an additional two years until March 31, 2020 and authorized the implementation of alternative payment methodologies.

TBI/NHTD – the Executive agreed to continue to maintain the carve out from Medicaid managed care those services for participants of the Traumatic Brain Injury and Nursing Home Transition and Diversion (TBI/NHTD) Medicaid waivers until January 1, 2019.

Uniform Assessment System – the final budget included language to ensure an individuals' cognitive condition is included within an evaluation when Medicaid managed long term care plans are enrolling eligible individuals and utilizing the Uniform Assessment Tool (UAS). (S.2009-C)

Bed Hold – the Legislature fought to restore the nursing home bed hold cut proposed by the Executive, and was ultimately able to restore bed hold payments for therapeutic absences.

Fiscal Intermediary – the proposal advanced by the Legislature to require DOH authorization and oversight of fiscal intermediaries in the Consumer Directed Personal Assistance Program (CDPAP) is included in the final adopted budget.

Wage Parity in CDPAP – a provision advanced by the Legislature to provide workers under CDPAP with wage parity protections currently provided to other home care aides in certain areas of the state is included in the enacted budget, effective July 1, 2017.

School Based Health Centers – the Executive committed to administratively delay the carve-in to managed care for School Based Health Centers until July 1, 2018.

Voluntary Foster Care Agencies – the Legislature modified the Executive proposal to establish Voluntary Foster Care Agency Health Facilities to provide Medicaid covered services, by ensuring greater specificity on the health services that such agencies will be required to provide.

Women's Health and Prenatal Care Pilot – the final budget includes provisions advanced by the Senate to provide medical assistance for certain infertility services aimed at improving outcomes by targeting those zip codes that have the highest incidence of triplet births in the preceding five years. If the state receives a ninety percent match from the federal government, such services shall be covered by Medicaid, if the state does not receive such match, the program will be administered as a grant program through funds appropriated.

Managed Long Term Care Transportation – the Legislature rejected the Executive proposal to carve managed long term care transportation out of the capitated rates and restored the $3.98 million in funding.

Adult Day Health Care Transportation – the Executive agreed to refrain from taking administrative actions to carve Medicaid transportation out of Adult Day Health Care program reimbursement, and to continue to allow such programs to managed their own transportation. The Legislature restored $5 million in funding.

Rural Transportation Assistance – the Legislature restored the $4 million cut the Executive made to this program.

Supplemental Ambulance Payment – the Legislature maintained the supplemental ambulance payment and rejected the Executive's proposal to repeal the payments and reapportion the funding at DOH's discretion. While the Executive issued a report days before the final budget was adopted, calling the current rates inadequate, the Executive failed to include any additional funding to adjust those rates.

Accounts Receivable – the Legislature agreed to provide the Department of Health with authority for two years to sell account receivable balances owed to the state by Medicaid providers to financial institutions, provided the sale terms governing the collection of such balances shall be reasonable and the commissioner shall provide the Legislature with a description of the terms and a list of impacted providers 30 days prior to the sale.

Administrative Actions Under the Medicaid Cap included in the enacted budget –

- Marketing ban on Managed Long Term Care (MLTC) plans
- Limiting reimbursement of Hospice services to only those not paid by Medicare
- Requiring Medicare coverage, for those eligible, as a condition of Medicaid eligibility
- Reductions in the MLTC and Managed Care Quality Bonus
- Reducing 911 "Frequent Fliers"
- Reductions in VAPAP/VBP-QIP

HOSPITALS, NURSING HOMES AND OTHER PROVIDERS

Capital – the final budget included $500 million for the continuation of the Health Care Facility Transformation Program enacted in FY 2017. Of this $500 million, a minimum of $75 million will be earmarked for community-based health care providers, a substantial increase from the minimum of $30 million proposed by the Executive. In addition, the Legislature stipulated that up to $300 million of these funds may be awarded based on applications submitted to DOH in response to the initial request for applications (RFA) issued in 2016 by the Department for the same purpose, and included language requiring these awards to be made no later than May 1, 2017. A new RFA for the remaining appropriated amount cannot be issued until after June 1, 2017, allowing stakeholder, community and Legislative input regarding eligible participants, and the criteria and process by which the remaining funds will be awarded (S.2009-C).

Enhanced Safety Net Hospital Program – the Legislature included $10 million to increase rates to certain enhanced safety net hospitals.

Critical Access Hospitals - the Senate included $10 million to increase rates to facilities federally designated as critical access hospitals.

SUNY DSH – the Senate restored $9.30 million of the cuts the Executive made in the portion of DSH state share payments the Executive was paying on behalf of SUNY.

Hospital Excess Liability Pool (Excess Medical Malpractice) – the Legislature extended the funding of Hospital Excess Liability Pool for another year and rejected the Executive's proposal to tie access to the pool to providers that turn over certain tax documents.

PUBLIC HEALTH

Opioid Addiction Initiatives – the Legislature added funding to that proposed by the Executive in order to secure record-high funding of $214 million to fight heroin and opioid addiction in the enacted budget. Funding will be used to strengthen prevention, treatment, recovery and education services in FY 2018.

Early Intervention – the Legislature rejected the Executive's proposal to mandate commercial insurance reimbursement and exhaustion of the appeals process prior to providers receiving payment from the state, and restored the $4.05 (plus $1.35 million within the Medicaid Cap) in funding.

Public Health Programs – the Legislature rejected the Executive's proposal to pool together 39 public health programs to compete against each other for funding. The Legislature was unable to restore the 20% ($25 million) cut the Executive also made to these programs.

Greater Public Health Works (GPHW) - the Legislature rejected the reduction in reimbursement to NYC under this program from 36% to 29% and restored the $11 million in funding.

Organ Donation – the Legislature provided 1.3 million in funding to increase organ donation efforts.

Eating Disorders – the Legislature provided $1.06 million in additional funding for Comprehensive Care Centers for Eating Disorders.

Women's Health Initiatives – the Legislature allocated $1.8 million towards various initiatives for women's health services.

Lyme and Tick-borne Disease Initiatives – the Senate allocated $400,000 for the Lyme Disease Task Force recommendations.

Programs for the Elderly – the Legislature allocated approximately $3.3 million in various programs to assist the aging population.

Drinking Water

The Senate Committees on Health and Environmental Conservation held hearings around the state jointly with the Assembly in the fall of 2016. As a result of those hearings, the Senate released a report in January 2017 entitled *Water Quality and Contamination*. Many of the recommendations from this report were adopted as part of the FY 2018 budget, including substantial funding for infrastructure and other drinking water quality initiatives, and the creation of a Drinking Water Quality Council to make recommendations regarding state specific emerging contaminants and notification levels to inform the public of potential threats to public health.

EMERGING CONTAMINANT MONITORING ACT (Part M)

Establishes a process for State adopted emerging contaminants and notification levels

- DOH establishes Emerging Contaminant List through regulations. Such list must include PFOA, PFOS and 1,4 Dioxane, and may include other contaminants as DOH determines taking into consideration: recommendations from the Drinking Water Quality Council, unregulated contaminants listed pursuant to the Federal Unregulated Contaminant Monitoring Rule (UCMR), substances other jurisdictions are regulating, and pesticides for which the federal Environmental Protection Agency (EPA) has set human health benchmarks for drinking water.
- DOH must establish notification levels for all emerging contaminants. Notification levels shall be set based upon available scientific information, Drinking Water Quality Council recommendations and must be equal to or lower than any federal lifetime health advisory level.
- DOH may add contaminants by "declaration" if it appears to be prejudicial to the interests of the people to delay action, provided regulations must be adopted within a year.

Requires public water systems to test for emerging contaminants and establishes a notification process

- Systems must test once every three years, through a certified lab and labs must submit the results to DOH, the public water supply, and any local health department.
- Provides financial assistance to systems that show testing is a hardship, with priority given to those serving less than 10,000 individuals.
- Public water systems must notify DOH within 24 hours of the exceedance of any notification level.
- DOH must establish timeframes within which the public must be notified, which shall be no more than 90 days, and DOH may notify property owners directly.
- Property owners must notify any tenants within 10 days of receiving notice themselves.

Authorizes DOH to require or take action if the concentration of an emerging contaminant in drinking water constitutes "an actual or potential threat to public health"

- The Department can require the water system to reduce exposure
- The Department must consult with Department of Environmental Conservation (DEC) regarding the appropriate action to mitigate and/or remediate pursuant to new provisions in Title 12 of the Environmental Law. Twenty million is provided annually for these purposes.

DRINKING WATER QUALITY COUNCIL (Part R)

Establishes a new Council within the Department of Health

- The Council will consist of 12 members, including Commissioners and experts in various areas of drinking water and public health, shall serve two year terms, without compensation, and must meet at least twice a year. The Council is subject to the open meetings law and must allow for public/stakeholder input before recommendations are made to the DOH. Final recommendations of the Council must be posted to DOH's website within 30 days.
- The Council shall advise DOH regarding:
    - Which contaminants should be included on the state's emerging contaminant list and must consider: the Federal UCMR list, contaminants other jurisdictions are monitoring, pesticides listed by the EPA, waterborne pathogens (including Legionella), and microbiological contaminates (which contribute to Alge Blooms);
    - What notification levels should be established for each of the emerging contaminants, and the form and content of such notifications;
    - Timeframes/frequencies within which testing should be required for recommended emerging contaminants, allowing for variations based on size, region and type of water source;
    - Which emerging contaminants should be removed from the list and regulated with a maximum contaminant level (MCL), based on available scientific evidence and other relevant factors.
    - Working with state and federal agencies to ensure funds are available, responsible parties are pursued, and clean-up projects occur in a timely manner;
    - Developing education materials regarding private well testing;
    - Appropriate use of methods and manners of conducting studies and biomonitoring
    - Inclusion of information on the DEC online tracking/mapping system of the; and
    - Anything else the DOH or DEC designates.
- The Council shall provide the Department of Health with its first list of recommended emerging contaminants and corresponding notification levels within one year of its initial meeting and update its recommendations annually thereafter

CLEAN WATER INFRASTRUCTURE FUNDING (Part T)

Provides $2.5 billion over 5 years for clean water infrastructure projects allocated as follows -

- No less than **$1 billion for the Water Infrastructure Improvement Act (WIIA) of 2017** - WIIA 2017 is modeled after the largely successful WIIA 2015 program but reduces the amount of financing municipalities have to undertake by allowing grants to cover 75% of project, whereas the 2015 program grants could only cover 60% of the cost. The project cap remains at $5 million.
- No less than **$150 million for Intermunicipal Water Infrastructure Grants** - this is a new grant program for municipalities choosing to work together to replace, upgrade and repair infrastructure through a shared water quality infrastructure project. This program covers larger projects (with a cap of $10 million) and projects that were typically not funded through WIIA because one or more of the communities did not qualify under the hardship provision.
- No less than $**245 million for Water Quality Improvement Projects (WQIPs)**, including up to $25 million for road salt management - WQIP is an existing competitive grant program that uses Environmental Protection Funds (EPF) for projects to reduce polluted runoff, improve water quality and restore habitat in New York's waterbodies.

- Up to **$50 million for green infrastructure projects** – this funding will be used by the Department of Environmental Conservation to continue funding green infrastructure projects.
- **$110 million for Source Water Protection –** through a newly established program to assist municipalities, non-profits and soil and water conservation districts to undertake land acquisition projects, including conservation easements, for the purpose of enhancing drinking water quality protection.
- Up to **$50 million for concentrated animal feed operations (CAFOs)** – one time funding to be used to help farms meeting certain animal size thresholds comply with recently enacted requirements to ensure proper management of nutrients while increasing water quality protection.
- Up to **$130 million for Superfund/remediation** – funding not used for the two mitigation remediation programs detailed below on an annual basis are used to fund Superfund. A new mitigation and remediation program for substances that have not been designated as hazardous substances eligible for the Superfund program is established. Under this new program:
    - Up to **$5 million** a year is available for mitigation and remediation of solid waste sites impairing drinking water quality.
    - Up to **$20 million** is available annually for mitigation of water systems to reduce exposure to emerging contaminants found to be present. Mitigation activities include installation of treatment systems and/or the provision of alternative water supply sources. If there exists an actual or potential threat to public health, DEC is authorized, and after notice and hearing, the Commissioner can also order the owner/operator or other responsible party, to take steps reasonable and necessary to mitigate and remediate. The Commissioner is required to seek recovery of mitigation costs only from the owner/operator of the contamination site.
- No less than **$20 million for replacement of lead drinking water service lines** - a new grant program is established to distribute funds regionally focusing on priority areas with elevated childhood blood levels based on the most recent data.
- **$200 million for New York City water quality projects.**
- Not less than **$75 million for a septic rebate program** - a new septic system replacement fund is established to provide funding to property owners of up to 50% of eligible costs, not to exceed $10,000, for replacement of a cesspool or septic system with an upgraded system that will significantly and quantifiably reduce environmental and public health impacts associated with effluent.
- Up to **$10 million for Emergency Water Infrastructure -** an interest free loan program is established for municipalities facing an infrastructure emergency that may result in imminent hazard to the public health or welfare. Upon entering an agreement, funding must be made available to the municipality within 2 days. The municipality must pay the loan back within one year, provided EFC may authorize up to 2 years for such repayment. Receipt of a loan under this program does not disqualify any such project from apply for grant programs.
- **$100 million** to support municipal water quality infrastructure programs that do not otherwise qualify.
- Up to **$10 million for a Water Quality mapping and tracking database** and to study the feasibility of establishing an integrated database incorporating past, present and ongoing water infrastructure projects applied for or funded through DOH, DEC, and EFC to inform future policy and funding initiatives by January 30, 2018.