

**Report on Approved State Budget for 2017-18:
Important Provisions Included, Notably NYSPA's Priority of Raising the Age of Criminal Responsibility**

Suffice it to say that the last two weeks in Albany have felt like a rollercoaster ride with lots of highs, lows, twists and turns, including the Legislature's passage of a two-month extension of the current budget to avert a government shutdown and assure state employees would be paid while negotiations continued past the April 1 deadline. Ultimately, the logjam on a handful of issues that had been the lynchpin for reaching an agreement on a budget for fiscal years 2017-18, ranging from raising the age of criminal responsibility to education aid to charter school funding, broke on Friday, April 7, 2017 with the Governor announcing he had reached an agreement with Legislative Leaders on the outstanding issues, paving the way for the Legislature to adopt a \$153.1 billion (all funds) budget over the weekend. State Operating Funds spending rises by 2 percent to \$98.1 billion (excluding Federal Funds and capital).

The enacted budget contains a number of important policy and programmatic changes as well, including raising the age of criminal responsibility, raise for direct care workers and clinical staff, workers' compensation reforms, and contingency plan should New York see a reduction in federal aid. A brief report on the approved budget, focusing on the elements of most interest for psychiatry follows.

I. RAISING THE AGE OF CRIMINAL RESPONSIBILITY

The approved budget includes one of NYSPA's top legislative priorities for 2017: a plan to raise the age of criminal responsibility in New York State from 16 years of age to 18 years of age in phases: first to 17 on October 1, 2018, and to 18 on October 1, 2019.

Briefing materials on the new plan indicate cases involving 16 and 17 year olds would be adjudicated as follows:

- Civil violation charges would continue to be handled in the local court, including open container violations and possession of small amounts of marijuana, as well as misdemeanors under the Vehicle and Traffic Law, such as DWIs.
- All misdemeanor charges under the Penal Law would be handled in Family Court.
- All felony charges would begin in a newly established Youth Part of the criminal court, presided over by a Family Court judge, where offenders would have access to additional intervention services and programming. Judges in the Youth Part will receive training in juvenile justice, adolescent development as well as "effective treatment methods for reducing unlawful conduct by youths."
- Non-violent felony charges would be transferred to Family Court, unless the district attorney makes a motion and demonstrates extraordinary circumstances that justify retaining the case in the Youth Part of the criminal court.
- Violent felony charges would remain in the Youth Part of the criminal court and be subject to a three-part test that weighs the seriousness of the offense to determine whether the case will be eligible for presumptive removal to Family Court.
- Juvenile cases not eligible for removal will be treated as adults for sentencing purposes, though the court will be directed to consider the defendant's age when imposing a sentence of incarceration.

Other elements of the new law:

- **Confinement:**
 - The law establishes a timeline for youth to be removed from county jails as follows: October 1, 2018 for youth under the age of 17; and, October 1, 2019 for youth under the age of 18.
 - If the detention of the youth is necessary, confinement will take place at detention facility that is operated and regulated by the Office of Children and Family Services (OCFS).
 - Youth convicted in the Youth Part and sentenced to state prison will be housed in adolescent offender facility operated by the Department of Corrections and Community Supervision (DOCCS) with programming provided by OCFS. Further clarification is being sought regarding the shared responsibility between DOCCS and OCFS.
- **Sealing of Records:** Recognizing the damage a record of conviction can have on future opportunities for employment, higher education and housing, individuals who have been convicted of a non-violent offense will be able to apply to the court to have their record sealed following a 10-year waiting period after the completion of their sentence.
- **Raise the Age Implementation Task Force:** Appointed by the Governor, the duties of the task force include: (a) monitor state's implementation of raise the age law; (b) evaluate adherence; and, (c) review of provisions regarding the sealing of records and effectiveness of such. The initial report of the task force is due on or before August 1, 2019.
- **Funding:**

- \$110 million in capital projects funding for OCFS to upgrade/renovate/redesign facilities and develop capacity
- Opportunity for counties to apply for funding to the State upon a demonstration of financial hardship pursuant to an application to be submitted to the Division of the Budget
- Funding for probation departments to establish and provide “a continuum of evidenced-based intervention services for youth” adjudicated under the Family Court Act or in accordance with the provisions governing the Youth Part

II. HEALTH AND MENTAL HYGIENE ARTICLE VII BILL HIGHLIGHTS

The approved budget *includes* the following:

- **Physician Excess Medical Malpractice Program** – Maintains funding for the program at \$127.4 million, but does not include a requirement that physicians receive a “tax clearance” from the Department of Taxation and Finance.
- **Director Care Workers & Clinical Staff** – Raise for direct care workers and direct support professionals working at state-funded programs: 3.25 percent on January 1, 2018 and another 3.25 percent on April 1, 2018 (total of 6.5 percent). Clinical staff at state-funded programs would receive a 3.25 percent raise starting on April 1, 2018.
- **Prescription Drug Costs** – The Governor’s plan to combat the rising cost of prescription drug costs was scaled back significantly in the approved budget. Ultimately, the budget only targets the Medicaid program, establishing a cap and annual growth limit for pharmaceuticals. In certain instances, the Commissioner of Health would identify and refer drugs to the Drug Utilization Review Board to make a recommendation as to whether or not a manufacturer should provide a targeted “supplemental rebate” to the Medicaid program and empowers the Commissioner to Health to take certain action if a manufacturer does not agree to provide such rebate.
- **Inappropriate Prescribing of Opioids** – Definition of what is considered an unacceptable practice in the Medicaid program is expanded to include the inappropriate prescribing of opioids, going beyond statutory limits, which could result in the prescriber’s exclusion from the program. The provision further specifies that a provider’s due process rights otherwise required under law or regulation must be adhered to before exclusion can occur.

The approved budget *does not* include the following as originally proposed by the Governor in his Executive budget request:

- Establishment of the Health Care Regulation Modernization Team along with the authority for Commissioners of the Department of Health, Office of Mental Health, and Office of Alcoholism and Substance Abuse Services to expand scopes of practice through “demonstration programs” that are not otherwise permitted under current law or regulations.
- Authorization for pharmacists to adjust the drug strength, frequency or route of administration, the discontinuation of a medication as well as the authority to initiate medication that differs from that initially prescribed by the patient’s physician as part of comprehensive medication management services for patients with chronic disease or diseases.
- Elimination of prescriber prevails in Medicaid Fee for Service and Medicaid Managed Care for all drug classes. The Governor’s proposal would have only provided an exception for atypical anti-psychotics and anti-depressant medications. This means the status quo remains.
- Requirement for pharmacy benefit managers (PBMs) to register with the Department of Financial Services (DFS).
- Authority for DFS to order an insurer into administrative supervision proceedings in cases where the insurer has become insolvent.
- Authority for the Office of Mental Health to permit the establishment of jail-based restoration-to-competency programs within locally-operated jails and State prisons operated by the Department of Corrections and Community Supervision.

III. APPROPRIATIONS OF NOTE

The approved budget *includes* the following:

- **Additional \$1.5 Million in Loan Forgiveness for Psychiatrists** – Approved budget includes an additional \$1.5 million, for a total of \$3 million, for the purposes of making physician loan repayment awards to psychiatrists who are licensed to practice in New York 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 OMH.

- **Funding for NYSPA’s VMH-PCTI** – Approved budget includes a re-appropriation of \$450,000 or \$150,000 per organization for the New York State Psychiatric Association, the Medical Society of the State of New York and the National Association of Social Workers – New York State to continue the Veterans Mental Health Training Initiative.
- **Federal Funding to DFS** – \$1.4 million federal grant DFS received to enhance its activities with respect to mental health and substance use disorder parity enforcement and compliance.
- **Funding for Crisis Intervention Teams** – \$1.4 million appropriated for crisis intervention teams and diversion services, an effort that is aimed in part at expanding the number of law enforcement and first responders trained on interacting with and responding to individuals in crisis.
- **Reinvestment in Community-Based Services** – As much as \$11 million (annualized) for OMH to invest in community-based services to offset the reduction of inpatient beds with \$110,000 to be re-invested for each bed closed.
- **Affordable Housing** – \$2.5 billion to provide for establishment of 6,000 supportive housing units and 100,000 units of affordable housing.
- \$200 million in funding to continue the fight against heroin and opioid epidemic aimed at a number of initiatives to support prevention, treatment and recovery.

IV. WORKERS’ COMPENSATION REFORMS

A number of workers’ compensation reforms were adopted as part of the 2017-18 budget:

- **Prescription Drug Formulary** – Establishment of a formulary by December 31, 2017, including “... a tiered list of high-quality, cost-effective medications that are pre-approved to be prescribed and dispensed, as well as additional non-preferred drugs that can be prescribed with prior approval.” The provisions require the Worker’ Compensation Board to promulgate regulations establishing a process for the medical director of the board to receive requests to change the formulary, including requests to change the status of a drug from non-preferred to preferred.
- **Development of New Medical Impairment Guidelines** – Workers’ Compensation Board is required to promulgate new/updated medical impairment guidelines by the end of 2017.
- **Independent Medical Examinations** – The chair of the Workers’ Compensation Board is required to conduct a study on the use of independent medical examinations within the 2018 calendar year and present a report on the findings to an advisory committee to be established consisting of representatives from labor, business, insurance carriers, medical providers and others the chair deems appropriate. The advisory committee is tasked with presenting detailed recommendations by December 31, 2019 to the Governor and Legislative Leaders.
- **Coverage for First Responders** – A provision of the Workers’ Compensation Law is amended, stipulating a claim filed by a first responder for “mental injury premised upon extraordinary work-related stress in a work related emergency” cannot be rejected by the board “upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment.” This provision covers a police officer, firefighter, emergency medical technician, paramedic, or other individuals authorized to provide medical care in emergencies.

V. PLAN FOR RESPONDING TO CHANGES IN FEDERAL FUNDING

While the approved budget does not include the unilateral authority initially sought by the Governor to make changes in the budget in the event of a reduction in federal aid, it establishes a contingency plan as follows:

- If the federal government reduces aid for Medicaid or any other area of the budget by \$850 million or more, the Division of the Budget (DOB) will prepare a Financial Response Plan consisting of spending reductions.
- The Legislature will have 90 days to pass an alternative plan, otherwise the plan put forth by the DOB will take effect.

VI. ETHICS REFORM

The final budget does not include the myriad of ethics reforms the Governor had proposed ranging from limiting the outside income for legislators, creating a full-time legislature, establishing term limits for legislators, and campaign finance reforms.