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REPORT ON 2018-19 APPROVED STATE BUDGET

This year, the Passover and Easter holidays provided added pressure and incentive for the Governor and Legislative Leaders to reach an agreement on a state budget ahead of the April 1 deadline. While March Madness was underway on the basketball court captivating millions around the U.S., a version of the game could be found at the Capitol in Albany as the last week of March brought intense around the clock negotiations, frenzied give-and-take, and unpredictability as last minute demands and issues arose reading curriculum standards for private schools, which at one point raised the specter of a shutdown. Ultimately, a number of policy issues originally included in the Governor's Executive Budget proposal – ranging from ethics reform, bail reform, early voting, tuition assistance for undocumented students (DREAM Act), and extending the time victims of child sex abuse have to bring civil and criminal cases (Child Victims Act) – were jettisoned for further consideration post-budget. This paved the way for final resolution with the Legislature passing the budget bills late in the evening on Friday, March 30 and into wee hours of Saturday, March 31, 2018, ahead of the April 1 deadline.

In terms of numbers, the budget for 2018-19 tops \$168.3 billion in all funds limiting the growth in spending from State operating funds to 2 percent, all while closing a budget deficit that reached \$4.4 billion as the Governor and Legislative Leaders began the budget process. The budget includes provisions for the State to bring in \$2 billion (\$500 million per year for the next four years) from Centene's purchase of Fidelis Care if the deal is approved. The enacted budget contains a number of policy and programmatic initiatives, including changes in the State tax code in an attempt to mitigate the adverse impact of the federal tax law, new policies to combat sexual harassment in the workplace (public and private sectors), new surcharge on ride-sharing services and taxis below 96th Street in Manhattan to address congestion, as well as an assessment on manufacturers and distributors of opioids that will raise \$100 million to support prevention, treatment and recovery.

We continue to review and analyze the ten budget bills, totaling thousands of pages. A brief report on the approved 2018-19 budget follows, focusing on the elements of most interest for psychiatry and medicine.

SNAPSHOT OF OUTCOMES IN FINAL BUDGET OF MOST INTEREST

Proposal	NYSPA Action and/or Position	Enacted Budget
Elimination of Prescriber Prevails in Medicaid Fee-for-Service and Medicaid Managed Care	Opposed	Prescriber Prevails Preserved
Loan Forgiveness for Psychiatrists: \$3 million in new funding 2018-19 fiscal year for psychiatrists who are licensed to practice in New York State and work for the State or in underserved area for 5 years.	Supported	Appropriation Adopted
New Funding: NYSPA/MSSNY/NASW-NYS Veterans Mental Health Training Initiative: \$450,000 Appropriation	Supported	\$450,000 appropriation adopted (\$150,000 per organization)
1 Year Extension of Excess Medical Malpractice Program	Supported	Adopted
Funding for implementation of New York's law raising the age of criminal responsibility: \$100 million in aid to localities and additional capital projects funding.	Supported	Adopted
For-profit retail clinics	Opposed	Not included
Scope of Practice Proposals: (1) Certified Nurse Anesthetists; (2) Comprehensive Medication Management; and, (3) community paramedicine	Opposed	Not included
Social Work/Psychology/Mental Health Practitioner Licensure Exemption for Individuals	Preserve Current Professional Authority Regarding Diagnosis & Treatment	Final provisions include among others clarification of tasks unlicensed persons can perform, while maintaining oversight by licensed professional and providing for additional regulations and study.

Physician Misconduct Proposal: including new powers for summary suspension of physician license, search and seizure and reduction in amount of time licensee would have to respond to Department of Health (DOH).	Worked w/MSSNY	Modified: Curtailing instances where summary suspension can be obtained to require felony charge and imminent threat to public safety. Search and seizure and provisions regarding reduction in time to respond to DOH not adopted.
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SUMMARY OF 2018-19 BUDGET

Here is additional detail on some of the provisions highlighted in the chart as well as a report on some of the other noteworthy provisions in the adopted budget.

1. We are pleased to report the final budget will include \$150,000 for the continuation and expansion of NYSPA’s Veterans Mental Health – Primary Care Training Initiative.
2. \$3 million in loan forgiveness for psychiatrists through the Doctors Across New York Program. In order to be eligible, psychiatrists must be licensed to practice in New York State and 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.
3. The repeal of preserving prescriber prevails in Medicaid Fee-For-Service and Medicaid Managed Care was not adopted. *The status quo remains.*
4. Independent Substance Use Disorder and Mental Health Ombudsman – Supported by a \$1.5 million appropriation, the Office of Alcoholism and Substance Abuse Services (OASAS), in consultation with the Office of Mental Health (OMH), will operate or select an ombudsman to investigate, refer, and resolve complaints received from consumers and providers regarding health insurance coverage and benefits for mental health and substance use disorders and compliance with federal and state parity laws.
5. Social Work/Psychology/Mental Health Practitioner Licensure Exemption – The final budget clarifies the tasks unlicensed individuals may perform who are working in an agency or program that is operated, funded, licensed or regulated by OMH, OPWDD, OASAS, OCFS, OTDA, DOCCS, SOFA and local mental hygiene or social service districts. The provisions maintain oversight by a licensed professional and adherence to New York’s respective scope of practice laws. In addition, the budget provides a regulatory framework for the respective State agencies to adhere to over the next year to bring further clarity and date for when those who commence employment in an exempt setting must be licensed.
6. \$100 million for implementation of New York’s raise the age law, enacted in 2017 as well as additional capital project funds to assist with constructing, renovating or rehabilitating facilities to house youth.
7. One year extension of the Physician Excess Medical Malpractice Program at the historic funding level of \$127.4 million with no programmatic or eligibility changes.
8. Rejection of a number of proposals opposed by NYSPA, MSSNY and the medical specialties, including:
 - Authorization of for-profit retail clinics.
 - Authorization for certified nurse anesthetists to practice independently and establish a scope of practice that includes unrestricted prescriptive authority.
 - Authorization for pharmacist to adjust drug strength, the frequency or route of administration, the discontinuation of a medication as well as the authority to initiate medication which differs from that initially prescribed by that individual’s physician or nurse practitioner pursuant to written medication management protocols as part of comprehensive medication management program.
9. Integration of Primary Care/Mental Health/SUD Services – Providers already licensed or certified by DOH, OMH or OASAS would not have to obtain a separate license from the respective state agency to add such integrated primary care and MH/SUD services. The aforementioned agencies will promulgate regulations regarding criteria for obtaining approval to provide integrated services.

10. Expanding Telehealth Coverage Under Medicaid – A patient’s home would now be an authorized location for telehealth under Medicaid. The budget also directs DOH, OMH, OASAS and OPWDD to develop a single guidance document that highlights the differences in regulations or policies each respective agency has for telehealth.
11. Physician Misconduct – Authority for the Commissioner of Health to summarily suspend physician who has been charged with a felony under New York State Law, federal law, or law of another State, and whose conduct “constitutes an imminent danger to the health of people.” Of note, the final budget did not include expanded powers regarding search and seizure of records and property and reducing the amount of time to respond to Department of Health’s request for information.
12. Final budget does not include 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.
13. OMH Reinvestment into Community-Based Services – Provides \$11 million for reinvestment into community-based services as part of the potential closure of 100 inpatient hospital beds.
14. Raises for OMH/OPWDD/OASAS Direct Care Workers & Clinical Staff – The final budget includes the funds to cover the 6.5 percent salary increase for direct care professionals and 3.25 percent clinical staff, enacted as part of last year’s budget. The raises are set to take effect April 1. This year’s final budget did not include language for future raises.
15. Provisions Regarding Opioids/Substance Use Disorders:
- Amends State Insurance Law to prohibit prior authorization for outpatient substance use disorder treatment for opioids.
 - 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. This requirement would not apply to patients being treated for cancer that is not in remission or for those who are in hospice or “other end-of-life care, or whose is being treated as part of palliative care practices.”
 - Stewardship Act – Manufacturers and distributors selling or distributing opioids in New York State would be required to pay an “opioid stewardship payment” into an overall \$100 million annual fund. The payment amount by each manufacturer or distributor is based on a formula that considers among other factors the total number of morphine milligram equivalents (MMEs) sold or distributed by the individual manufacturer or distributor versus the total amount of MMES sold in the State. The budget language explicitly states manufacturers and distributors could not pass the cost of this payment onto their purchasers, including consumers, and there would be an exemption for MMEs that are attributable to buprenorphine, methadone or morphine. The funds would be earmarked in part for supporting programs operated OASAS that provide treatment, recovery, prevention and education as well as supporting New York’s prescription monitoring program.
 - \$3.8 million to develop and implement substance use disorder treatment in local jails
16. Children’s Behavioral Health – Final budget did not include a two-year delay in implementing an expanded list of Medicaid services for children previously approved by CMS through a State Plan Amendment. The final budget includes \$15 million in State funds (matched by \$15 million by the feds) to start implementation.
17. The Final budget includes the Governor's proposal to prohibit the suspension an individual’s professional license for falling behind or defaulting on student loans.
18. Final budget also includes:
- Commissioner of OPWDD will develop a training program and training materials for first responders on how to properly respond to emergencies involving individuals (minors and adults) with autism and other developmental disabilities. In developing the training, the Commissioner of OPWDD will consult with Superintendent of State Police, Municipal Training Council, and the Office of Fire Prevention and Control. In addition, the Municipal Police Training Council, in consultation with the OPWDD, will develop written guidelines and procedures for handling emergency responses to individuals with autism and other developmental disabilities, which shall address training new and veteran police officers as well as recommendations for periodic retraining.
 - Funding for 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. OMH and the Office of Temporary and Disability Assistance are also required to work together to assure the ACT teams are connected to existing shelters to enhance access to treatment and services for individuals with mental illness.

- \$1,000,000 for School Mental Health Resource and Training Center assisting with New York’s law to requiring mental health to be part of health curriculum taught in schools. A priority of The Mental Health Association of New York State, MHANYS explained the purpose of the Center: “... provide information and referral services by phone and online including resources on the Center website; consultation with school districts; and organization of regional summits and webinars that include professional development. In addition, teachers required to earn 100 hours of educational credits over a three year period will be able to take advantage of this training at no cost.”
- \$925,000 for crisis intervention teams and other mobile crisis programs

19. Tax Code Changes – New York is the first State to respond to the federal tax law changes, which eliminated the ability to deduct State and local taxes (also known as SALT) above \$10,000. In summary, the budget includes the following provisions:

- New voluntary payroll State system that employers could opt into, subjecting them to a 5 percent tax on all payroll expenses over \$40,000 per employee when fully phased in, which would be offset for the business by a State tax credit and provide no change in take-home pay for employees.
- Establish two new State-operated Charitable Contribution Funds New York taxpayers could donate to, one for improving health care and the other for education in New York, maintaining the ability for those who itemize to deduct such contributions on their federal and State tax returns. The State would also provide a tax credit equal to 85 percent of the donation. The budget provision also authorizes local governments and school districts to establish charitable funds where local residents could donate to and then receive a reduction in property taxes.
- Decoupling the State tax code from the federal tax code to allow New Yorkers to utilize deductions that were permitted prior to 2017.

20. School Safety/Gun Control – While the Senate had proposed a number of school safety plan measures and the Assembly put forth a batch of gun control bills, the Governor and Legislative Leaders reached an accord on only one: individuals convicted of domestic violence, including misdemeanors, would have to surrender all firearms. The enacted measure will also prohibit individuals wanted for a felony or other serious offense from obtaining or renewing a firearm license.

21. Other Budgetary Issues

- The proposal to recoup the windfall health insurance companies received as a result of the federal tax plan through a 14 percent surcharge was not adopted in the final budget.
- Initially proposed with the title of “Healthcare Shortfall Fund,” the final budget does include provisions to establish a “Health Care Transformation Fund,” to consist of funds derived from a number of streams of revenue, including capturing the excess reserves of certain HMOs that go beyond a certain ceiling, namely non-for-profit Fidelis as it is in the process of being purchased by for-profit Centene. The funds would be used “... to support health care delivery, including for capital investment, debt retirement or restructuring, housing and other social determinants of health, or transitional operating support to health care providers.”

22. Pay Commission – Final budget provides for the establishment of a five member Pay Commission to consider raising the pay of lawmakers and certain Executive branch employees with a report of its findings and recommendations due by December 10, 2018. The five members of the commission include the Chief Judge of the Court of Appeals and State of New York, New York State Comptroller, New Yorker City Comptroller, a former New York City Comptroller, and a former New York State Comptroller.

23. Sexual Harassment Policies – In response to the onslaught of scandals and Metoo movement, the final budget includes sweeping new rules to address sexual harassment in the workplace, covering the public and private sectors. Among the newly adopted policies: limiting the use of non-disclosure agreement by employers, prohibiting the use of mandatory arbitration and prohibiting the use of tax payer funds for sexual harassment judgements. The provisions also include the development of model sexual harassment policy employers can use and protections for contractors, subcontractors and vendors used by employers.

24. Democracy Agenda – While the early voting proposals incorporated in to the Governor’s “Democracy Agenda” were not adopted in the final budget, new disclosure requirements were enacted for political advertisements appearing online and on social media, which will hold these advertisements to the standards that exist for radio, newspaper and television.