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New York State Fiscal Year 2018 Enacted Budget Highlights

OVERVIEW

The final State budget for state fiscal year (SFY) 2017-2018 resulted in more continuity than widely expected after the November 2016 federal elections. The budget maintains funding for a large majority of health care programs and includes growth in some transformation, safety net and public health initiatives. However, the budget gives the Governor the authority to reduce Medicaid (and non-Medicaid) expenditures from budgeted amounts if federal financial participation is reduced by more than $850 million. The compromise language specifies a process in which the Division of Budget may propose a plan to reduce appropriations, after which the legislature will have 90 days to pass its own plan in a concurrent resolution. If it fails to do so, the Administration's plan takes effect.

MAJOR FUNDING PROVISIONS

Health Care Facility Transformation Program

The budget includes $500 million for capital funding for the Health Care Facility Transformation Program (HCFTP). This funding will support capital projects, debt retirement, working capital, as well as non-capital projects that facilitate transformation activities to maintain or expand essential health care services, such as mergers, consolidations, or acquisitions. The Department of Health (DOH) and the Dormitory Authority of the State of New York (DASNY) may award these funds to Article 28 general hospitals, residential health care facilities, and community-based providers, defined as:

- Article 28 diagnostic and treatment centers and clinics;
- Article 31 mental health clinics;
- Article 32 substance abuse clinics;
- Primary care providers;
- Article 36 home care providers; or
- Other providers designated by DOH.

Funds may be awarded without a competitive process, but applicants will be judged on various criteria, including the project's contribution to long-term sustainability, alignment with DSRIP, geographic distribution of funds, community need, and alternative financing options. Priority for new funding will be given to applications not funded through last year's $195 million HCFTP appropriation (for which awards have not yet been announced).

Conditions on the awards are as follows:

- Up to $300 million may be awarded to applications that were submitted but not funded through last year's HCFTP. As such, up to a total of $495 million in funding may be provided to applications submitted through last year's RFP. These awards must be made by May 1st.
- Up to $200 million may be awarded for projects that are **not** eligible to be funded by bonds issued by the Dormitory Authority of the State of New York (DASNY).
- $50 million will be allocated to Montefiore Medical Center.
- At least $75 million will be allocated to community-based providers, as defined above.

A new RFP for funds not awarded by May 1st will be released no earlier than June, to allow time for stakeholder input.

Vital Access Provider Funding

The budget contains the following appropriations for safety net providers, continued from last year:

- $132 million to meet existing commitments of the Vital Access Provider (VAP) program; and
- $50 million for services to "preserve critical access to essential behavioral health and other services in targeted areas," which likely represents existing commitments.

Additionally, the following new appropriations have been approved (assuming a 50% federal match):

- $20 million for payments to critical access hospitals;
- $20 million for payments to "enhanced safety net hospitals." These are defined as hospitals that satisfy the following criteria:
    - At least 50 percent of patient volume is Medicaid members or uninsured;
    - At least 40 percent of inpatient discharges are Medicaid members;
    - Less than 25 percent of discharges are commercially insured; and
    - At least 3 percent of patients are uninsured.
- $329.3 million for additional Disproportionate Share Hospital (DSH) payments for SUNY-operated hospitals.
- $49 million for Medicaid funding for major academic pool payments.

These funds may be eligible for federal matching dollars.

Health Homes

$85 million was appropriated for Health Home grants for establishment and infrastructure costs.

MEDICAID REFORM

Minimum Wage

The following funding was appropriated for FY 2018 to increase worker salaries and fringe benefits, in keeping with the $15 minimum wage requirement, for agencies under the following auspices:

- $4.6 million for Office of Alcoholism and Substance Abuse Services (OASAS) providers;
- $3.5 million for Office of Mental Health (OMH) providers; and
- $14.9 million for Office for People with Developmental Disabilities (OPWDD) providers.

Medicaid Global Cap

The Medicaid Global Cap has been extended through SFY 2019, tied as before to the 10-year rolling average of the medical consumer price index (though subject to change if the $850 million federal financial participation threshold is triggered).

Health Information Technology (HIT)

The following HIT appropriations were approved at the same levels as last year:

- $30 million to continue operation of the Statewide Health Information Network for New York (SHIN-NY);
- $10 million for HIT initiatives; and
- $10 million for the establishment of the All Payer Claims Database.

Benefit Expansion

The following services have been added to the Medicaid benefit:

- Donor breast milk, for high-risk infants; and
- Services for women undergoing ovulation enhancement.

PHARMACY

Medicaid Pharmacy Cap

The budget establishes a cap on the amount of payments that the Medicaid program will make for drugs (through fee-for-service and managed care), as follows:

- SFY 2018: The Global Cap rate, plus 5 percent, minus $55 million
- SFY 2019: The Global Cap rate, plus 4 percent, minus $85 million

If the pharmacy cap is exceeded, DOH is authorized to identify high-cost drugs and negotiate with manufacturers for supplemental Medicaid rebates. If these negotiations fail, the Drug Utilization Review Board (DURB) will be authorized to set a target rebate that DOH will then seek to require from the manufacturer. If DOH and the manufacturer are still unable to come to terms, DOH may require the provision of confidential information such as the cost of production, marketing costs, and prices charged for the drug in other national and global markets.

Should DOH be unable to obtain a rebate that is at least 75 percent of the DURB's target rebate, it may remove the drug from Medicaid coverage, unless it is the only drug that treats a condition. Only two drugs may be subject to removal at any given time.

If costs continue to exceed the cap after all rebate negotiations take place, DOH may take further steps, such as implementing prior approval requirements, removing drugs from formularies, and promoting the use of alternative drugs. In particular, these measures may be targeted at drugs whose manufacturers did not enter into supplemental rebate agreements.

Pharmacy Pricing

Standard Medicaid prices for prescription drugs have been altered:

- For generic drugs, Medicaid will now pay no more than the wholesale acquisition price minus 17 percent.
- For brand-name drugs, Medicaid will now pay no more than the wholesale acquisition price minus 3.3 percent.

Medicaid dispensing fees are raised from $3.50 to $10, while co-pays for prescription drugs are reduced from $3 to $2.50.

Additionally, the budget modifies the provision implemented in last year's budget allowing the State to require manufacturers of generic drugs to provide rebates to Medicaid if prices increase by more than a

certain threshold. The threshold has been decreased from 300 percent of state maximum acquisition cost (SMAC) to 75 percent of SMAC starting in FY 2018.

Prior Authorization for Controlled Substances

Prior authorization for a drug refill for controlled substances may now be required if the refill is requested when more than a seven-day supply is remaining on the previous prescription.

BEHAVIORAL HEALTH (BH) AND DEVELOPMENTAL DISABILITIES (DD)

Extension of APG Rates

The State will extend the requirement for Medicaid and CHIP MCOs to pay fee-for-service Ambulatory Patient Group (APG) rates for BH services through the end of FY 2020. Furthermore, the requirement is expanded from ambulatory BH services to all non-inpatient BH services.

This extension is contingent on providers meeting aggregate benchmarks laid out in the Value-Based Payment (VBP) Roadmap, but the State may waive this requirement if conditions warrant.

Cost of Living Adjustment (COLA) and Wage Subsidies

COLAs for all human services agencies are eliminated for FY 2018, and for behavioral health and developmental disabilities services agencies through FY 2019. The sunset date on the statutory authority permitting COLAs is extended through FY 2021.

Instead, the budget authorizes two wage increase adjustments:

- An increase of 3.25 percent for direct care staff wages in January 2018; and
- An increase of 3.25 percent for direct care staff and clinical staff wages in April 2018.

Agencies may direct the amount of this increase towards various job positions as they see fit.

Heroin and Opioid Prevention and Treatment

The budget allocates $30 million in operating funding to address heroin and opiate use and addiction disorders. Funds may be used for treatment, recovery, and/or prevention services. An additional $10 million in capital funding is also available for these purposes.

Children's BH Restructuring

The budget includes $10 million in capital funding for not-for-profit agencies to support the restructuring of children's behavioral health services.

LONG TERM CARE

Nursing Home Per Diem Adjustment

For all nursing homes that primarily serve adults, DOH will implement a per diem adjustment to rates that will reduce payments by $18 million per year, effective April 1st.

Benchmark Rate

MCOs will reimburse nursing homes at a fee-for-service benchmark rate through December 2020.

Reserved Bed Day Payments

For adults in nursing homes, the separate limit for reserved bed day payments for temporary hospitalizations has been removed. As such, Medicaid will now pay for only 10 days total per 12-month period (reduced from 14 days).

Consumer Directed Personal Assistance Program (CDPAP)

The budget establishes a certification process for fiscal intermediaries (FI), which provide payroll and similar financial services to support consumers who choose to self-direct their personal care through CDPAP. Additionally, personal care workers (including family) who are paid through CDPAP are now included in the home care wage parity program.

PRIMARY CARE

Indigent Care Pool

The Indigent Care Pool for non-profit voluntary Article 28 diagnostic and treatment centers has been extended for three years, with $7.5 million per year, through 2020.

INSURANCE

Essential Plan

The appropriation for the Essential Plan was increased by $14.6 million (to $4.178 billion) from the Governor's proposal, while increased premium requirements were rejected.

OTHER PROGRAMS

Public Health Programs

The Governor's proposal to block grant many public health programs with a general 20 percent cut in funding was not approved. However, many of the line-item appropriations reflect a 20 percent reduction in funding, such as:

- Chronic Disease Programs
    - $19.8 million for evidence based cancer services programs;
    - $33.1 million for tobacco use prevention and control programs and cancer research;
    - $2.2 million for tobacco enforcement and education programs;
    - $6.0 million for diabetes and obesity programs; and
    - $2.6 million for breast cancer research and prevention.
- Maternal and Child Health
    - $26.3 million for nutritional services for pregnant women, infants, and children;
    - $10 million for the promotion of women's health and programs to reduce the adverse effects of multiple births;
    - $1.9 million for a universal prenatal and postpartum visitation program;
    - $1.9 million for state grants to improve access to infertility services, treatments, and procedures; and
    - $1.8 million for a prenatal care assistance program (PCAP).

Similar cuts apply for school-based health, workforce, and other programs.

Extensions of Existing Law

Many provisions scheduled to sunset after 2017 have been extended, in most cases for a three-year period, and generally at the same funding level as in FY 2017. This includes:

- Health Care Reform Act (HCRA) programs;
- Physician workforce programs like the Empire Clinical Research Investigator Program and Physician Loan Repayment Program;
- Recruitment and retention rate adjustments for home health aides and personal care providers; and
- The medical malpractice and hospital excess liability insurance programs.