

## NYS Fiscal Year 2022 Executive Budget

### OVERVIEW

On January 19<sup>th</sup>, Governor Andrew Cuomo and Budget Director Robert Mujica delivered presentations on the Fiscal Year (FY) 2022 New York State budget. Due to the COVID-19 crisis, the State is facing significant fiscal challenges: the Division of the Budget (DOB) has projected a combined \$15 billion budget shortfall for FY 2021 and FY 2022.

Although the Governor has called for the federal government to provide \$15 billion in federal aid to close the two-year deficit, the Executive Budget Financial Plan is based off a “worst-case” scenario under which the federal government provides only \$6 billion, which DOB has identified as a reasonable lower bound on potential federal funding. The Budget assumes that this would be apportioned evenly as \$3 billion per year in the next two budget years (ending March 2023). In this scenario, the budget would include the following major spending reductions and tax increases:

Proposed Budget Action	FY 2022 Impact	FY 2023 Impact
<b>Across-the-Board Local Aid Cut:</b> In June, the State announced that it would begin withholding 20% of most local aid payments to achieve cash flow savings. This amounted to about \$2.9 billion through December 2020. Due to improved receipts, the State would repay three-quarters of this amount and convert the withhold into 5% across-the-board ongoing reductions. The State intends to repay the balance of the amount withheld during FY 2021 (i.e., 15% of payments) by the end of March 2021.	\$900 million	
<b>Medicaid:</b> The State would achieve FY 2021 savings through COVID-19 adjustments to managed care rates and other adjustments and FY 2022 savings through across-the-board cuts and the use of available resources to support spending.	\$599 million	\$351 million
<b>School Aid:</b> The State would consolidate expense-based School Aid categories and institute a Local District Funding Adjustment to account for federal aid. In the school year 2021-22, these cuts would be fully offset by federal relief funds.	\$1.51 billion	\$1.52 billion
<b>State Operations:</b> Among other items, the State will continue to withhold planned contractual salary increases for the state workforce until FY 2023.	\$44 million	\$110 million
<b>Temporary High-Income Surcharge:</b> The State would institute a temporary, three-year personal income tax surcharge of between 0.5 percent and 2.0 percent on taxpayers with incomes above \$5 million.	\$1.54 billion	\$1.40 billion
<b>Pause of Middle-Class Tax Cut:</b> The State would pause the scheduled decrease of personal income taxes for middle-income taxpayers (i.e., the brackets between \$43,000 and \$323,200) by one year.	\$394 million	\$403 million

By August 31<sup>st</sup>, if the federal government provides less than \$3 billion in unrestricted aid for FY 2022, the Director of the Budget would have “superpowers” to conduct further cuts, across-the-board if practical. Conversely, if the federal government provides the Governor’s request of \$15 billion or more by the same date, these proposals could be reversed or modified. In this scenario, the budget would allow for the restoration of the aforementioned spending reductions according to the following schedule:

- \$3.25 billion for education, including restoration of the Local District Funding Adjustment and other cuts;
- \$600 million for state operating expenses, including contractual salary increases;
- \$400 million for services within the Department of Health, municipalities, and other public health organizations;
- \$700 million for local aid for various support services for vulnerable populations;
- \$200 million for mass transit administration and operating assistance; and
- \$100 million for local governments.

With this funding, the State would also enact or expand further COVID recovery programs, including emergency rental assistance, food insecurity initiatives, the State’s universal broadband program, the Liberty Defense Program for legal aid to undocumented individuals, and tax credits for small businesses, restaurants, and the arts and entertainment industry. In his budget address, the Governor stated that he intends to pursue all avenues to achieve adequate aid, potentially including litigation.

Below is a summary of other major health-related provisions and legislation from the budget. As a reminder, all proposals are subject to change during the 30-day amendment period (ending February 18<sup>th</sup>) and during negotiations with the Legislature.

The Governor’s presentation is available [here](#). The budget briefing book, which provides a summary of the budget proposal, is available [here](#). The Governor’s office has also released the State of the State book that outlines the Governor’s agenda for FY 2021 and is available [here](#). Additional policies and funding details are included in the full Executive Budget, which is available [here](#).

## TELEHEALTH

The Governor’s State of the State address included proposals to reform telehealth policy following the end of the COVID-19 public health emergency. Those that are explicitly included in the proposed Budget legislation are underlined below.

### Reduction of Regulatory Barriers

- Allow individuals to receive telehealth services wherever they are located, subject to federal approval;
- Establish a single statewide consent form for the Statewide Health Information Network (SHIN-NY), and require qualified entities to allow all SHIN-NY participants to access all of a patient’s information through that form;
- Direct the State Education Department to, by March 31, 2022, issue regulations creating an interstate licensing reciprocity program with contiguous and Northeastern states, to allow

practitioners licensed in those states to provide telehealth services to patients in New York, taking into account specialties with historical access issues;

- Eliminate remaining in-person evaluation requirements before telehealth services can be delivered, to the extent permitted by federal law and when professionally appropriate; and
- Expand the types of staff who can deliver remote services.

## Behavioral Health

- Develop a regulatory structure for a predominantly virtual outpatient substance use disorder treatment program;
- Allow certain unlicensed staff, such as Credentialed Alcoholism and Substance Abuse Counselor (CASAC) trainees and Peer Specialists, to deliver substance use disorder and mental health services; and
- Explore the expansion of existing initiatives that extend behavioral health services into nursing facilities.

## Managed Care and Insurers

- Ensure that telehealth will be reimbursed at “rates that incentivize use when medically appropriate”;
- Require regulated health insurers offering comprehensive coverage to ensure that they provide an adequate telehealth network;
- Require any telehealth platforms offered as part of a mandatory telehealth program to participate in the Statewide Health Information Network for New York (SHIN-NY) or an equivalent electronic medical records system;
- Require commercial health insurers and Medicaid to cover telephonically-delivered services when medically appropriate, subject to federal approval;
- Expand coverage for patient monitoring services;
- Require insurers to offer members an e-triage or virtual emergency department platform that enables individuals to receive a symptoms assessment and a referral to a network of providers or a nearby emergency department when warranted; and
- Facilitate the use of expert consultations between providers via telehealth (i.e. “e-consults”) by encouraging insurers to reimburse providers directly for engaging in e-consults or permitting the inclusion of insurers' costs associated with e-consult platforms within the health care service costs.

## Investments and Other Requirements

- Require hospitals and health care professionals to publicly disclose whether they offer telehealth services;
- Support community health providers, libraries, pharmacies, and others to invest in audiovisual devices, remote monitoring devices, physical telehealth spaces, and other technologies to develop more ways to connect to underserved communities;

- Launch a new optional Telehealth Training program that will offer providers an open-access continuing medical education curriculum on telehealth; and
- Pilot a telehealth facilitator program that aims to improve comfort with and access to telehealth tools for vulnerable populations who lack familiarity with the technology. Community service providers, including non-medical professionals, will be trained to help patients in their home set up accounts, connect to doctors, and address other technological literacy issues.

## COVID-19 RESPONSE

The Budget includes several initiatives related to the State's ongoing efforts to combat the COVID-19 pandemic. To assist the vaccination program, the Governor is proposing the development of a New York State Public Health Corps that will be managed by the State Department of Health. The Public Health Corps will enlist up to 1,000 students in undergraduate and graduate public health programs, nursing schools, medical schools, recent graduates, retired medical professionals, and laypeople who will receive an intensive public health training curriculum and will assist in the State's vaccination efforts.

The Governor is also proposing to require all public and private employers to offer workers four hours of paid time off to obtain the COVID-19 vaccine and that the New York Vaccine Equity Task Force establish partnerships with private entities, localities, and public clinics to ensure vaccines reach vulnerable and underserved communities.

## PANDEMIC PREPAREDNESS

To ensure that New York is prepared for future public health emergencies, the Budget proposes to:

- Secure an in-state personal protective equipment (PPE) supply chain and pass the Medical Supplies Act, which will prioritize the purchase of PPE and medical supplies that are produced domestically;
- Make permanent the hospital "Surge and Flex" regulations implemented during the COVID-19 pandemic, which coordinate and organize hospitals under a single system and require hospitals to be prepared to increase bed and staffing capacity, maintain and manage PPE, patient load balance, and report all information necessary information to the State;
- Launch a free online citizen public health training program that will train and educate New Yorkers on how to be prepared for the next health emergency; and
- Direct the Empire State Development Corporation to create a new \$40 million New York Infectious Disease Resiliency Commercialization Fund that will accelerate the growth of companies statewide and support the development of innovations that address emerging infectious diseases and public health threats.

## MEDICAID

The budget proposes to extend the Medicaid global cap of 2.9% through FY 2023. Total Federal, State and local Medicaid spending is expected to be \$82.9 billion in FY 2022, with a State share of \$27.6 billion.

## HOSPITALS

The Budget would:

- Enact a new, further reduction of 5% to hospital capital rate add-on payments;
- Discontinue State funding for Indigent Care Pool payments to public hospitals;
- Provide \$500 million in funding through FY 2022 for the Distressed Provider Relief Fund to support financially distressed hospitals and nursing home facilities; and
- Discontinue requirements for annual working hour audits of hospital residents, to be replaced with an annual attestation requirement.

## LONG-TERM CARE

The budget proposes provisions to ensure that nursing homes spend an appropriate level of their resources on resident care, including to:

- Increase the existing Nursing Home Quality Pool, in order to reward quality based on staffing practices;
- Promulgate regulations governing the review and approval of any contracted staffing arrangements between nursing homes and staffing agencies that provide or arrange for direct care staff; and
- Ensure that Medicaid reimbursement rates will include only staffing costs related to staffing contract arrangements that comply with regulatory requirements and only to the extent that such costs are determined by the Department of Health (DOH) to be consistent with comparable rates for employed clinical staff and/or fair market value and commercial reasonableness.

The budget also proposes to:

- Reduce, by 50 percent, the worker recruitment and retention funding for long-term care personal care service workers, certified home health agencies, long-term home health care programs, AIDS home care programs, hospice programs, and managed long-term care plans;
- Extend various expiring laws, such as extending the authorization of bad debt and charity care allowances for certified home health agencies through March 2023; and
- Extend a limitation on the reimbursement of certified home health agencies and long-term home health care programs administrative and general costs to not exceed a Statewide average through March 2023.

## HEALTH INSURANCE

The budget proposes to:

- Reduce rates paid to Medicaid plans, including both mainstream and managed long-term care (MLTC), to account for lower health care utilization in FY 2021 due to the pandemic;

- Eliminate Essential Plan monthly premiums for 400,000 current enrollees and will lead to coverage of an additional 100,000 enrollees who are currently uninsured;
- Provide \$420 million in payment rates to insurers who cover Essential Plan enrollees, in order to enhance provider reimbursement;
- Establish a \$200 million Essential Plan Quality Pool to incentivize providers based on performance;
- Provide \$442 million in total gross funding for the operation of the State's health insurance marketplace (the NY State of Health Exchange).

In the State of the State Briefing Book, the Governor also proposes to:

- Direct the Department of Health (DOH) to conduct a comprehensive review of public health insurance programs (including Medicaid, the Essential Plan, and CHP) to identify and address health inequities for communities of color, including by requiring managed care plans to address social determinants of health and tie health plan quality incentives to reductions in health disparities; and
- Require health plans to collect and submit detailed data related to health disparities.

## PHARMACY

Legislation in the FY 2021 Enacted Budget directed the Medicaid pharmacy benefit to be carved out from managed care back into fee-for-service, effective April 1, 2021. This includes drugs purchased through the 340B program and billed to Medicaid. The FY 2022 Executive Budget proposes to:

- Establish a supplemental payment pool (\$102 million per FY, starting FY 2022) in which DOH will reinvest a portion of the savings from the pharmacy benefit carveout directly to 340B providers (including FQHCs and other safety net community providers, but excluding hospitals), to offset these entities' revenue losses;
- Extend the Medicaid drug cap through FY 2022;
- Enhance pharmacy oversight by discontinuing prescriber prevails and coverage for certain over-the-counter products (results in \$59.7 million in State savings over two years); and
- Propose a licensing program for Pharmacy Benefit Managers (PBMs), funded by licensing fees, and that would require PBMs to register with the Department of Financial Services (DFS) and to disclose financial arrangements that may affect consumers.

## MENTAL HYGIENE

### Multi-Agency Budget Actions

The Budget seeks to enhance collaboration between the Office of Mental Health (OMH), the Office of Addiction Services and Supports (OASAS), and the Office for People with Developmental Disabilities (OPWDD). It proposes to:

- Integrate OMH and OASAS into the Office of Addiction and Mental Health Services);

- Authorize OMH and OASAS to jointly license and operate Crisis Stabilization Centers that accept admissions without referrals, including direct drop-offs by police or first responders;
- Enact legislation that directs OMH, OASAS, and DOH to establish a single integrated license that enables providers to offer a full array of physical, addiction, and mental health outpatient services at the same location, effective CY 2022;
- Extend for three years the authority of OMH and OPWDD facility directors to act as representative payees to use funds for the cost of a resident's care and treatment; and
- Extend for five years the current law that allows OMH and OPWDD to appoint temporary operators for the continued operation of programs when it may be necessary to maintain a program's viability and protect the health and safety of patients.

## OMH

The Budget appropriates \$3.2 billion in funds to OMH programs (representing a 0.9% decrease from FY 2021) and proposes specific provisions to:

- Continue the \$20 million investment from FY 2021 to support existing community-based residential programs;
- Provide \$9.7 million annually for individuals living in transitional adult homes wishing to transition to community-based settings;
- Provide \$60 million to maintain and preserve community-based residential facilities; and
- Charge application fees to process applications for the issuance of OMH operating certificates and increase penalties for providers who fail to comply with the terms of their operating certificate.

## OASAS

The Budget appropriates \$645 million in funds to OASAS programs (representing a 4.1% annual growth from FY 2021) and proposes specific provisions to:

- Commit to opening at least 160 new residential treatment beds by the end of FY 2022;
- Increase the number of co-located medication units and mobile addiction treatment programs;
- Expand the use of take-home medication for opioid misuse;
- Promote changes to opioid treatment programs (OTPs), including allowing OTPs to provide interim maintenance treatment to individuals (and thereby eliminating waitlists), increasing the use of peer and family services, and incorporating outpatient rehabilitation services; and
- Fund and develop an authorization process and regulatory standards for individuals and businesses that assist individuals in finding treatment services, including requirements to register with OASAS and the development of a public list of trusted businesses.

## OPWDD

The Budget appropriates \$3.98 billion in funds to OPWDD, representing a 2.8% increase from FY 2021, and proposes provisions to:



- Provide an additional \$15 million to support the expansion of independent living opportunities for individuals with intellectual and developmental disabilities;
- Assess the potential effectiveness and sustainability of an OPWDD transition to managed care;
- Transition individuals who are living in State-operated residences to voluntary-operated programs (where appropriate) in order to accommodate young adults with more intensive needs who have aged out of residential schools;
- Continue to increase program capacity in areas including day programs, employment services, caregiver respite, and Self-Direction; and
- Extend existing processes for time-limited demonstration programs that provide individuals with specialized psychiatry units in order to allow for new methods of services for individuals with I/DD to be properly evaluated.

## HUMAN SERVICES

The Budget would provide \$10.5 billion in total funds for human services programs (representing an increase of 5.6% from FY 2021) under State agencies including the Office of Temporary and Disability Assistance (OTDA), Office of Children and Family Services (OCFS), and the Department of Labor (DOL). Additionally, the Budget proposes to:

- Provide \$250 million for supportive housing construction, as part of the continuing Affordable and Homeless Housing and Services Initiative; and
- Provide \$128 million in continued funding for the Homeless Housing and Assistance program.

## WORKFORCE

The budget contains a broad range of provisions related to workforce, many related to expanding scope of practice and streamlining pathways to higher-skill roles. Specifically, it would:

- Include nearly \$2 billion to support the direct cost of the FY 2022 minimum wage increases for health care workers that provide Medicaid services, including reconciliation of underpayments from prior years;
- Use an additional \$38.5 million in State funds to support minimum wage increases for staff at not-for-profits authorized by OMH, OASAS, and OPWDD;
- Introduce legislation to expand the scope of practice of pharmacists. Specifically, pharmacists would be able to (1) direct limited-service labs, provide health care screenings, and administer tests, (2) act as referring healthcare providers for diabetes self-management and asthma self-management training, (3) administer immunizations, and (4) enter into collaborative drug therapy management agreements with physicians in community settings;
- Introduce legislation to expand the nurse practitioner (NP) scope of practice by allowing NPs to administer immunizations and engage in collaborative agreements with pharmacists;
- Allow licensed nurses in need of fulfilling final baccalaureate credentials to receive priority admission to all SUNY and CUNY programs across the state;



- Allocate \$2 million for a new “Pathways In Health Care Careers” grant program within the Workforce Development Initiative, which, in partnership with the industry, funds workforce supports to train new and existing health care workers for higher-skilled jobs;
- Expand SUNY’s free Online Training Center with health care certification programs;
- Assemble a task force including representatives of nursing schools, hospitals, and practicing nurses to develop policy giving nursing schools flexibility to include simulations as part of mandated clinical coursework; and
- Propose a comprehensive set of reforms for the DOH Office of Professional Medical Conduct (OPMC) including strengthening disciplinary oversight, enacting periodic renewal requirements for physicians to maintain their New York State license, reforming the investigation and hearing processes, and ensuring that consumers have accessible information about NYS licensed physicians.

## OTHER

The Budget would:

- Extend regulatory waiver authority to allow providers who were involved in DSRIP projects or who would like to scale and replicate ideas from the DSRIP program, to avoid duplicative requirements, through April 1, 2024, and allow promising DSRIP approaches to be continued;
- Pass a comprehensive adult-use cannabis program, including the creation of a new Office of Cannabis Management and implementation of a new regulatory framework, expected to generate \$300 million in tax revenue;
- Allow DOH to authorize and implement medical respite pilot programs;
- Revise the payment schedule for physician Excess Medical Malpractice payments to insurers (from one annual payment to two installments split over two fiscal years) and reduce the State support for future policy years by 50 percent;
- Extend provisions of the hospital excess liability pool through June 30, 2022;
- Discontinue the Empire Clinical Research Investigator Program (ECRIP) and phase out current Stem Cell and Spinal Cord research programs;
- Discontinue support for certain legacy public health programs within DOH, including the Enhanced Quality of Adult Living (EQUAL) program and Enriched Housing program;
- Extend the elimination of the trend factor for service for general hospital and nursing home reimbursement through March 31, 2023; and
- Limit state aid reimbursement rate provided to New York City under the “general public health works” program to 10%.