

New York State Fiscal Year 2022 Enacted Budget Highlights

OVERVIEW

On April 7th, the New York State (NYS) Legislature passed the Enacted Budget for NYS Fiscal Year (FY) 2021-22. Governor Cuomo is expected to sign the budget bills into law this week. Total spending across all sources (including NYS and federal funds) is estimated at about \$212 billion, with \$111 billion from State operating funds. This reflects an increase of over \$16 billion from the Executive Budget proposal (\$7 billion in State spending), with significant new spending on COVID-19 response and relief for schools, renters, small businesses, excluded workers, and others.

On the revenue side, the budget incorporates significant federal aid from the American Rescue Plan (ARP) as well as additional revenue raised from increased taxes. The Financial Plan from the Executive Budget, as updated on February 22nd, projected a two-year budget gap of \$12.7 billion. The ARP provides a total of \$12.6 billion in unrestricted aid at the State level, which will be available for up to four years, and about \$5.5 billion of this funding will be used to fill various gaps in FY 2022. The ARP also offered a total of \$10.8 billion in aid to local governments (including about \$6 billion for New York City), and the Budget creates appropriation authority for the distribution of these funds.

Below is a summary of major health care provisions and other highlights from the budget's Article VII legislation and appropriation bills. Where available, legislative sources are marked in [brackets]. The Article VII Health and Mental Hygiene (HMH) bill can be found [here](#). The full FY 2022 budget materials will be available on the Division of the Budget's website [here](#).

REVENUE

The Enacted Budget contains several new revenue-raising provisions:

- Establish a surcharge on high earners (which would expire after 2027), with a top rate of 10.9% for filers earning more than \$25 million (Revenue, Part HHH). This would raise \$2.8 billion in FY 2022.
- Implement a surcharge on corporations with a business income base of over \$5 million (which would expire after 2023) that increases the top business income tax rate from 6.5% to 7.25% (Revenue, Part HHH).¹ This would raise \$750 million in FY 2022.
- Create an alternative tax framework for pass-through entities (partnerships and S corporations), partly addressing the federal cap on state and local tax (SALT) deductions (Revenue, Part C).
- Authorize a framework for mobile sports betting (Revenue, Part Y). The State's estimate is that revenues could be about \$99 million in FY 2022, and as high as \$500 million by FY 2026, although these projections are highly uncertain. Funds will be earmarked primarily for education, with allocations to problem gambling and youth sports programs.

¹ For corporations who owe taxes based on their business capital base, the liability would be increased to 0.1875% of that base through 2023.

TELEHEALTH

The Budget includes the following telehealth proposals from the Executive Budget [HMH, Part F]:

- Expand eligible distant site locations for telehealth delivery and payment purposes to be any site within the United States or U.S. territories where the telehealth provider is located while delivering healthcare services;
- Expand originating site locations to be any site where the patient is located at the time they are receiving healthcare services via telehealth; and
- 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 via telehealth.

Other telehealth proposals in the Executive Budget were rejected. These include:

- 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.
- Create 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.
- Require regulated health insurers offering comprehensive coverage to ensure that they provide an adequate telehealth network.

The Budget also contains no requirements for telehealth payment parity, although this may be addressed in future legislation.

Additionally, the Governor announced that the Reimagine New York Build Back Better initiative will include a \$3 million capital grant program with matching state and private funding to support telehealth infrastructure needs of rural providers and providers serving vulnerable populations.

MEDICAID PROGRAM

The Enacted Budget removes the Executive proposals for an additional 1% across-the-board Medicaid cut, proposed reductions to indigent care and other safety net pool programs, and elimination of quality pools. However, other existing cuts have apparently not been reversed, including the FY 2021 across-the-board cut of 1.5% and the COVID-19 rate adjustment to managed care plans effective April 2020.

The Budget extends the Medicaid Global Cap through FY 2023 and changes the requirement for the Department of Health (DOH) to report on the Global Cap from monthly to quarterly (HMH, Part A).

The Budget also continues the carve-out of certain services from Medicaid managed care:

- Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) waivers until at least January 1, 2026 [HMH, Part II].
- School-based health centers (SBHCs), until at least April 1, 2023 [HMH, Part JJ].

HCBS Funding

The ARP includes a 10% increase in federal matching funds for Medicaid home and community-based services (HCBS) for one year. Federal guidance on how these funds may be used is expected to be forthcoming shortly.

The Enacted Budget creates an appropriation for New York's estimated allocation of \$1.629 billion through this enhancement [AtL, 769]. The appropriation authorizes the Department of Health (DOH) or a sub-allocated agency to expend these funds through non-competitive contracts or grants. Funds may be sub-allocated without limit to other agencies based on approved Medicaid HCBS claims. The Budget also describes the following sub-allocations to other agencies:

- Office of Addiction Services and Supports (OASAS): \$11 million [AtL, 982]
- Office of Mental Health (OMH): \$160 million [AtL, 1005]
- Office for People with Developmental Disabilities (OPWDD): \$740 million [AtL, 1031]

Much of the balance of \$718 million would likely be related to long-term care HCBS.

INSURANCE AND PAYERS

The Budget will:

- Eliminate monthly premiums and cost-sharing requirements for enrollees in the Essential Plan and incorporate dental and vision services into the benefit package [HMH, Part H]. The Essential Plan provides coverage to households with incomes between 138% and 200% of the federal poverty line (FPL).
- Provide health insurance coverage for postpartum women with income between 200% and 223% of FPL [HMH, Part PP]. Such women are currently eligible for Medicaid during their pregnancy and up to 60 days after its end. The Budget establishes a new program that would subsidize all remaining premium obligations, after federal premium tax credits, for such women to enroll in a silver-level qualified health plan (QHP) on the New York State of Health (NYSoH) exchange.

PHARMACY

The Enacted Budget will:

- Delay the transition of the Medicaid pharmacy benefit from managed care to fee-for-service (FFS), previously slated for May 1, 2021, to no earlier than April 1, 2023 [HMH, Part C].
- Require DOH to make a report to the Legislature describing how the Medicaid program (both managed care and FFS) pays prescription drug dispensing fees to retail pharmacies by December 31st [HMH, Part QQ].

The Enacted Budget does **not** contain the following rejected proposals from the Executive Budget:

- End the Medicaid “prescriber prevails” policy.

- Create a system for regulation of pharmacy benefit managers (PBMs). This issue may be addressed in future legislation later in this session.
- Enable nurse practitioners to engage in collaborative drug therapy agreements with pharmacists.
- Update vaccination authority for physicians, NPs, and pharmacists.
- Expand the scope of practice for pharmacists.

PAYMENT REFORM

The Budget modifies last year's (FY 2021) Budget authority for DOH to set up one or more five-year, regional multi-payer (Medicaid, Medicare, and commercial) global budgeting demonstrations by requiring that at least one such demonstration will be located in the Western, Central, Southern Tier, or Capital Region [HMH, Part OO].

SAFETY NET PROGRAMS

The Budget appropriates \$132 million for essential community provider network and Vital Access Provider (VAP) expenses and \$50 million for targeted behavioral health VAP services [AtL, 757].

LONG-TERM CARE

The budget extends 0% trend factors for nursing home, Article 36 home health, and personal care services through 2023.

Nursing Homes

The Enacted Budget includes the following nursing home reforms, which were initially introduced in the 30-day amendments to the Executive Budget [HMH, Part GG]:

- Require that nursing homes spend at least 70% of revenue on direct resident care (excluding capital costs, capital depreciation, debt service, rent and leases, fiscal services, taxes other than payroll taxes and sales taxes, and administrative costs other than nurse administration) and at least 40% of revenue on resident-facing staff, beginning January 1, 2022.
 - If the nursing home contracts out for resident-facing staff (registered nurses, licensed practical nurses, or certified nurse aides), only 85% of such costs will be counted for the purposes of this requirement.
- Limit nursing home operating margins to 5%.
- Nursing homes who violate either of these requirements are required to return the unspent or excess revenue to DOH. DOH may pursue these funds through lawsuits or deductions from Medicaid payments. These funds will be reinvested in the nursing home quality pool. These requirements may be waived in exceptional circumstances.

Other nursing home reforms proposed in the 30-day amendments were rejected. These included salary caps for executive and managerial positions, requirements for nursing homes to increase transparency by

disclosing rates and facility ownership information on a publicly available website, and requirements for nursing homes flagged for operational deficiencies to contract with an independent quality monitor.

The Budget also extends the Health Facility Cash Assessment of 6% on gross receipts through FY 2023 [HMH, Part S].

Fiscal Intermediaries

The Budget requires DOH to authorize more fiscal intermediaries (FIs) from the pool of existing applicants to address issues of access and geographic distribution [HMH, Part LL]. The Request for Offers (RFO) will not be reissued. Instead, DOH will survey previous applicants to request additional information about their operations, location, and certain equity criteria. DOH will then make additional awards to the next-highest scoring applicants who meet the following criteria:

- 1-2 additional applicants in each county with a population between 200,000 and 500,000;
- 1-2 additional applicants in each county with a population above 500,000;
- At least 2 additional applicants who are not-for-profits who have operated since 2012 and provide services to people with intellectual and/or developmental disabilities (I/DD);
- At least 2 additional applicants who are not-for-profits who have operated since 2012 and serve racial, ethnic, or religious minorities or new Americans;
- At least 2 additional applicants who are minority or woman-owned businesses.

Other Long-Term Care

The Enacted Budget accepts the Executive Budget's extension of current certified home health agency (CHHA) policies [HMH, Part S]:

- Extend the authorization of bad debt and charity care allowances for certified home health agencies through June 30, 2023.
- Extend limits on the reimbursement of administrative and general costs for CHHAs and long-term home health care programs (LTHHCPs) through March 31, 2023.

The Budget also expands the managed long-term care (MLTC) housing disregard to individuals who are mandated to and in the process of enrolling in MLTC [HMH, Part NN]. The [housing disregard](#) provides individuals who are being discharged to the community from a nursing home or other facility with an extra housing allowance.

The Enacted Budget rejected various proposals around the long-term care workforce, including:

- Executive Budget proposals to reduce workforce retention and retraining funds by 50 percent across a number of long-term care providers, including personal care service workers, CHHAs, LTHHCPs, AIDS home care programs, hospice programs, and MLTC plans.
- Senate and Assembly proposals to facilitate home care workers from out-of-state, expand eligibility for home care, and enhance pay for home care workers.

HOSPITALS

The Budget will:

- Enact an additional reduction of 5% (for a total of 10%) to hospital capital rate add-on payments [HMH, Part D].
- Extend provisions of the hospital excess liability pool through June 30, 2022 [HMH, Part K].
- Extend, through FY 2023, the 0% trend factors for general hospital inpatient and outpatient reimbursement through FY 2023 [HMH, Part S].
- Extend, through FY 2023, authorization for adjustments related to the capital related inpatient expenses component of payment rates [HMH, Part S].

Cuts to Disproportionate Share Hospital (DSH) payments were rejected.

PHYSICIANS AND PRACTITIONERS

The Budget will extend:

- For one year (through June 30, 2022), the physician Excess Medical Malpractice program [HMH, Part K];
- For one year (through December 31, 2022), reimbursement rates for the Medical Indemnity Fund [HMH, Part S]; and
- For one year (through June 30, 2022), the Nurse Practitioner Modernization Act [HMH, Part S].

The Executive Budget's proposals for reform of physician licensure (including a requirement to renew licenses periodically) and definitions of physician misconduct were rejected.

Separately from the FY 2022 Budget, the Legislature passed and the Governor signed [S. 5177](#), a bill that repeals the Emergency or Disaster Treatment Protection Act (EDTPA), which provided a liability shield to providers during the COVID-19 PHE and was originally passed as part of the FY 2021 Budget.

MENTAL HYGIENE

Multi-Agency Actions

The following provisions in the Enacted Budget apply to at least two of New York's mental hygiene agencies (OMH, OASAS, and/or OPWDD).

- Appropriate \$46.2 million to apply a 1% Cost of Living Adjustment (COLA) for non-profits licensed, certified, or otherwise under the auspices of OMH, OASAS, or OPWDD, including applying to salaries for direct care workers [Revenue, Part FFF].
- Include funding of \$38.5 million across OMH, OASAS, and OPWDD to support direct salary and fringe costs related to minimum wage increases [AtL].

- Authorize OMH and OASAS to jointly license and operate 24/7 Crisis Stabilization Centers that provide stabilization service to individuals at risk of a mental health or substance use crisis and who are voluntary referrals only [HMH, Part AA].
- Arrange for appropriate training, including crisis intervention team training and mental health first aid, to law enforcement and first responders within the catchment areas of Crisis Stabilization Centers [HMH, Part AA].
- 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 [HMH, Part T].
- Extend, for one year, current authority for OMH and OPWDD to appoint temporary operators for the continued operation of programs when necessary to maintain a program's viability and protect the health and safety of patients [HMH, Part U].
- Direct the Office of Children and Family Services (OCFS), along with OMH, OASAS, DOH, and other state agency partners, to implement a statewide campaign to educate families about adverse childhood experiences. [ELFA, Part JJ, Subpart A]

The Enacted Budget rejects the following Executive Budget proposals:

- Integrate OMH and OASAS into a single Office of Addiction and Mental Health Services.
- Authorize OMH, OASAS, and DOH to establish a single integrated license.

OMH

The Budget will:

- Extend, for three years, the Community Mental Health Support and Workforce Reinvestment Program, which reinvests funds from the closure of inpatient beds in State Psychiatric Centers into community resources. However, OMH is not required to allocate funding for FY 2022 [HMH, Parts W and X].
- Establish application processing fees for the issuance of OMH operating certificates, to be deposited to the General Fund [HMH, Part Z].
- Extend, for three years, OMH's existing authority to implement time-limited demonstration programs that provide individuals with specialized psychiatry services [HMH, Part V].

The Enacted Budget does not include proposals to give OMH additional oversight authority to close or consolidate facilities without one year's notice and impose additional fees.

OASAS

The Budget includes the creation of a \$32 million fund from the McKinsey opioid settlement, to be used for treatment and prevention of opioid use disorder, including medication assisted treatment (MAT) [AtL, 985].

The Enacted Budget does not include the Executive Budget's proposal to allow OASAS to set licensing, credentialing, and authorization standards for all types of addiction professionals.

OPWDD

The Budget appropriates \$72.4 million for OPWDD to create new service slots, including expanded certified housing supports, community habilitation, respite, housing subsidies, self-direction, and day and employment services. This includes restoring proposed rate cuts to Care Coordination Organizations (CCOs).

The Budget modifies and clarifies membership requirements for the Developmental Disabilities Planning Council. At least 60% of the appointed members must be people with I/DD or their immediate relatives or guardians [HMH, Part HH].

SOCIAL SERVICES

The Budget appropriates \$5.6 million to apply a 1% COLA increase for OCFS, the Office of Temporary and Disability Assistance (ODTA), and the New York State Office for the Aging (SOFA) [AtL].

It also includes \$200 million for Pandemic Emergency Assistance through ODTA. Of these funds, \$100 million is split evenly for three dedicated purposes: (1) diapers for children under 3, (2) relocation services for victims of domestic violence, and (3) emergency food assistance for the elderly. The remaining funds may be used for all other permissible purposes.

Children's Services

The Budget will:

- Establish a two-year demonstration program for up to two specialized pediatric residential health care facilities for medically fragile young adults or transition-aged youth, to be operated by experienced providers [HMH, Part MM].
- Prohibit youth from being required to leave foster care solely on account of age, and, until October 1st, allow youth who were discharged from foster care on or after April 1, 2020 to return to care [ELFA, Part FF].
- Ensure that funding that foster care agencies receive through the Paycheck Protection Program (PPP) does not reduce their future maximum state aid rates (MSARs) [ELFA, Part EE].
- Continue, for one year, realigned financing for Committee of Special Education (CSE) residential placements outside of New York City [ELFA, Part I].
- Enact changes to comply with the Federal Family First Prevention Services Act regarding placement of youth in residential treatment programs [ELFA, Part L], including:
 - Requiring a licensed clinician/trained professional who is unaffiliated with any placement settings to provide an assessment of the youth within 30 days of placement; and

- Requiring Family Court to review and approve the placement within 60 days of placement.
- Direct OCFS to update guidelines and training for local child protective services and parties required to report cases of suspected child abuse and maltreatment [ELFA, Part JJ, Subpart A].

Housing and Supportive Services

The Enacted Budget authorizes DOH to license medical respite programs for individuals who are homeless or at risk of homelessness. Such programs will be operated by not-for-profit organizations to provide temporary room and board, health care, and supportive services [HMH, Part G].

The Budget also incorporates ongoing capital funding for supportive housing. The Governor announced that this includes \$250 million in additional capital funding in FY 2022. The Budget also includes \$128 million for the Homeless Housing and Assistance Program [Capital, 358].

WORKFORCE

The Budget will:

- Appropriate \$50 million for the new COVID-19 Recovery Workforce Initiative, which will fund training in high-growth industries, employer-driven training for low-income workers, and funding for small businesses to re-train and hire employees.
- Direct SUNY and CUNY to implement priority admission to nursing programs for nurses who need to finish their baccalaureate credentials to maintain licensure.

COVID-19 AND STATE OPERATIONS

The Budget establishes an appropriation fund of up to \$25 billion for various federal revenues, including ARP state and local aid, education aid, public health and Medicaid funds, and COVID-19 vaccine education. Separate funds of up to \$6 billion are also allocated for COVID-19 response and \$2 billion for accrued financial assistance.

The Budget's COVID-19-related relief for businesses will:

- Create the \$800 million COVID-19 Pandemic Small Business Recovery Grant program. The program will provide grants to businesses with 100 or fewer employees who can demonstrate year-over-year lost revenue in 2020. Grants may reimburse payroll, rent, local taxes, insurance, utilities, PPE, and other documented COVID-19-related costs.
- Establish that companies who required employees to work remotely due to COVID-19 may, through December 31st or the end of the PHE, designate remote work as having occurred at the original office location, for the purposes of location-based tax benefits [Revenue, Part NN].

The Budget's COVID-19-related relief provisions for individuals will:

- Create a \$2.1 billion Excluded Worker Fund, administered by the Department of Labor, which will provide one-time unemployment benefits to workers, including undocumented immigrants, who lost income or employment due to COVID-19, but were ineligible for federal aid [Revenue, Part EEE].
- Establish the \$2.4 billion COVID-19 Emergency Rental Assistance Program. This program will provide assistance to individuals or households with 80% or less of the area median income who experienced financial hardship due to COVID-19, and who are at risk for housing instability or homelessness. The program will fund up to 12 months of rent and utility arrears and 3 months of prospective rental assistance [ELFA, Part BB].
- Extend the covered period for forbearance of residential mortgage payments through December 31st or when reopening is complete [TED, Part LL].

Additional COVID-19-related allocations include:

- \$15 million for public education campaigns to address vaccine hesitancy, including funds that will be awarded directly to community-based organizations.
- \$10 million in support of social service crisis intervention programs and providers disproportionately affected by COVID-19.

Additionally, the Governor announced that the Budget will support ongoing COVID-19 response activities, including COVID-19 testing capacity, vaccine distribution, and the establishment of the New York Public Health Corps.

OTHER

Other Aid and Development

The Budget will enact several new aid initiatives not tied to COVID-19:

- Create low-cost broadband for low-income consumers by requiring large broadband providers (at least 20,000 households) to offer high-speed broadband services at a capped amount of \$15/ per month to qualifying consumers, including Medicaid enrollees [ELFA, Part NN].
- Invest \$2.3 billion of federal child care resources and \$100 million of State funding into child care programs. In particular, the Budget will expand child care affordability by requiring local departments of social services (LDSSs), for three years, to limit child care copayments to no more than 10% of the amount that a family's income is above 100% of FPL [ELFA, Part Z].
- Enhance the Excelsior Jobs Program and Employer Provided Child Care credits to increase incentives for employers to provide child care.
- Appropriate \$50 million for Nourish New York to address food insecurity [AtL].

The Budget appropriates \$385 million for the State and Municipal Facilities Program and includes all not-for-profit organizations as eligible entities, as occurred in one previous appropriation [Capital, 1035].

It also authorizes Federal Supplemental Security Income (SSI) benefits to be increased in 2022 by the percentage of any SSI COLA [ELFA, Part P].

The Budget also includes another round of \$750 million (including \$150 million in capital funding) for Regional Economic Development Council (REDC) awards, and \$220 million in capital funding for the New York Works Economic Development Fund.

Existing Programs and Authorities

The Budget will extend the following currently existing programs and authorities [HMH, Part S]:

- For six years, the authority for DOH to contract with transportation managers or brokers to provide transportation services for Medicaid beneficiaries;
- For one year (through April 1, 2022), regulatory waiver authority for providers involved in DSRIP projects or interested in scaling and replicating ideas from the DSRIP program;
- For three years (through December 31, 2024), DOH's authority to issue certificates of public advantage (COPAs);
- Through FY 2026, requirements for DOH to provide opioid overdose information to counties on a quarterly basis.

Regarding programs funded by the Health Care Reform Act, the Budget will:

- Phase out the Empire State Stem Cell Board grant program, with no new grants after April 1st. However, the Enacted Budget does not end the Empire Clinical Research Investigator Program (ECRIP) [HMH, Part M].
- Extend for one year the NYS Health Insurance Continuation Assistance Demonstration Project run by the Department of Financial Services (DFS) for entertainment industry employees [HMH, Part KK].

Miscellaneous Health-Related Provisions

The Budget will:

- Provide for the defense and indemnification of physicians acting on behalf of the state within the scope of their employment or duties [ELFA, Part HH].
- Enact the New York Medical Supplies Act, which stipulates that all State purchasing contracts for over \$50,000 of State contracts for personal protective equipment (PPE) or medical supplies require that the PPE/medical supplies be produced in the United States, unless cost or public welfare requires an exception [PPGG, Part BB].
- Enact the Community Violence Intervention Act, which will dedicate at least 10% of total funding awarded from the federal Victims of Crime Act to support hospital-based intervention programs and community-based violence intervention programs [ELFA, Part LL].
- Appropriate \$8 million for the New York State Maternal Mortality Review Board.
- Appropriate \$10 million for the All-Payer Claims Database.
- Appropriate \$30 million for the Statewide Health Information Network of New York.