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NEW YORK FY 2022-23 ENACTED BUDGET

April 2022

Sachs Policy Group

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New York State Fiscal Year 2023 Enacted Budget Summary

OVERVIEW

On April 9th, the New York State (NYS) Legislature passed the Enacted Budget for NYS Fiscal Year (SFY) 2022-23. Total spending across all sources (including NYS and federal funds) is estimated at approximately $221 billion, up from the Executive Budget's proposal of $216 billion, and a year-over-year increase from SFY 2022 of about $9 billion. The Budget projects that the State's principal reserves will rise to 15% of projected State Operating Funds spending by 2025.

Some notable changes in the Enacted Budget from Governor Hochul's Executive Budget include:

- **Medicaid Procurement**: The proposed competitive procurement of Medicaid managed care organizations (MCOs) has been removed, but the Department of Health (DOH) will commission an independent study on this topic to be delivered by October 31st.
- **Medicaid Eligibility**: The Budget proposed to expand eligibility thresholds and abolish resource limits in Medicaid. The former proposals have been accepted and extended to create new definitions for partial dual eligibles and to include adults over 65 regardless of immigration status. However, the abolition of resource limits has been removed.
- **Workforce and Scope of Practice**: The Budget does not include the Governor's proposals to:
  - Join the Interstate Medical and Nurse Licensure Compacts;
  - Move oversight of health care professions from the State Education Department (SED) to DOH; and
  - Reform emergency medical services and implement community paramedicine.
- **Home Care Minimum Wage**: The Budget includes a commitment to increase minimum wages for home care aides by $3 per hour by October 2023.

Other major proposals have been included, but with modifications. These include:

- **Capital Funding**: The Budget includes the proposed $1.6 billion for health care capital projects, with a wider array of eligible providers.
- **Workforce Bonuses**: The Budget includes the proposed $1.2 billion for health care workforce bonuses, with more specific requirements for implementation.

The remainder of this document provides more detailed information on 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 Article VII Education, Labor and Family Assistance (ELFA) bill, which served as an omnibus bill for lawmakers this year and contains additional health provisions, can be found here.

Other FY 2023 budget materials are available on the Division of the Budget (DOB) website here.

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MEDICAID

Global Cap Re-Indexing

As proposed by the Executive, the Enacted Budget modifies the metric used to calculate the growth of the Medicaid Global Cap. Instead of being limited to the 10-year rolling average of the medical component of the Consumer Price Index (CPI-M), the Global Cap would grow by the 5-year rolling average of Medicaid spending projections from the Centers for Medicare and Medicaid Services (CMS) to better account for enrollment and population changes.

Going forward, DOH is required to include more information in Global Cap quarterly reports, including:

- The methodologies used to calculate projected changes in DOH Medicaid spending and material impacts on the Global Cap;
- Comparisons between projected and actual savings from Budget initiatives;

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- Price and utilization information on new service categories, including:
  - Home care,
  - Personal care, including the Consumer Directed Personal Assistance Program (CDPAP),
  - The Vital Access Provider Assurance Program (VAPAP), and
  - New programs instituted since the previous quarterly report; and
- An appendix with:
  - Program trends, including actual and projected Medicaid enrollment;
  - Details on anticipated spending outside of the Global Cap;
  - Details on the anticipated mental hygiene stabilization fund transfer (see "Behavioral Health" below);
  - The number of fiscal intermediaries contracted with DOH;
  - Links to approved fee-for-service (FFS) rates for general hospitals; and
  - Links to the approved FFS rates for drugs on the preferred drug list [HMH, Part H].

Across-the-Board Increases

As proposed by the Executive, the 1.5% across-the-board (ATB) reduction for Medicaid providers that was recommended by the second Medicaid Redesign Team (MRT II) in 2020 and enacted in the FY 2021 Budget will be restored [Financial Plan].

The Enacted Budget also provides an additional Medicaid trend factor of 1% for all DOH Medicaid fee-for-service payment rates in recognition of provider labor cost increases [HMH, Part I].

Eligibility Expansion

The Enacted Budget expands and simplifies Medicaid eligibility thresholds. Under current law, individuals may qualify for Medicaid through two types of eligibility groups:

- **Modified Adjusted Gross Income (MAGI) groups**: Individuals who belong to MAGI groups, which generally includes non-disabled adults under 65, children, and pregnant women, are determined eligible for Medicaid solely based on their MAGI.
- **Non-MAGI groups**: Individuals in non-MAGI groups, primarily adults over 65, disabled, or otherwise enrolled in Medicare, are determined eligible based on income and resources. The income calculation is separate from the MAGI calculation.

The Budget makes the following changes:

- The income calculation for non-MAGI groups has been increased to become a uniform standard of 138% of the Federal Poverty Line (FPL).
- Definitions of partial dual eligible categories, including Qualified Medicare Beneficiary (QMB), Qualified Individual (QI), and Qualified Disabled and Working Individual (QDWI), are updated as follows:
  - QMB: Individuals with incomes less than 138% of FPL and resources that do not exceed twice the Supplemental Security Income (SSI) limit who are not otherwise eligible for Medicaid. If federal financial participation is available, the resource limit will not apply.

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  - QI: Individuals with incomes between 138% and 186% of FPL who are not otherwise eligible for Medicaid.
  - QWDI: Individuals who meet federal QWDI standards with incomes less than 200% of FPL and resources that do not exceed twice the SSI limit.
- Individuals 65 or older who "are otherwise eligible for medical assistance […] but for their immigration status" will be eligible to receive benefits through an Article 44 Medicaid managed care provider. If any benefits available as of the effective date are then transferred to FFS, "such individuals shall continue to be entitled to these benefits in the fee-for-service program."
- The eligibility threshold for pregnant women (a MAGI group) is increased to 138%, effectively, of the federal poverty line (FPL). [ELFA, Part AAA]. As described further below (under "Maternal Care"), any pregnant Medicaid enrollee will have continuous coverage for one year, beginning on the last day of pregnancy, regardless of changes to income [ELFA, Part CCC].

These changes are effective January 1, 2023 [ELFA, Part AAA].

MCO Procurement

The Enacted Budget does not include the Executive proposal to implement a competitive bid process to procure of Medicaid managed care organizations. Instead, the Budget directs DOH to select an independent contractor to draft a report on potential effects of a competitive procurement and regional limits on the number of MCOs, as proposed, to inform a plan to reform the Medicaid MCO system [HMH, Part P]. The report will include:

- A market assessment of current Medicaid MCOs and of the needed number of MCOs in each region;
- Analysis of potential effects of a competitive procurement, including:
  - Potential improvements and challenges in the MCO system (access, outcomes, etc.)
  - Cost savings;
  - Effects on network adequacy;
  - Potential enrollee service disruptions;
  - Impacts on providers;
- The current approach to person-centered care for people with behavioral health (BH) needs enrolled in Medicaid MCOs, with a particular focus on Health and Recovery Plans (HARPs) and the integration of those benefits with mainstream plans; and
- An assessment of existing and potential new performance standards and oversight for Medicaid MCOs.

Expiration of Medicaid Eligibility and LTC Assessment Contracts

A new provision in the Enacted Budget modifies certain provisions enacted in the FY 2021 budget to facilitate MRT II recommendations. The Enacted Budget places the following limits on Medicaid program contractors:

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- The contract for an independent assessor to determine need for personal care services (including CDPAP) and eligibility for Medicaid long-term care plans may not be extended beyond September 30, 2025.
- The contract for a panel of independent physicians to provide clinician orders for personal care services (including CDPAP) may not be extended beyond September 30, 2025.
- The contract for a statewide Medicaid eligibility vendor, the Conflict-Free Evaluation and Enrollment Center (CFEEC), may not be extended beyond August 19, 2026 [HMH, Part QQ].

WORKFORCE

Health Care Workforce Bonuses

The Budget will provide approximately $1.2 billion of State-only funds to provide one-time Healthcare Workforce Bonuses of up to $3,000 (exempt from state and local income tax) to health and mental hygiene workers with salaries of $125,000 or less [ELFA, Part ZZ].

Eligible employees must be "frontline" workers who "provide hands on health or care services." They may include practitioners, technicians, assistants, and aides, regardless of the structure of their employment (including independent contractors). The legislation includes a list of eligible occupations, and additional occupations may be determined by DOH or a relevant agency commissioner.

"Employer" is defined as a Medicaid-enrolled provider that bills for State Plan or home and community-based services (HCBS) waiver services, or that has a provider agreement with a Medicaid MCO. It may also include public or private schools, institutions of higher education, preschool programs, and other programs funded by State agencies.

DOH or the relevant agency commissioner will issue a schedule of six-month "vesting periods" between October 1, 2021 and March 31, 2024, during which an employee may become eligible for a bonus if they are continuously employed. Once the vesting schedules are published, employers will be responsible for disbursing bonuses. Employees are eligible for up to two vesting periods per employer.

Total payments may not exceed $3,000 per employee across all employers. Bonus amounts will be determined based on average hours worked per week during a vesting period:

- 20 to 30 hours per week: $500
- 30 to 35 hours per week: $1,000
- 35 hours or more per week: $1,500

Employers must submit claims for bonuses within 30 days of the end of the vesting period and pay the bonus to eligible employees within 30 days of receiving the amount from the State. Any inappropriate bonus payments will be recovered from the employer, not from the employee.

Specific appropriation allocations for this program include $923 million for DOH [AtL 792] and $136 million for the Office of Mental Health (OMH) [AtL 1084]. Appropriations for other agencies appear to be folded into other program accounts.

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COLA for Human Services Agencies

The budget includes a 5.4% Cost of Living Adjustment (COLA) for FY 2023 for frontline direct care workers in eligible human services programs, which include those certified, licensed, or funded by:

- OMH;
- The Office of Addiction Supports and Services (OASAS);
- The Office for People with Developmental Disabilities (OPWDD); and
- The Office of Children and Family Services (OCFS).
- The COLA will also be applied to certain programs under the auspices of the State Office for Aging (SOFA) and the Office of Temporary and Disability Assistance (OTDA).

The Budget includes one specific appropriation for OMH [AtL 931-932], but other amounts appear to be folded into other program accounts. Any Local Government Units (LGUs) or direct contract providers receiving this funding must submit a written certification of how funds will be used to recruit and retain direct care staff. [HMH, Part DD]

Increased Minimum Wage for Home Care Aides

The Budget includes a requirement to increase the minimum wage for home care aides by $3 per hour, in two phases:

- A $2 per hour increase, beginning October 1st;
- A $1 per hour increase, beginning October 1, 2023.

This increase will affect only the cash portion of the minimum home care aide compensation. The benefit portion will remain $4.09 in NYC and $3.22 in Long Island and Westchester. The legislation does not specify how employers will be reimbursed for this increase [ELFA, Part XX].

Licensure and Scope of Practice

As proposed, the Enacted Budget permanently enacts the Nurse Practitioners Modernization Act. It also authorizes the following scope of practice flexibilities, but only for two years:

- Fully exempting nurse practitioners (NPs) with more than 3,600 practice hours in primary care from the requirement to have a written collaborative practice agreement with a physician.
    - NPs in primary care are defined to include general pediatrics, general adult medicine, general geriatric medicine, general internal medicine, OB/GYN, family medicine, and other areas determined by DOH.
- Certain scope of practice expansions that were put in place by executive order during the Covid-19 public health emergency (PHE), including:
    - Enabling licensed pharmacists to direct a limited service laboratory and to order and administer Covid-19 and influenza tests; and
    - Allowing physicians and NPs to order non-patient specific regimens to test patients for Covid-19 or influenza [HMH, Part C].

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Nurse Loan Forgiveness Program

The Budget establishes the new Nurses Across New York (NANY) loan forgiveness program for nurses practicing in underserved communities for three years [HMH, Part A]. It allocates $2.5 million, down from $5.5 million in the Executive Budget, for the program [AtL 763].

Omitted Proposals

Workforce-related proposals from the Executive that were removed in the Enacted Budget include:

- Expanding the scope of practice for certified medication aides to administer routine medications and to allow non-licensed individuals to collect specimens for Covid-19 testing;
- Joining the Interstate Licensure Compacts for physicians and nurses;
- Moving oversight of health professions from SED to DOH; and
- Emergency medical services (EMS) reforms.

CAPITAL FUNDING

As proposed by the Executive, the Enacted Budget allocates a new $1.6 billion investment into the Statewide Health Care Facility Transformation Program (SHCFTP). Under the Executive Budget, eligible providers could be "including but not limited to":

- Hospitals;
- Residential health care facilities;
- Adult care facilities (ACFs);
- Article 28 diagnostic and treatment centers (DTCs);
- Clinics licensed pursuant to Public Health Law (PHL) or Mental Hygiene Law (MHL);
- Children's residential treatment facilities (RTFs) licensed under Article 31 of the MHL;
- Assisted living programs;
- Article 31 and Article 32 clinics; and
- Independent practice associations (IPAs) or organizations.

The Enacted Budget further added the following provider types as explicitly eligible:

- Article 16 licensed or certified OPWDD residential facilities or day program facilities;
- Article 36 licennsed home care agencies (LHCSAs)
- Article 40 hospices;
- Primary care providers; and
- Community-based programs funded under OMH, OASAS, or OPWDD.

Awarded funds are not subject to approval by the State Comptroller. Except for the Round 3 Supplement, funds may be awarded without the need for a competitive bid or RFA. Instead, DOH will conduct an evaluation process "acceptable to the commissioner" that must be approved by DOB. Disbursement of awards may be contingent on the provider achieving certain process and performance

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metrics. DOH will provide a quarterly status report on the SHCFTP projects to relevant committees of the Assembly and Senate.

Funds are split into five pools, described below. [HMH, Part K]

SHCFTP Round 3 Supplement

Up to $450 million is available for unfunded applications for capital projects submitted under the SHCFTP III Request for Applications (RFA), which were due February 15th. This additional funding is to be awarded by December 31st. Specific allocations by provider type have been altered from the Executive Budget as follows:

- At least $25 million for Article 28 DTCs, IPAs or organizations, LHCSAs, and hospices;
- At least $25 million for Article 16, 31, or 32 clinics, or community-based programs funded under OMH, OASAS or local governmental units (LGUs).
- At least $50 million for residential health care facilities and ACFs. [HMH, Part K]

Emergency Department of Regional Significance

Up to $200 million will be awarded for modernizing "emergency departments of regional significance," which must be a Level 1 Trauma Center with the highest volume in its region and meet other safety net criteria. [HMH, Part K]

SHCFTP Round 4

Up to $750 million may be awarded to capital projects that "build innovative, patient-centered models of care, to improve the quality of care, and to ensure financial sustainability of health care providers." Unlike previous SHCFTP rounds, this funding will be only available for capital projects and not debt retirement.

Specific allocations by provider type include:

- At least $25 million for Article 28 DTCs, IPAs or organizations, LHCSAs, and hospices;
- At least $25 million for Article 16, 31, or 32 clinics, or community-based programs funded under OMH, OASAS or local governmental units (LGUs).
- At least $25 million for residential health care facilities and ACFs. [HMH, Part K]

Technology and Telehealth

Up to $150 million may be awarded "for technological and telehealth transformation projects." [HMH, Part K]

Nursing Home Alternatives

Up to $50 million may be awarded to "residential and community-based alternatives to the traditional nursing home model." [HMH, Part K]

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INSURANCE

Telehealth Payment Parity

The Budget includes the Executive Budget proposal to establish telehealth payment parity for both Medicaid and commercial plans. However, it includes a new requirement for DOH and DFS to submit a report on the impact of implementing telehealth parity by December 31, 2023, and otherwise sunsets the parity provisions as of April 1, 2024.

Plans will be required to reimburse providers "on the same basis, at the same rate, and to the same extent" that equivalent services are provided in person. Payment parity does not apply to costs such as facility fees or costs included in Article 28 APG rates, if neither end of the service was provided in a facility setting and therefore the relevant costs were not incurred. However, for Article 16, 31, and 32 services, plans are required to reimburse at the in-person rate as established by OPWDD, OMH, or OASAS, respectively.

Regulated commercial plans will be subject to similar requirements and a similar exemption regarding facility fees. Plans will also be required to ensure that they meet network adequacy requirements for telehealth [HMH, Part V].

Maternal Health

The Enacted Budget modifies the original Executive proposal to expand coverage for pregnant women for one year postpartum to extend across Medicaid, the Children's Health Insurance Program (CHIP), and the Essential Plan, as follows:

- A pregnant woman eligible for Medicaid on any day of her pregnancy remains eligible for a period of one year, beginning on the last day of pregnancy, regardless of changes in income. This provision is effective March 1, 2023 and has no expiry. [ELFA, Part CCC]
- A pregnant woman enrolled in CHIP remains eligible for 12 months, beginning on the first day of the month following the last day of pregnancy. This provision is effective from March 1, 2023 to March 31, 2027, and may be extended [ELFA, Part DDD]
- A pregnant woman enrolled in the Essential Plan is eligible to continue receiving services for a period of one year following the end of the pregnancy, regardless of changes in income. The infant will be deemed eligible for Medicaid. This provision is "subject to federal approval if required and the use of state funds," unless Essential Plan trust funds may be used. [ELFA, Part BBB]

Accompanying this change, effective March 1, 2023, the Budget repeals last year's Budget's provision that provided one year of postpartum coverage for certain women, but through subsidized Exchange coverage rather than continuous Medicaid, CHIP, or EP. [ELFA, Part CCC]

The Budget also directs DOH to define a wider set of prenatal and postpartum care services under the definition of "standard coverage" in Medicaid. These may include but are not limited to:

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- Nutrition services;
- Care coordination, case management, and peer support services;
- Services by licensed clinical social workers;
- Dyadic services; and
- Bluetooth-enabled devices for remote patient monitoring.

These benefits are subject to federal approval and effective April 1st [ELFA, Part CCC].

Essential Plan

The Budget authorizes DOH to seek federal waivers to expand Essential Plan (EP) eligibility, "subject to federal approval and the use of state funds," unless EP trust funds may be used, in several ways:

- To increase the maximum eligible income from 200% of FPL to 250% of FPL;
- To include in the EP benefit an array of HCBS services for enrollees with functional limitations or chronic illnesses, starting with the otherwise MAGI-eligible" immigrant population through December 2024 and extending to all enrollees as of January 2025;
- Extending coverage for pregnant women and infants, as described under "Maternal Health"; and
- Eliminating cost-sharing for the expanded HCBS benefit and the expanded population of pregnant women and infants.

Currently, the "otherwise MAGI-eligible" immigrant population for the EP consists of non-citizens who are MAGI-eligible (typically, having a MAGI under 138% of FPL) and who:

- Are permanent residents;
- Are permanently residing in the United States under color of law (PRUCOL); or
- Otherwise have a valid non-immigrant status.

The Budget does not otherwise seek to expand EP eligibility to undocumented immigrants.

Because the SFY 2022 Budget also sought to expand the EP benefit to include dental and vision services, which may be repealed or rejected, the 2023 Budget includes two variations of each of these legislative provisions. The second variation will go into effect if the 2022 legislation expires and/or is repealed. [ELFA, Part BBB]

Children's Health Insurance Program (CHIP)

The Enacted Budget modifies the Executive proposal to eliminate all CHIP premiums. Instead, starting in FY 2023, the Budget reduces CHIP premiums based on the child's family's income as a percentage of the non-farm FPL, as follows:

- Less than 223%: $0
- Between 223% and 250%: $15 per month per child
- Between 251% and 300%: $30 per month per child
- Between 301% and 350%: $45 per month per child
- Between 351% and 400%: $60 per month per child.

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The premium amount is capped at the cost for three children (e.g., $135 per month for a family of three or more children).

As proposed in the Executive Budget, effective January 1, 2023, the Budget aligns the CHIP benefit with the Medicaid benefit package by requiring CHIP plans to cover ambulance services and Medicaid behavioral health services for children, including:

- Children's HCBS;
- Children and Family Treatment and Support Services (CFTSS);
- Assertive Community Treatment (ACT) services (to be reimbursed in accordance with the APG-rate setting methodology);
- Residential rehabilitation for youth services (to be reimbursed in accordance with APG-rate setting methodology); and
- Health-related services provided by Article 29-I Voluntary Foster Care Agencies.

Finally, as proposed by the Executive, the Budget creates a process to transfer the administration of the CHIP program and rate-setting authority from the Department of Financial Services (DFS) to DOH. Once complete, DOH will have all authority over CHIP policy. Current CHIP policies approved by DFS will remain in effect until DOH establishes a process to review and approve member handbooks in accordance with federal requirements [ELFA, Part DDD].

Requirement to Offer Contracts to Cancer Centers

As proposed by the Executive, the Budget requires that insurers offering health plans through the Marketplace offer a contract to all National Cancer Institute (NCI)-designated Cancer Centers in their service area. The contract must include reimbursement for services at no less than the fee-for-service (FFS) Medicaid payment rate for the Center's inpatient and outpatient services. [HMH, Part P].

Surprise Billing

As proposed by the Executive, the Budget makes changes needed to align New York's surprise billing process with the requirements of the federal No Surprises Act, including allowing the independent dispute resolution entity to consider median rates for similarly qualified providers in determining a reasonable fee for services [HMH, Part AA, Subpart A].

The No Surprises Act offers protections for beneficiaries who receive incorrect information about their plan's provider network. Specifically, it states that if a beneficiary receives services from a non-participating provider who they believe is participating (either because the provider is listed as such in their insurer's provider directory or they request and receive information to that effect) the provider is responsible for reimbursing any cost-sharing paid over the in-network requirement.

The Enacted Budget includes a new clause, not included in the Executive proposal or the federal legislation, that explicitly stipulates that if the insurer provided the inaccurate information to the beneficiary, "the insurer shall reimburse the provider for the out-of-network services regardless of whether the insured's coverage includes out-of-network services" [HMH, Part AA, Subpart B].

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Coverage of Abortion Services

As proposed by the Executive, the Budget would codify regulations to require commercial insurance policies to cover abortion services without cost-sharing, except in high-deductible plans. The Enacted Budget modifies the insurers covered to include any that offer "hospital, surgical, or medical coverage and maternity coverage."

An exemption may be granted for coverage for religious employers to offer a no-premium rider as an alternative. These provisions are effective January 1, 2023 [HMH, Part R].

SAFETY NET PAYMENTS

Temporary Rate Adjustments (VAPAP)

As proposed by the Executive, the Enacted Budget extends DOH's authority to make temporary rate adjustments or pay lump sums to safety net providers through FY 2023, and expands the definition of eligible providers beyond hospitals to include nursing homes and IPAs or accountable care organizations (ACOs) that participate in network arrangements with other eligible provider types.

A new requirement in the Enacted Budget is that DOH must publish the criteria, evaluation process and guidance for transformation plans, and notification of any award recipients [HMH, Part M]. The Budget appropriates up to $1.560 billion for this provision, up from $570 million last year [AtL 783].

Local Tax Intercept for Distressed Providers

The Enacted Budget extends the authority for the Distressed Provider Assistance Account, which uses a local tax intercept to fund safety net payments for hospitals and nursing homes, to last for five years after its original enactment in 2020. However, it reduces the total amount of the intercept from $250 million to $150 million [HMH, Part RR] This means New York City and other areas will each save $50 million [AtL 823].

Other Allocations

LONG TERM CARE

Modifications to Nursing Home Revenue Cap

The Enacted Budget modifies the requirements passed in the FY 2022 Budget on nursing home operations and profits. Nursing homes are still subject to the requirements passed last year to spend at least 70% of revenue on direct resident care and at least 40% of revenue on resident-facing staff. The Budget allocates $187 million to support this initiative, up from $64 million last year [AtL 792].

As proposed in the Executive Budget, however, the following revenue sources will now be excluded from the definition of revenue:

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- HCRA Provider Assessment revenue, for all nursing homes; and
- The capital per diem portion of reimbursement rates, for all nursing homes with 4- or 5-star quality rankings by CMS.

The Enacted Budget additionally:

- Excludes from the definition of revenue any grant funds from the federal government for reimbursement of COVID-19 pandemic-related expenses, including but not limited to funds received from the Federal Emergency Management Agency (FEMA) or Health Resources and Services Administration (HRSA).
- Removes the proposal to allow DOH to exclude the capital per diem portion of reimbursement rates from 3-star nursing homes on a case-by-case basis [HMH, Part M].

Private Duty Nursing for Medically Fragile Adults

The Budget includes a modified version of the Executive's proposal to create enhanced rates for private duty nursing (PDN) for medically fragile adults. The Enacted Budget includes a new definition of "medically fragile adults" as a person who previously qualified as a medically fragile child but no longer meets the age requirement.

As originally proposed, the Budget directs DOH to establish a PDN provider directory for medically fragile adults, similar to the previously-enacted PDN directory for medically fragile children. DOH will then set increased FFS reimbursement rates for PDN providers who enroll in the directory and serve medically fragile adults. This amount will be set as a benchmark payment based off the average 2020 Medicaid managed care payment for reimbursement of PDN services.

The Budget also includes a new provision to establish rates for continuous nursing services for medically fragile adults provided by a certified home health agency (CHHA), LHCSA, or long term home health care program that are at least equal to the payment rates for such services delivered to patients eligible for AIDS home care programs.

LTC Tasking Tool

As proposed in the Executive, the Budget repeals the directive for DOH to establish a single uniform task-based assessment tool for long-term care plans, and instead directs DOH to develop "guidelines and standards" for the use of tasking tools to assist Medicaid MCOs and local departments of social services (LDSS) in making home care need determinations [HMH, Part O].

Modifications to CDPAP RFO

A new provision in the Enacted Budget modifies how DOH may resolve the CDPAP Request for Offers conducted in 2021. Specifically, DOH must accept all CDPAP fiscal intermediaries (FIs) who were not selected, but who can attest to meeting the following condition:

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- New York City: The FI must have been serving at least 200 consumers in New York City at any point from January 1, 2020 to March 31, 2020.
- Rest of State: The FI must have been serving at least 50 consumers elsewhere in the state at any point from January 1, 2020 to March 31, 2020.

DOH will publish an attestation form, which FIs must submit within 60 days in order to remain eligible [HMH, Part PP].

Omitted Proposals

The Enacted Budget omits the Executive proposals to:

- Enact reforms to the Certificate of Need (CON) process for LHCSAs; and
- Create a streamlined application process for Programs of All-Inclusive Care for the Elderly (PACE) organizations.

HOSPITALS

Rate Rebasing Delay

As proposed by the Executive, the Budget delays the statutory requirement to rebase and reweight acute hospital rates until at least January 1, 2024, to prevent large changes in hospital reimbursement rates. A new provision in the Enacted Budget also allows DOH to exclude costs reported during a federal PHE or State Disaster Emergency that severely impacts general hospitals [HMH, Part J].

Excess Liability Insurance

As proposed by the Executive, the Budget extends the Hospital Excess Liability Pool by one year and restructures Physician's Excess Medical Malpractice Program payments to insurers from one annual payment to two installments split over two fiscal years [HMH, Part Z].

BEHAVIORAL HEALTH (BH)

APG Rate Extension

As proposed by the Executive, the Enacted Budget extends the requirement for Article 31 and Article 32 providers, including BH crisis programs licensed by OMH and OASAS under Article 36 of the Mental Hygiene Law, to be paid at government-set APG rates through March 31, 2027 [HMH, Part LL].

988 Behavioral Health Crisis Hotline

The Enacted Budget includes a modified version of the Executive proposal to establish the 988 Suicide Prevention and Behavioral Health Crisis Hotline system to connect individuals experiencing a behavioral health crisis with suicide prevention and crisis services.

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A new provision in the Enacted Budget requires OMH and OASAS to promulgate reporting metrics and standards for crisis hotline centers to provide follow-up services to individuals accessing the hotline [HMH, Part EE].

The Budget allocates $35 million for the establishment of this system [AtL 1055-1056].

Reinvestment of BH Managed Care Savings

The Enacted Budget includes a modified version of the Executive proposal to reinvest $111 million in projected State share savings from FY 2022 to FY 2023 into OMH services [AtL 1054] and OASAS services [AtL 1031]. This includes savings produced from the recovery of premiums that represent a reduction of underspending against established premium targets for behavioral health services and the medical loss ratio applicable to special needs plans.

The Enacted Budget includes a new requirement for DOH to post a list of the managed care providers that have been subjected to the recovery of premiums [HMH, Part FF].

Other Provisions

The Budget accepts the Executive proposals for:

- The creation of a voluntary certification process for recovery-supportive housing providers [HMH, Part II].
- The expansion of property pass through laws by allowing OMH to reimburse supportive housing programs for property costs such as rent and mortgage payments, in a manner similar to community residences or residential care centers for adults [HMH, Part NN].
- The extension and amendment of Kendra's Law for court-ordered Assisted Outpatient Treatment (AOT) through June 30, 2027. Amendments include allowing physicians to testify at hearings by videoconference [ELFA, Part MM].

A new provision in the Enacted Budget adds a variety of licensed mental health practitioners as allowable provider types eligible for Medicaid reimbursement when providing services through telehealth, including:

- Licensed mental health counselors (LMHCs);
- Licensed marriage and family therapists (LMFTs);
- Licensed Psychoanalysts; and
- Licensed creative arts therapists (LCATs) [HMH, Part V].

DEVELOPMENTAL DISABILITIES

Repeal of Utilization Limits for Article 16 Clinics

The Budget repeals the authority for DOH to implement utilization limits on OPWDD licensed Article 16 clinics, which result in targeted Medicaid reimbursement rate reductions based on provider-specific

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or patient-specific utilization thresholds [HMH, Part TT]. These regulations are currently codified at 10 NYCRR 86-12.1.

STATE AGENCIES

DOH

As propose by the Executive, DOH will invest $10 million to create a new Workforce Innovation Center [State Ops 383].

A new provision in the Budget requires DOH to conduct a new study to determine ways to improve access to health services in Kings County. The study will particularly consider health disparities and whether new services for women and children or improvements to regional perinatal centers are needed. The report is to be submitted by January 2024 [HMH, Part SS].

OMH

The Enacted Budget provides $5.2 billion in All Funds appropriations (a net increase of $630.5 million from FY 2022) for OMH, with the net increase attributable to the 5.4% COLA adjustment, worker bonuses, minimum wage increases, and continued investments in community-based services OMH [AtL 1051, State Ops 561, Capital Projects 499].

OASAS

The Budget provides $1.5 billion in all funds appropriations (a net increase of $542.6 million from FY 2022) for OASAS, with the net increase attributable to the 5.4% COLA adjustment, worker bonuses, minimum wage increases, and federal Substance Abuse Prevention and Treatment (SAPT) Block Grant funding [AtL 1028, State Ops 553, Capital Projects 475].

The Budget also appropriates $200 million from the Opioid Stewardship Investment Act to fund initiatives to combat the opioid crisis, including assistance to uninsured and underinsured individuals for treatment and medications [AtL 1037].

OPWDD

The Budget provides $7.2 billion in all funds appropriations (a net increase of $2.2 billion from FY 2022) for the OPWDD, with the net increase attributable to the 5.4% COLA adjustment, worker bonuses, and additional Medicaid costs [AtL 1079, State Ops 574, Capital Projects 540].

Temporary Operators

The Enacted Budget modifies the Executive's proposals on temporary operators. Instead of making authority permanent, the Budget extends the following authorities through March 31, 2025:

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- Authorization of 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. [HMH, Part OO]; and
- Authorization of the Office of Temporary and Disability Assistance (OTDA) and the Office of Children and Family Services (OCFS) to appoint a temporary operator for emergency shelters [ELFA, Part T].

OTHER

Other Health Care

The Budget includes the following Executive proposals, with some modifications:

- Allows DOH to increase annual State Aid base grant funding for full-service Local Health Departments (LHDs) to $750,000 and for partial service LHDs to $577,500 to help LHDS respond to emerging public health threats [HMH, Part E].
- Streamlines requirements in the fee-for-service Utilization Threshold (UT) program to reduce administrative burden, effective July 1st [HMH, Part W].
- Extend regulatory waiver authority associated with projects implemented under the Delivery System Incentive Reform Payment (DSRIP) program, to allow the continued operation or scaling and replication of promising DSRIP approaches. The Executive proposed a three-year extension, but the Enacted Budget only extends the authority through April 1, 2024 [HMH, Part GG].
- Extend various provisions of the Public Health and Social Services Law to continue previously enacted Medicaid and health savings initiatives, including:
    - Extend the Assisted Living Program (ALP) Need Methodology through April 1, 2025;
    - Extend DOH's authority to make Disproportionate Share Hospital (DSH) and Intergovernmental Transfer (IGT) payments to public general hospitals outside of NYC through March 31, 2025;
    - Extend provisions relating to general hospital inpatient payments to April 1, 2025;
    - Extend the Statewide Medicaid Integrity and Efficiency Initiative through March 31, 2024;
    - Permanently authorize the New York Agency Trust Fund, Distressed Provider Assistance Account;
    - Allow pharmacists to enter into collaborative drug therapy management agreements with physicians in certain settings to July 1, 2024; and
    - Authorize the General Public Health Work Program to April 1, 2031. [HMH, Part CC]

Broadband Connectivity

The Budget appropriates $300 million in State-share funding to support investments in broadband infrastructure under the ConnectALL Initiative to provide affordable broadband access to rural areas,

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high-speed internet access to municipalities, digital equity, connectivity innovation, and local connectivity planning [AtL, 1030].

Education

As proposed by the Executive, the Enacted Budget:

- Authorizes a COLA of 11% for the School Year (SY) 2023 tuition rates for 853 Special Education providers that receive funding through an annual rate-setting process (i.e. providers of preschool-age children with disabilities, students with disabilities educated in private settings and special act school districts, and students with disabilities receiving summer services) [ELFA, Part A, Section 19-a].
- Appropriates $100 million for School Year (SY) 2022-23 and 2023-24 for Recover from COVID School (RECOVS) Program grants for school districts or BOCES demonstrating the highest need to address student well-being and learning loss. Grants will fund the employment of mental health professionals and expansion of school-based mental health services or other evidence-based mental health supports for students and school staff and the creation/expansion of summer learning programs, after-school programs, or extended day/year programs [AtL, 249].