

Carreau Consulting
Strategic Legislative Solutions - Compelling Results
2020/21
Enacted Budget Overview

The novel coronavirus or COVID-19 has created chaos and disruptions in the legislative process just as it has in every aspect of life community across the state and country. Until mid-March, session was proceeding with business as usual, albeit with less glad handing, and new precautions; Capitol hallways remained bustling with lobbyists, advocates and stakeholders with all eyes on the 2020/21 budget. And then, in mid-March, two members of the Assembly tested positive, and life quickly changed for legislators, their staff and lobbyists alike, as the capitol was closed to “non-essential” staff and all visitors – shifting all of our work to the phonelines and Wi-Fi. As we worked against the budget deadline clock, the news became more dire, with reported cases growing by the thousands each day and the stock market crashing and bouncing around like an EKG mid-heart attack. We had already started the process with a \$6 billion deficit, by the closing bell on March 31, an additional estimated loss of \$10 to \$15 billion was reported by the State’s Budget Director.

In one’s month time the number of cases in New York State has exceed 122,000 and the number of deaths totals 4,159 as of April 4, 2020. Governor Cuomo and his administration are working around the clock on a number of fronts in anticipation of the apex hitting state in the coming weeks. The efforts focus on increasing the number of hospital beds and staff as well as securing the necessary personal protective equipment (PPE) and ventilators.

In the meantime, the last budget bill was passed at 3:00 am on April 3 and the Legislature taking their scheduled break, however, each house has put provisions in place to vote remotely and it is expected that staff and Legislators will resume their work remotely...As will advocates. Reports are suggesting the houses will return (if the virus abates) in late summer and early fall. While the thousands of pages of bills are still being combed through, the following provides an overview of the big picture.

STATE FISCAL PICTURE

As noted above, the State is projecting a loss of \$10 to \$15 billion in revenue as the deadlines for filing federal and state income taxes has been delayed to July 15, 2020. While recently enacted federal legislation has provided \$5 billion to the State for expenses directly related to COVID-19, the Governor and Legislature are hoping additional support will be provided to States for the loss of revenue as the closing of non-essential business took effect to maximize social distancing protocols.

To contend with the revenue shortfall, the enacted budget provides unprecedented and broad powers to the Division of Budget to make across the board adjustments throughout the coming fiscal year, either to adjust for revenue that does not come in as expected or to distribute increased revenue if additional support comes from the federal government and the economy rebounds. Reevaluation of the budget will take place during three periods - April 1, 2020 through April 30, 2020, May 1, 2020 through June 30, 2020 and July 1, 2020 through December 31, 2020

The enacted budget also authorizes the Division of Budget to pursue short-term borrowing to maintain cash flow. In terms of the numbers, all funds spending is projected to total \$177 billion and state operating spending is authorized at up to \$105.8 billion. The State Operating number may be adjusted downwards by \$10 billion to \$95.08 billion depending on federal assistance and the speed of the economic recovery.

This summary of the enacted budget focuses on areas of mental health, human services, workforce development and juvenile justice. There was no health and mental hygiene budget bill per se, as is normally the case, but rather program changes and

appropriations for health and mental health scattered in to the Education, Labor and Family Assistance Article VII bill, Transportation, Economic Development and Environmental Conservation, Aid to Localities and State Operations.

NOTABLE PROVISIONS ENACTED FOR MENTAL HYGIENE

- MH/SUD Parity Enforcement and Compliance – Behavioral Health Parity Compliance Fund established, which would consist of funds collected from penalties assessed on insurance carriers who violate New York’s MH/SUD parity laws. The funds collected into the fund would be used to support the MH/SUD ombudsman and other parity implementation initiatives.
- \$1.5 million permanent and annual appropriation for SUD/MH Ombudsman – Ombudsman is a joint program of the Office of Alcoholism and Substance Abuse Services (OASAS) and Office of Mental Health (OMH), which helps individuals and families navigate health insurance coverage for mental health and substance use disorders as well as investigating complaints and issues related to denied or delayed care.
- Telehealth – In an effort to increase the application of telehealth specifically for behavioral health and services for high-need populations, Commissioner of Health, in consultation with the Commissioners of OASAS, OPWDD, and OMH, is directed to consider promulgation of regulations that specify additional acceptable modalities to be delivered via telehealth including audio-only communications, online portals and survey applications, additional originating sites at which a patient may be located at the time a service is delivered via telehealth. In follow up, the Board of Regents acted on emergency regulations to ease the burdens on Education, Students and Professionals in the wake of the pandemic related to licensure and practice (including telehealth).
- Comprehensive Psychiatric Emergency Programs (CPEP) – Extends authorization for the CPEP through July 1, 2024 (currently set to expire July 1, 2020). The enacted budget, however, did not extend the time an individual can be held in CPEP for emergency observation, care and treatment from 72 hours to 96 hours.
- \$1 million for services and expenses related to suicide prevention efforts for veterans, first responders, law enforcement and corrections officers
- 2 percent increase for direct care staff and clinical staff at not-for-profits licensed, certified or otherwise authorized by OPWDD, OMH and OASAS. Staffing designations eligible for the raises are the 100, 200, and 300 series in the Consolidated Fiscal Report.
- \$10 million in funding available to school districts as grants to address student mental health. These grants are intended to improve student access to mental health resources and assist students who have experienced trauma that negatively affects their educational experience. This program will be administered by the Office of Mental Health and developed in consultation with the State Education Department.
- \$500,000 for the School Mental Health Resource and Training Center operated by Mental Health Association in NYS
- Move responsibility for the autism awareness and research fund from DOH to the Office for People with Developmental Disabilities (OPWDD) and the Eating Disorder and the Comprehensive Care Centers for Eating Disorders program from the DOH to the Office of Mental Health (OMH).

NOTABLE PROVISIONS NOT ENACTED FOR MENTAL HYGIENE

- Jail-Based Restoration to Competency Demonstration Program – Enacted budget *did not* include a proposal for OMH to establish jail-based restoration-to-competency programs in county jails on a voluntary basis. This would have authorized local correctional facilities (outside of New York City) to operate residential mental health units to house, treat and restore felony-level defendants to competency as they await trial.

HEALTH CARE/MEDICAID REDESIGN TEAM II

The enacted State budget did include many of the recommendations advanced by the Medicaid Redesign Team II aimed at generating \$2.5 billion on recurring savings in New York’s Medicaid Program. The adopted provisions relate to the reimbursement structure for hospitals, care management, pharmacy, transportation, managed long term care and program integrity. The enacted budget also contains broad authority for the Division of the Budget to make an across the board reduction in Medicaid payments in the 20-21 fiscal year if spending exceeds 3 percent growth.

MRT II PROPOSALS ENACTED OF INTEREST

- Transition the Medicaid pharmacy benefit from managed care back to Fee-for-Service. The earliest the transition could occur is April 1, 2021, and DOH is required undertake appropriate transition planning.

MRT II PROPOSALS – NOT ENACTED

The enacted State budget *did not* include the following MRT II recommendations:

- Repeal of prescriber prevails under Medicaid Managed Care and Medicaid Fee for Service. This mean the status quo remains.

ENACTED HEALTH CARE PROVISION OF INTEREST

- Enactment of "Emergency Disaster Treatment Protection Act," which includes provisions protecting the health care facilities and health care professionals (including volunteers) in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency.
- Expansion of Medication Assisted Treatment under Medicaid Managed Care and Medicaid Fee for Service –
 - Department of Health to publish a statewide formulary of opioid dependence agents and opioid antagonists.
 - Prior authorization will not be required when a health care provider prescribes a medication that is on the statewide formulary of opioid dependence agents and opioid antagonists unless otherwise required by DOH's Drug Utilization Review Board.
 - When a health care provider prescribes a medication that is not on the statewide formulary of opioid dependence agents and opioid antagonists, the managed care plan is required to have a process for the individual or the prescriber to request a review for the medication not on the formulary.
 - Prohibit prior authorization for methadone when used for opioid use disorder and administered or dispensed in an opioid treatment program.
- Price Transparency – Enacted budget provides for the establishment of a new website, called NYHealthcareCompare, where New Yorkers can easily compare the cost and quality of healthcare procedures at hospitals around the state. The website will be created by the Department of Health, the Department of Financial Services and the New York State Digital and Media Services Center.
- Department of Financial Services, in consultation with the Department of Health, will convene a work group to study and evaluate mechanisms to reduce health care costs and complexities. The work is to prepare a report with its findings and recommendations within eighteen months and is to examine the following areas: "claims submission and payment, claims attachments, preauthorization practices, provider credentialing, insurance eligibility verification, and access to electronic medical records."
- Actions on Outstanding Medical Debt – Shorten the statute of limitations to collect unpaid medical debt to three years (currently it is six years).
- Empower the Department of Financial Services to investigate prescription drug price increases and establish the Drug Accountability Board. Investigation would be triggered if drug price increases by more than 50%.

ENACTED RAISE THE AGE/CRIMINAL JUSTICE PROVISIONS OF INTEREST

- Transfer of Adolescent Offender from DOCCS to OCFS – Enacted budget includes provision requiring DOCCS and OCFS to jointly establish transition plan and protocol to be used in transferring all adolescent offenders in DOCCS custody to OCFY by October 1, 2020. The plan and protocol must be completed by July 1, 2020.
- \$250 million to continue implementation of New York's Raise the Age Law (law that raise the age of criminal responsibility from sixteen years of age to eighteen years of age)

- Enacted budget include provisions to allow for expedited closure of state correctional facilities in fiscal year 2020-2021 to require the Department of Corrections and Community Supervision to report back to the Legislature on the success of staff relocation efforts.
- Bail Reform – The budget also makes changes to the bail reform measures enacted just last year. The modifications to the law include:
 - Adds to the list of crimes bail may be imposed (for example - Burglary in the 2nd degree, sex trafficking, money laundering in support of terrorism, promoting an obscene sexual performance by a child, aggravated vehicular assault, assault in the 3rd degree, arson in the 3rd degree when charged as a hate crime, aggravated assault on someone 11 years or younger, criminal possession of weapon on school grounds, grand larceny in the 1st, enterprise corruption, money laundering in the 1st, failure to register as a sex offender, bail jumping, escaping custody, criminal obstruction of breathing or blood circulation, strangulation in the 2nd degree, unlawful imprisonment, any felony charge while on probation of post release supervision, any felony or class A misdemeanor involving harm to someone, or something, where the charge arose from conduct while they were released before trial and any crim that is alleged to have caused the death of another person).
 - There is also a mechanism to hold defendants charged with manslaughter before trial, and defendants charged with qualifying offenses before trial if they are repeat offenders.
 - Not included - judicial discretion based on perceived "dangerousness" or "perceived threat to society."
 - Preserves last year's law removing imposition of bail on most misdemeanors and non-violent felonies.
 - Provides additional clarification for judges to assure they are familiar with the non-monetary conditions that can be imposed.
 - \$40 million to support the implementation of discovery reforms.
 - Prosecutors will need to produce discovery within 15 days before trial for a traffic offense and petty charges, 20 days after arraignment for misdemeanors and felonies when the defendant is in custody, and 35 days after arraignment for misdemeanors and felonies when the defendant is not remanded to custody. A court can, however, grant a motion to extend the time periods in instances where materials related to the case are considered to be "voluminous."

ENACTED FOSTER CARE/PREVENTIVE SERVICES

- Restoration of the Children and Family Treatment Support services rates that were cut at the beginning of this year
- Exemption of Children's Health homes from Medicaid across the board cuts that may be implemented
- Fostering Youth College Success Initiative – Enacted budget appropriates \$6 million and adopts provisions to allow participating students can use funding received from the program for health expenses.
- Enacted budget included provisions to streamline the pre-admission to youth with mental illness to residential treatment facilities. The enacted provisions will require: (1) the newly created advisory board to include family representatives and appropriate medical personnel, requiring the advisory board to issue an annual report to the Governor and Legislature; (2) limiting medical necessity checks to be done no sooner than 14 days after admission to a RTF, and (3) require OMH to consult with the RTF regarding placement of children and youth at the facility before placement of that child at the facility.
- \$75 million budget for receipt of federal funding to assist with implementation with Family First Prevention Services Act
- \$3 million in State-supported funding maintained for Family First Transition Fund, which is to assist local services districts to support, recruit, and retain current and prospective foster families, including kinship caregivers
- \$10,603,000 appropriated in Aid to Localities to: (1) provide post-adoption services, post-guardianship services and services to support and sustain positive permanent outcomes for children who would otherwise might enter foster care; and (2) support local services districts, including New York City, for services to support and recruit and retain current and prospective foster families including kinship caregivers pursuant to plan developed by OCFS. (Note a called for restructuring of KinGap Funding was not included in the enacted budget.)

- While the enacted budget included \$220,500 for services and expenses of the Catholic Family Center in Rochester to establish, operate, and administrate a statewide kinship information, education, program services and referral network, \$100,000 restoration for kinship navigator and \$338,750 for services and expenses of kinship programs, nearly \$1 million was cut from kinship caregiver programs.

NOT ENACTED

- Enacted budget *did not* include provisions to enact changes that are required in order for New York to comply with the Federal Family First Prevention Services Act regarding the placement of youth in a qualified residential treatment program (QRTP) including requirement for local social service districts.
- Enacted budget *did not* include foster care Ombudsman; however, Advocates have worked with the legislature to introduce standalone legislation on the topic and will resume their work on the issue.

WORKFORCE

- Calls for a 3 percent increase for a period of five years across the Human Services Workforce were not included in the enacted budget.
- \$644,000 re-appropriation for services and expenses of Youth Build programs located in New York
- \$250,000 new appropriation for services and expenses of settlement housing fund for the DREAMS Youth Build & Young Adult Training program
- Note for Youth Build – Enacted budget includes \$9.5 million lump sums not yet allocated for non-profits and municipalities and \$2.8 million for health, human services and community services. This will provide an additional opportunity for further advocacy.
- \$2 million for services and expenses of the apprentice CUNY program to support CUNY Community Colleges in establishing and developing registered apprenticeship programs with area businesses which may include educational opportunity centers.
- \$3 million for services and expenses of the apprentice SUNY program to support SUNY community colleges in establishing and developing registered apprenticeship programs with area businesses which may include educational opportunity centers
- Syracuse Comprehensive Education and Workforce Training Center – Funding in the budget provides for the establishment of the State’s first Comprehensive Education and Workforce Training Center in Central New York, which is to be administered by the Syracuse City School District in partnership with SUNY Empire State College and other local colleges and universities. This new center will provide specialized educational opportunities and state of the art workforce training programs in advanced technologies to students and residents throughout the region with a scheduled opening in 2021 and a plan to serve 1,000 students as well as community residents. The state funding will reimburse 98% of the cost to renovate building where center will be housed.
- \$11,500,000 For partial reimbursement of services and expenses per contract hour of work force education conducted by the consortium for worker education (CWE), a private not-for-profit corporation program approved by the commissioner of education that enable adults who are 6 years of age or older to obtain or retain employment or improve their work skills capacity to enhance their opportunities for increased earnings and advancement
- \$750 million for another round of the regional economic development councils

PAID SICK LEAVE ENACTED

- Businesses with four or fewer employees with a net income of under \$1 million will be required to provide four days of unpaid sick leave per year.
- Businesses with four or fewer employees with a net income of greater than \$1 million will be required to provide four days of paid sick leave per year.
- Businesses with five to 99 employees will be required to provide employees with at least five days of paid sick leave per year.
- Businesses with 100 or more employees will be required to provide at least seven days of paid sick leave.
- Business would be prohibited from taking any retaliatory actions against employee who uses accrued sick time and must restore employee to position he or she held prior to taking sick leave.

GUN CONTROL

- Adopted – Enacted budget closes the out-of-state loophole to prohibit individuals convicted of serious misdemeanor crimes in other states from owning a gun in New York State.
- Not Adopted – Enacted budget did not include amendment to Mental Hygiene Law to allow for the sharing of information to law enforcement entities in other states for the purpose of determining eligibility to purchase, possess, or carry a firearm.

OTHER ITEMS ADOPTED IN ENACTED BUDGET

- Banning the “Pink Tax” – Prohibit gender-based pricing discrimination for substantially similar or like kind goods and services.
- Legalization of Gestational Surrogacy – This establishes criteria that must be included in contract, informed consent and codification of a Surrogates’ Bill of rights.
- Prohibit sale or distribution of e-cigarettes that have a characterizing flavor and prohibit the sale of all tobacco products in pharmacy.
- Ban the use of single-use polystyrene foam containers and sale of polystyrene loose fill packaging by January 1, 2022
- \$3 billion environmental bond act to fight climate change

OTHER ITEMS NOT INCLUDED IN ENACTED BUDGET

- Enacted budget *did not* include provisions to allow for adult-use of cannabis.