

Report on 2021-22 Approved State Budget: \$212 Billion, Onerous Proposals Defeated, Advocacy To Continue On Key Issues Including Telehealth

After months of negotiations and arduous battles throughout the Easter Holiday weekend, the final 2021-22 Fiscal Year Budget finally passed this week with messages of necessity (to avoid a state shutdown), which Governor Cuomo characterizes as “the most important budget in modern history.” In the end, given the complexity of some of the issues at hand related to raising revenue, the excluded workers fund and mobile sports betting the budget was enacted seven days into the new fiscal year with a temporary stop gap measure passed to assure state employees would receive their paychecks on time.

The behemoth budget of \$212 billion (an increase of \$18.7 billion or 9.7% over last fiscal year) includes nearly \$5 billion in new revenue through a large tax increase on wealthy New Yorkers and some corporations (see additional details below). It also includes restoration of a planned annual phase-in of a middle-class tax cut program, relief for homeowners and tenants affected by the economic downturn associated with the Covid-19 pandemic and the legalization of mobile sports betting. In addition, planned tuition hikes at the State University of New York will be halted for three years, the Tuition Assistance Program eligibility will be increased by \$500 per pupil and substantial increases in school aid (\$1.4 billion) were included.

Overall Numbers

- All Funds spending \$212 billion for FY 2022 (an increase of \$18.7B or 9.7% over SFY 2021-22)
- State Operating Funds spending is \$111 billion
- Applies \$5.5 billion in federal aid
- Provides \$29.5 billion in School Aid, a \$3 billion (11%) increase
- Provides \$7.7 billion in support of higher education

REVENUE RAISERS

The FY 20-21 budget includes provisions to raise taxes generating \$3.5 billion in FY 2022, and \$4.3 billion in FY 2023 as follows:

- Individuals with taxable annual income of more than \$1 million and joint filers earning more than \$2 million would see their current state income tax rate rise from 8.82% to 9.65%.
- Two new tax brackets would be established: (1) individuals with incomes over \$5 million would see a new state income tax bracket of 10.3%, and (2) those earning over \$25 million would be taxed at rate of 10.90%.
- Increases the Corporate Franchise Tax Rate from 6.5% to 7.25% for three years, while leaving the rate of 6.5% unchanged for companies with under \$5 million in income.
- Enacted budget does continue middle class tax cut saving 4.8 million individuals over \$2.2 billion.

OVERVIEW OF ENACTED HEALTH & MENTAL HYGIENE PROVISIONS

MENTAL HYGIENE

1. Merger of OMH/OASAS was not included. Likely to be considered further by Legislature post-budget.
2. Changes to Kendra’s Law and threshold for involuntary hospitalization were not included.

3. Authorization for the closure of up to 200 OMH inpatient psychiatric beds generating a savings of \$22 million, which for FY 2022 would not be required to be reinvested in community-based services. Notwithstanding, the enacted budget does extend the law requiring reinvestment for an additional three years.

4. Closure of Rockland Children's Psychiatric Center not included.

5. Authorization for OMH and OASAS to jointly license crisis stabilization/urge care centers. Crisis stabilization centers would serve as emergency service provider for individuals with psychiatric or substance use disorder who are in need of "crisis stabilization services." These centers shall provide OR contract to provide services 24/7 including: (a) engagement, triage and assessment; (b) continuous observation; (c) mild to moderate detoxification; (d) sobering services; (e) therapeutic intervention; (f) discharge and after care planning; (g) telemedicine; (h) peer support services; and (i) medication assisted treatment.

6. 1% Across the Board Cost of Living Adjustment (COLA) for Mental Health, OASAS and OPWDD, which is the first COLA in over ten years.

7. Restoration of the 5% cut to mental health programs given the influx of federal funds.

8. \$20 million for mental health housing

9. \$1.5 million for services and expenses of the office of the independent substance use disorder and mental health ombudsman, which can assist New Yorkers with understanding insurance rights and benefits as well as assist with denials by insurers and health plans.

10. \$32 million received by NY from McKinsey & Company as part of settlement for company's role in opioid epidemic is earmarked to be "suballocated or transferred to any other state agency for treatment and prevention of opioid use disorder, including medication-assisted treatment." Use of funding must be consistent with terms in the February 4, 2022 final consent order and judgement.

11. Language included in final budget requiring OMH to issue annual reporting to the Chairs of Mental Health in each House regarding the disbursement of federal dollars. The Agency is currently engaging stakeholders and will then report: the type of projects supported, the total funds committed by project type and the total funds liquidated by project type and the number of mental health providers who have received direct grant payments by July 1, 2021, October 1, 2021 and annually thereafter.

12. \$200,000 appropriated for the Autism Society of the Greater Capital Region for the expansion of their College Readiness Program.

HEALTH

1. Medicaid

- Prescriber prevails under Medicaid Fee for Service and Medicaid Managed Care will not be repealed. The status quo remains.
- Transition of the pharmacy benefit from Medicaid Managed Care to Fee for Service is delayed for two years until April 1, 2023. Status quo remains.
- Delays 340-B pharmacy carve out from Medicaid Managed Care to Fee for Service. Starting 4/1/23, DOH will review with no changes to reimbursement until 4/1/25.
- Extension of Medicaid Global Cap through fiscal year 2022-23 and changes reporting requirement from monthly to quarterly.
- Medicaid payments will not be reduced by 1.0% across the board.

2. Telehealth, three reforms were enacted under the Medicaid program:

- Health care professional can be anywhere in the U.S. or U.S. territory.
- Patient can be anywhere, removing restriction of being in a health care setting.
- Peers certified or credentialed by OMH or OASAS will be eligible for reimbursement.

NOTE: Advocates will continue to work on this issue as they fought vociferously to enact a provision requiring telehealth visits to be reimbursed at the same level/rate as in-person visit and preservation of audio-only across all payers. Post-budget advocacy will collectively begin upon return of the legislature.

3. The Excess Medical Malpractice Program – Extended for a year without requirement for physician pay 50% of the cost of the policy.
4. The e-prescribing waivers and low volume exemption will not be repealed. Status quo remains.
5. Reforms related to the Office of Professional Medical Conduct including authority to publish administrative warnings and expanded authority to summarily suspend a physician’s license were not included.
6. Expanded scope of practice for pharmacists and expansion of collaborative drug therapy program were not included.
7. One year extension of 2014 nurse practitioner law regarding written practice agreements and collaborative relationships.
8. Authorizes implementation of medical respite pilot programs. The program is designed to assist individuals who lack access to housing, are at increased risk of adverse health outcomes and who would otherwise “...require a hospital stay.” The goal of the pilot program is to reduce unnecessary “...hospital inpatient admissions and lengths of stay, hospital readmission and emergency room use.”
9. Eliminates the \$20 monthly premium requirement for enrollees with an income level between 150 and 200 percent of the Federal Poverty level & elimination of monthly premiums, deductibles, copays or out of pocket costs for dental and vision benefits for those up to 200% of federal poverty level.

JUVENILE JUSTICE/POLICE REFORM/PUBLIC SAFETY

- \$250 million to support continued implementation of raise the age
- While the Executive had originally proposed the closure of four OCFS youth facilities, the enacted budget authorizes only two: Red Hook Residential Center and Columbia Girls Secure. The language requires OCFS to give notice to the Speaker of the Assembly and the Temporary President of the Senate, six months notification of such closures and they shall post such notice upon its public website. Despite strong advocacy efforts, the final budget language did not include provisions requiring the reinvestment of savings accrued from closures.
- Establishment of Community Violence Intervention Act, which recognizes “gun violence and other forms of violence constitute a crisis” and creates funding mechanism for community and hospital-based violence intervention programs.
- \$25 million for Securing Communities Against Hate Program, which aims to combat hate crimes due ideology, religious belief or identity.
- \$10 million for Liberty Defense Fund to provide pro bono legal consultations and assistance for undocumented New Yorkers
- Implementation of Governor Cuomo’s police collaborative reform (Executive Order 203, the New York State Police Reform and Reinvention Collaborative), under which all police agencies were required to submit plans for reform that included community stakeholder input by April 1, 2021 or risk losing state funding. 450 of the 497 jurisdictions have submitted plans. The enacted budget authorizes the withholding of 50% of state and federal funds from jurisdictions who do not submit a plan and would authorize the installation of a monitor by NYS Attorney General.
- Strengthening New York’s Policing Profession – Strengthens the hiring standards for all police officers by requiring law enforcement agencies to comply with background check standards and minimum hiring standards.
- Sharing of Crime Gun Data – Enacted budget did not include mandate law enforcement agencies to report seized and recovered firearms to the criminal gun clearinghouse.
- Arrest Warrant Prohibitor – Enacted budget did not include proposal to amend penal law to include prohibiting individuals that are the subject of an outstanding arrest warrant from purchasing, possessing, or disposing of firearms.
- Establishment of a Domestic Violence Misdemeanor Label – Enacted budget does not include proposal to ensure that domestic abusers do not have access to (legal) guns in New York state by creating a domestic violence misdemeanor label in Penal Law. This initiative, if passed, would close the domestic violence gun-purchasing loophole in instances when a misdemeanor is committed against a family or household member.

CHILD WELFARE

- Enacts a series of changes to comply with the Federal Family First Prevention Services Act regarding placement of a youth in a qualified residential treatment program, which includes notification to Family Court and attorneys of placement, assessment of youth within thirty days and court determination within sixty days to confirm if “whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan.” Takes effect September 29, 2021.
- Aid to Localities provides for \$75 million for services and expense related to implementation of the Family First Prevention Services Act. (Pages 427-428)
- Enacted budget did not include directive for local social services districts to establish “differential response programs” as an alternative to child protective services for select allegations of maltreatment.
- Supports and Services for Youth Suffering from Adverse Childhood Experiences:
 - Require social services districts to make available to all applicants and recipients of public assistance educational materials (on paper or electronically) providing education about adverse childhood experiences, the importance of protective factors and availability of services for child at risk of suffering from such experiences.
 - Provides additional supports and services for youth suffering from adverse childhood experiences.
 - OCFS is directed to develop in consultation with OTDA, OASAS, OMH, DOH and not-for-profits with expertise the educational materials, which shall be posted on the website for the aforementioned agencies.
 - OCFS to develop and implement statewide campaign to educate parents and consumers of child day care programs.
 - Require pediatricians in their official capacity to provide parents, guardians, custodians with above referenced educational materials.
 - OCFS is directed to update training for all persons and officials required to report cases of suspected abuse to include protocols to reduce implicit bias in decision-making processes, strategies for identifying adverse childhood experiences and guidelines to assist in recognition of abuse or maltreatment while meeting virtually. Individuals that this applies to would have three years to receive such updated mandated reporting training.
 - Takes effect April 1, 2022.
- \$3 million (Transition Fund) in Aid to Localities be used to provide post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter into foster care in accordance with federal requirements. The funding appropriated shall be available to social services districts, including the city of New York, for services to support, recruit, and retain current and prospective foster families including kinship caregivers, in accordance with a plan developed by the office of children and family services. (Page 400-401)
- Appropriates \$7.2 million for FY 2021/22 and Reappropriates \$6 million from 2020 and \$1.5 million from 2019 for the foster care youth initiative transition to college. The initiative is designed to assist foster care youth with expenses of a post-secondary education such as tuition and fees, books, transportation, housing. (Page 199-200)
- Remaining in Foster Care During COVID-19 Emergency - Enacted budget includes authorization for youth who would have otherwise aged to remain in foster care until October 1, 2021. Youth who remained in foster care beyond age of 21 due to these provisions would continue to have permanency hearings at the same intervals that would otherwise have occurred.
- Expanding Child Care Affordability and Ease Administrative Burdens on Child Care Providers, (Part Z ELFA) – Enacted budget includes language amending Social Services Law in relation to families eligible for child-care assistance or family share percentage and codifies that no such family will be required to contribute more than ten percent of their income exceeding the state income standard.
- **Employer Child Care Credits** – The FY 2022 Enacted Budget enhances the Excelsior Jobs Program and Employer Provided Child Care Credit to allow for an expanded up to five percent Investment Tax Credit component and a credit up to six percent of ongoing net child care expenditures provided by the credit recipient. Governor’s press release states, “The Employer Provided Child Care Credit is also enhanced by doubling the current credit percentages to 50 percent of qualified child care expenditures and 20 percent of qualified child care resource and referral expenditures while increasing the per taxpayer cap from \$150,000 to \$500,000.”
- The final FY 2021-22 Executive Budget does not authorize CFTSS under Child Health Plus insurance program.
- Women’s Health – To address a gap in health insurance coverage for pregnant women, the enacted budget would provide coverage for those women between 200% and 233% of the federal poverty limit with coverage under Medicaid for 60 days after pregnancy to one year. We are reviewing this language in greater detail and will provide further summary.

COVID-RELATED PROVISIONS & APPROPRIATIONS

- \$1 billion to assist small businesses, \$800 million in grants and \$200 million in tax credits
- \$2.4 billion emergency rental assistance program
- \$40 million for Arts and Cultural Organization Recovery Grant Program
- \$35 million Restaurant Return-to-Work tax credit
- \$100 million over two years for NYC Musical Theatrical Production Tax Credit
- \$15 million fund for public education, communication efforts, and outreach to communities disproportionately impacted by the COVID-19 pandemic to disseminate information regarding health and safety measures.
- \$2.1 billion excluded workers fund, which will provide one-time assistance to individuals who lost their jobs or income but did not qualify for unemployment insurance or federal stimulus relief. The program is to be administered by the Department of Labor and will require applicants to provide documentation to verify eligibility including identity, residency, and work-related eligibility. NY Attorney General and NYS Comptroller will review the program as well before any funds are disbursed.
- Nursing home reform that will require facilities to spend 70 percent of all revenue received on direct resident care, 40 percent on patient-facing staff and cap profit at 5%. Any profit above 5% would have to be remitted to the State to be deposited into quality pool. \$64 million to assistance nursing homes with staffing but excludes those who do not comply with the spending aforementioned spending ratio.

YOUTH/WORKFORCE DEVELOPMENT

- \$2.5 million for services and expenses of Statewide YouthBuild Programs
- \$75,000 for services and expenses of YouthBuild Schenectady
- \$375,000 re-appropriation for the DREAMS Youth Build & Young Adult Training Program

OTHER

- **Access to Broadband** – Enacted budget requires internet service providers to offer broadband at least 25 mbps at a rate of \$15 per month to qualified households, which includes those who are eligible for SNAP benefits, reduce-priced school lunches, Medicaid benefits, senior citizen rent increase exemption or assistance with utility bills.