

## **Report on FY 23-24 Enacted NYS Budget: \$229 Billion Budget**

On Thursday, April 27, 2023, Governor Hochul announced she reached a “conceptual agreement” with Legislative Leaders, Senate Majority Leader Andrea Stewart-Cousins (D) and Assembly Speaker Carl Heastie, on the FY 2024 budget. The Legislature finished passing the budget bills in the late hours of Tuesday, May 2, 2023, over a month after the April 1<sup>st</sup> deadline.

The enacted budget totals \$229 billion (all funds). According to the Governor’s office, “The Enacted Budget will hold State Operating Funds spending under 3 percent in FY 2024 and will increase the State's reserves to a record level of 15 percent, as proposed by the Governor in the first months of her administration.” Enclosed is comprehensive report on the budget by subject of particular interest.

### **Mental Health-Related Provisions**

- \$300,000 for Veterans Mental Health Training Initiative equally split among NYSPA, MSSNY and NASW-NYS
- Mental Health Insurance Parity Provisions — The enacted provisions are as follows:
  - Requires commercial insurance coverage for mobile crisis intervention services and sub-acute care in medically monitored residential facilities licensed by the Office of Mental Health (OMH). The definition of residential facility includes crisis residence facilities and community residences for eating disorders.
    - Coverage of mobile crisis intervention services includes: “(1) telephonic crisis triage and response; (2) mobile crisis response to provide intervention and facilitate access to other behavioral health services; and (3) mobile and telephonic follow-up services after the initial crisis response until the insured is stabilized ...” The provision authorizes services “...to an insured who is experiencing, or is at imminent risk of experiencing, a behavioral health crisis, which includes instances in which an insured cannot manage their primarily psychiatric or substance use related symptoms without de-escalation or intervention.” Providers of mobile crisis intervention services may not charge or pursue reimbursement other than in-network copayments, coinsurance or deductible insured is responsible for under the policy.
    - Added provision requiring coverage for follow up outpatient care including mobile crisis intervention services, critical time intervention services, and assertive community treatment no later than 30 days following discharge from OMH licensed or operated hospital or the emergency department of a general hospital.
  - Prohibits preauthorization or concurrent reviews for adults in the first 30 days of inpatient/residential mental health treatment at in-network hospital or crisis residences licensed by OMH. Requires facility to inform insurer of admission within two days, perform daily clinical interviews and participate in “periodic consultation with the insurer to ensure that the facility is using the evidence-based and peer reviewed clinical review criteria ...approved by OMH and appropriate to the age of insured...”
  - Requires insurers to reimburse OMH licensed school-based mental health clinics at negotiated rate or in the absence of no less than the Medicaid rate.
  - Requires health insurance policies and contracts that include coverage for prescription drugs to prohibit prior authorization for initial or renewal of prescription for the detoxification or maintenance treatment of a substance use disorder including all buprenorphine products, methadone, or long-acting injectable naltrexone as well as medications for opioid overdose reversal.
  - Directs Department of Financial Services and Department of Health, in consultation with OMH and Office of Addiction Services and Supports (OASAS), to promulgate network adequacy regulations for mental health and substance use disorder services “including sub-acute care in residential facility, assertive community treatment services, critical time intervention services and mobile crisis intervention services.” As compared to the Governor’s proposal, the enacted language around network adequacy **did not include specific** requirement that regulations include standards for time and distance, appointment availability and in-network cost share rates for out-of-network. The regulations are required to be proposed by December 31, 2023. NYSPA will continue its advocacy as the regulatory process moves forward.
  - Other insurance provisions **not included** in the enacted budget:
    - Requirement for commercial insurers and health plans to use utilization review criteria designated by OMH for review and level of care determinations.

- Private right of action for individuals to sue insurers and health plans for violations of parity laws
  - Payment parity for telehealth services provided by providers licensed by OMH, OASAS, and OPWDD without regard to location of provider or patient.
- Authorizes OMH and OASAS to jointly license certified community behavioral health clinics (CCBHCs) and establish indigent care program. The enacted budget authorizes Justice Center to review criminal history information of prospective employees or volunteers at CCBHCs.
- Enhances authority of OMH Commissioner to impose penalties on providers for violating terms of operating certificate or applicable law. Increases the civil penalties OMH Commissioner can impose for failing to comply with terms of operation certificate to \$2,000 per day or \$25,000 per violation. Provisions states, “Penalties may be considered at the individual bed level for beds closed without authorization at inpatient settings.” Civil penalties imposed must account for factors including: “(1) officially declared national, state or municipal emergency; (2) any unforeseen disaster or other catastrophic event that directly impacts access to health care services; (3) the frequency, duration, scope, and nature of non-compliance; and any other factors as established by the commissioner.” The enacted language further stipulates it shall not be a defense that the operator was “...unable to secure proper staff or other necessary resources if the lack of staff or other resources was foreseeable and could be prudently planned for or involved in routine staffing needs.”
- Provides a 4.0% cost of living adjustment (COLA) for eligible human services programs within OMH, OPWDD, OASAS, OTDA, OCFS, NYSOFA from April 1, 2023, to March 31, 2024. Governor had originally proposed a 2.5% COLA.
- Authorizes Medicaid reimbursement for services provided licensed mental health counselors and licensed marriage and family therapists provided in general outpatient departments and diagnostic and treatment centers. (effective 1/1/24)
- Established independent developmental disability ombudsman program. Duties of the ombudsman include identifying, investigating, referring and resolving complaints made by or on behalf of individuals with developmental disabilities.
- OMH, in collaboration with OASAS, is to establish the ten member Daniel’s Law Task Force.
  - Ten members include:
    - OMH commissioner or designee;
    - OASAS commissioner or designee;
    - Commissioner of Division of Criminal Justice Services or designee;
    - One member appointed by Senate Majority Leader;
    - One member appointed by Assembly Speaker;
    - OMH Commissioner in consultation with OASAS commissioners shall appoint the following: one individual with experience in crisis response through the State Emergency Medical Services Council; one individual working as a licensed mental health professional; one individual who is employed as a crisis response call center personnel or crisis intervention personnel; one representative of the New York Conference of Local Mental Hygiene Directors; and one individual with lived experience mental health and/or alcohol use or substance use disorder.
  - Focus of task force is to include, but not be limited to: identifying potential operational and financial needs to support trauma-informed, community and public health-based crisis response and diversion for anyone in the state experiencing a mental health, alcohol use, or substance use crisis; reviewing and recommending programs and systems operating within the state or nationally that could be deployed as a model crisis and emergency services system; and identifying potential funding sources for expanding mental health, alcohol use and substance use crisis response and diversion services.
  - OMH to prepare written report summarizing opinions and recommendations including list of existing crisis response and diversion services. Report is due to Governor and Legislative Leaders by December 31, 2025, and is to be posted on OMH’s website.
  - Appropriation of \$1 million to support work of task force.
- OMH is to establish maternal mental health workgroup.
  - Members of workgroup will consist of OMH commissioner or designee; OCFS commissioner or designee; DOH commissioner or designee; and representatives of statewide mental health organizations, maternal health care provider organizations, health care provider organizations, health insurance industry, communities that are disproportionately impacted by “underdiagnoses of maternal mental health disorders,” and additional stakeholders the commissioners deem necessary.
  - Duty of the workgroup is to study and issue recommendations related to maternal mental health and perinatal and postpartum mood and anxiety disorders, including screening and identification, successful initiatives, evidenced-based practices and funding models.
  - Workgroup is to issue final report to Governor, Majority and Minority Legislative Leaders, OMH and OFCS commissioners by December 31, 2024.
  - Appropriation of \$250,000 to support work of workgroup.

- Rural general hospitals with inpatient units seeking to convert to “rural emergency hospital” will be required to provide notification to OMH/OASAS and local director of community if there is an inpatient psychiatric unit or OASAS if there is an inpatient substance use disorder program at converting hospital.

### **Mental Hygiene (OMH/OASAS) Appropriations of Note in State Operations/Aid to Localities**

- \$3,000,000 to DOH for the purpose of making physician loan repayment awards to psychiatrists who are licensed to practice in New York state and who agree to work for a period of at least three years in one or more hospitals or outpatient programs that are operated by the Office of Mental Health and deemed to be in one or more underserved areas, as determined by the commissioner of mental health
- \$14,000,000 for recruitment retention of psychiatrists, psychiatric nurse practitioners and other licensed clinicians in mental health programs deemed to have capacity shortages as determined by OMH commissioner including psychiatric inpatient units of general hospitals, comprehensive psychiatric emergency programs, crisis, residential and outpatient programs
- \$60,000,000 for operation and support of the 9-8-8 suicide prevention and behavioral health crisis hotline
- \$1,000,000 for services and expenses related to suicide prevent efforts for veterans, first responders, law enforcement and correction officers
- \$1,178,000 for services and expenses of the comprehensive care centers for eating disorders program
- \$2,000,000 for services to expand access to eating disorder treatment
- \$2,000,000 crisis intervention teams
- \$8,500,000 for independent substance use disorder and mental health ombudsman (CHAMPS)

### **Health Related Provisions**

- One year extension of the Medicaid global cap through FY 2025.
- Requires health plans and insurers to use utilization reviewers in the same specialty as the treating physician when a physician appeals an initial denial for patient care by that insurer (starting 1/1/24).
- Provides one year extension of the Physician Excess Medical Malpractice Program through June 30, 2024, without any new eligibility conditions or cost impositions.
- Establishes a health insurance guarantee fund to protect health care providers and patients when insurer or health plan becomes insolvent.
- Rejected repeal of “prescriber prevails” under Medicaid Managed Care and Fee for Service
- Rejected transfer of health care professions from State Education Department to the Department of Health
- Rejected scope of practice expansions for array of providers including independent practice for physician assistants and the establishment of the mental health associate credential under OMH.
- Rejected provisions to adopt Interstate Medical and Nurses Licensure Compact
- Rejected banning the sale of flavored tobacco and vapor products, including menthol but does include the \$1 increase in the cigarette tax.
- Rejected proposal to require insurers and health plans to pay claims for in-network hospital emergency services that result in admission before final determination of medical necessity. Hospital would have been required to refund overpayment if services ultimately determined not to be medically necessary or emergent.
- Disclosure of Material Transactions – Adopts provisions that will require disclosure of “material transactions” in health care including mergers, acquisitions, affiliations, formation of partnerships, joint ventures. This would include private practice acquisitions. The provisions would be applicable to transactions that will result in \$25 million or more in new, in-state, gross revenue to be reported to the Department of Health. The enacted language did not include language originally proposed requiring the Department of Health to approve such transactions. Disclosure for applicable transactions to the Department of Health would include the following information (as outlined in the Article VII legislation):
  - Names/current address of parties to material transaction,
  - Terms of material transaction,
  - Identification of all locations where health care services are provided, and revenue generated in the state from such locations,
  - Plans to reduce or eliminate services and/or participation in specific plan networks,
  - Closing date of proposed material transaction,
  - Brief description of the nature and purpose of the proposed material transaction including:
    - the anticipated impact of the material transaction on cost, quality, access, health equity, and competition in the impacted markets, which may be supported by data and a formal market impact analysis; and
    - (ii) any commitments by the health care entity to address anticipated impacts.

- Expands the Medicaid Buy-In for working people with disabilities for those over the age of 16 with sliding scale for the premium for those with income exceeding 250% of the federal poverty line with a cap of 30,000 participants.
- Provides for Transformative Health Care Capital Funding: Statewide V (\$1 billion)
  - Up to \$490M for capital projects, debt retirement, working capital and other non-capital projects that build innovative, patient centered models of care, increase access, improve quality and ensure provider financial stability as well as developing capacity in DOH designated underserved areas
  - Up to \$500M for technological and telehealth transformation projects
  - A portion of the \$500M may fund projects previously submitted but not funded with Statewide transformation IV funds
- Includes \$175,000 for the NYS Athletic Trainers Association and the Brain Injury Association of New York State for the purposes of concussion identification and management education.

### **Child Welfare/Affordability**

- The enacted budget did not raise financing for child welfare preventative services to 65%, the 62/38 percent state/county share remains.
- Increases the housing subsidy for foster care youth living independently from \$300 to \$725. Enacted provision did not increase the maximum age for transition-age youth to 24.
- Provides for COLA at 4% (see above)
- Appropriates full funding for the Kinship Navigator (\$320,500), kinship care and caregiver support services are maintained at \$2.2 million, though there is an expectation of structural changes, resulting in oversight by Permanency Resource Centers (PRCs), nonprofits, and voluntary agencies instead of smaller local community organizations
- \$8.2 million appropriation for the Foster Youth College Success Initiative (FYSCI)
- YouthBuild – New appropriation of \$2.5 million
- Expands the Empire State Child Tax Credit to children under the age of four;
- Provides \$500 million in federal funds to create a state Workforce Retention Grant Program to support New York's child care workforce, to be distributed through a Workforce Retention Grant Program. The program will provide bonuses for existing employees and funding for recruitment strategies, including sign-on bonuses for new employees and other related expenses. Expected to benefit an estimated 250,000 caregivers.
- \$4.8 million investment in a new Employer-Sponsored Child Care Pilot Program. Under the program, employers, the state and employees will split the cost of child care and families must fall between 85 percent and 100 percent of the state median income to qualify. Pilot will be operated in three regions of state as determined by OCFS.
- Funding to support expansion of eligibility for the Child Care Assistance Program raising the income limit to the maximum allowed by federal law, from 300 percent of the federal poverty level (or \$83,250 for a family of four) to 85 percent of the state median income (or \$93,200 for a family of four), assisting over 100,000 additional New York families.
- Effective January 1, 2024, the minimum wage will increase to \$16 in New York City and the counties of Nassau, Suffolk and Westchester, and to \$15 in all other parts of the State.
  - In 2025 and 2026, the minimum wage will increase by an additional \$0.50 in each year, after which the State's minimum wage would increase at a rate determined by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Northeast Region.
  - Effective January 1, 2027, New York State will increase its minimum wage by the three-year moving average of the CPI-W for the Northeast Region. There are provisions include an "off-ramp" in the event of certain economic or budget conditions."

### **Education**

- \$34.5 billion in total School Aid, including \$24 billion for Foundation Aid—a \$2.6 billion increase from last year
- \$150 million to expand high-quality prekindergarten programs to 20,000 children across the State
- \$134 million in state support to incentivize qualifying low-income public and nonpublic schools to participate in the federal Community Eligibility Provision program, which allows all students in those schools to eat breakfast and lunch at no charge regardless of their family's income.
- \$20 million for Early College High School (ECHS) and Pathways in Technology Early College High School (P-TECH)
- \$2.5 million for the State Education Department "...to study and design a new rate-setting methodology to streamline and improve the timeliness of tuition rates for special education schools. This funding will help ensure special education providers can continue to provide high-quality services to students with disabilities."
- 22 additional Charter School – Authorize an additional 14 charter schools to open in New York City and eight charter schools in the rest of the state.
- \$10,000,000 for student mental health support grants for schools

## Appropriations to Address Gun Violence and Create a Safer New York State

The FY 23-24 enacted budget includes:

- **\$347 million, a \$120 million increase** from the FY 2023 Budget to support programs designed to prevent and reduce gun violence, including but not limited to:
  - **\$84.1 million** for youth employment programs, of which **\$37 million** is for programs in Gun Involved Violence Elimination (GIVE) jurisdictions.
  - **\$70 million** for communities to respond to the aftermath of gun violence, of which **\$50 million** is for community capital needs.
  - **\$36.4 million** for the GIVE initiative.
  - **\$31.1 million** for crime reduction, youth justice, and gang prevention programs.
  - **\$25.9 million** for State Police Community Stabilization Units.
  - **\$25 million** for the SNUG Street Outreach program.
  - **\$7.4 million** in additional funding to establish a Supervision Against Violent Engagement program and expand the State's response to gun violence among the parolee population in GIVE jurisdictions.

## Cannabis-Related Provisions

- Enacted budget empowers the Office of Cannabis Management (OCM) and the Department of Taxation and Finance (DTF) to stop the sale and/or gifting of cannabis from unlicensed storefronts and trucks across New York State.
- Authorizes OCM to assess civil penalties against unlicensed cannabis businesses that would undercut their efforts, with fines of up to \$20,000 a day for the most egregious conduct; and makes it a crime to sell cannabis and cannabis products without a license.
- Enhances OCM's ability to conduct regulatory inspections of businesses selling cannabis and cannabis products, as well as businesses that sell and give away cannabis and cannabis products. Per the enacted budget briefing documents, OCM "... will seize untested cannabis and cannabis products from unlicensed businesses, and will seek court-orders, closing orders, and removal of commercial tenants who are selling cannabis and cannabis products without the appropriate license."
- Also, DTF will be authorized to conduct regulatory inspections of businesses selling cannabis to determine if appropriate taxes have been paid and will be able to levy civil penalties in cases where appropriate taxes have not been paid.
- Establishes a new tax fraud crime for businesses that willfully fail to collect, or remit required cannabis taxes, or knowingly possess for sale any cannabis on which tax was required to be paid but was not.