

*On Tuesday, January 22, 2013, Governor Andrew Cuomo released his proposed budget for State Fiscal Year (SFY) 2013-14. The following is a summary of the Executive Budget presentation and a very quick review of the pertinent appropriation and Article VII bills. Additional analysis and memoranda will be forthcoming as briefings take place and additional information becomes available.*

## **Budget Overview**

The Governor's proposed \$136.5 billion Executive Budget eliminates a General Fund budget deficit of \$1.35 billion in 2013-14 without raising taxes. The proposal also projects to substantially lower the budget gaps forecasted in future years. Prior to the cost savings efforts implemented over the last two years, the 2013-14 deficit was projected to be \$17.4 billion. The 2013-14 deficit reduction plan unveiled by the Governor will hold spending below 2% for the third consecutive year. The overwhelming bulk of the deficit reduction plan is attributable to \$974 million in projected savings that will be achieved by controlling State spending, \$434 million of which will be achieved through ongoing state agency redesign and cost controlling efforts which include strict controls on attrition and hiring; enterprise-wide consolidation of procurement, information technology and workforce management functions; and a range of operational measures to improve efficiency. The remaining \$412 million in savings will be achieved through local assistance program savings initiatives, the most significant of which will come from deferring automatic "cost of living" increase (COLAs) and trend factors for 2013-14 for *all* health and human service providers. Despite these cuts, disbursements for local assistance are projected to total \$60 billion in 2013-14, an increase of 2.3 % from last year.

Below is a brief outline of the Governor's proposed SFY 2013-14 Executive Budget impacting the medical schools followed by a summary of provisions impacting the health care sector:

## **Stem Cell**

- **Stem Cell Funding.** Empire State Stem Cell Research Account maintains funding consistent with SFY 2012-13 levels at \$44,800,000
- **Spinal Cord Injury Research Fund Account.** The Governor maintains funding at last year's levels: \$438,000 for SFY 2013-14.

## **Associated Medical Schools of New York (AMSNY) Post-Baccalaureate Program**

- **AMSNY Post-Baccalaureate Program.** We believe funding for this program, along with other programs of interest such as Doctors Across New York, has been included in a general fund along with funding for other local assistance programs. It is our understanding that the Department of Health will work in conjunction with the Division of the Budget to determine disbursement of this fund which is rumored to total approximately \$70 million. We will continue to monitor developments related to the general fund and keep you apprised of any updates as we become aware of them.

## **Empire Center for Research and Investigation Program ("ECRIP")**

- **ECRIP.** We believe funding for this program has been included in a general fund along with funding for other local assistance programs. It is our understanding that the Department of Health will work in conjunction with the Division of the Budget to determine disbursement of this fund which is rumored to total approximately \$70 million. We will continue to monitor developments related to the general fund and keep you

apprised of any updates as we become aware of them.

### **Excess Medical Malpractice Pool**

• **Excess Medical Malpractice Liability Coverage Pool.** The Excess Pool provides a secondary layer of medical malpractice coverage to qualified physicians and dentists, supplementing their primary individual coverage. The Executive Budget would repeal the existing Excess Medical Malpractice Pool, leaving in place all rules and regulations promulgated by DOH and DFS. In its place, the proposed budget would create a new excess pool titled the “Excess Medical Malpractice Liability Coverage Pool,” consisting of funds in, owed, or appropriated to the excess liability pool. This proposal is similar to changes to the Medical Malpractice Pool introduced as one of the Governor’s 30 Day Amendments to his 2012-13 Executive Budget. The need to alter the current format of the Medical Malpractice Pool was highlighted in a recent joint report by DFS and DOH that determined that the current structure of the pool was unsustainable.

### **Other HESC Programs**

Other HESC Administered Scholarships: The proposed budget includes \$42.3 million (an, decrease of \$1.6 million from SFY 12-13), for the NYS Math and Science Teaching Initiative Scholarships, Veteran’s Tuition Assistance Program, Military Enhanced Recognition, Incentive and Tribute (MERIT) Scholarships, World Trade Center Scholarships, Memorial Scholarships for Children and Spouses of Deceased Firefighters, Volunteer Firefighters and Police Officers Scholarships, and the American Airlines Flight 587 Memorial Scholarships, Scholarships for Academic Excellence, Regents Health Care Opportunity Scholarships, Regents Physician Loan Forgiveness Awards, Continental Airlines Flight 3407 Memorial Scholarships.

Patricia K. McGee Nursing Faculty Scholarship and Loan Forgiveness Program: The proposed budget maintains funding at \$3.9 million for this program.

Regents Licensed Social Worker Loan Forgiveness Program: The proposed budget maintains funding at \$978,000 for this program.

College Access Challenge Grant: The proposed budget includes \$1million for this program.

This is federal funding NYS receives as part of its multi-year College Access Challenge Grant Award.

### **SED Higher Education Administered Programs**

Higher Education Opportunity Programs: The proposed budget includes \$24.2 million for these programs. This is an increase of \$3.4 million from SFY 12-13.

Science and Technology Entry Program (STEP): The proposed budget includes \$10.8 million for this program. This is level funding from SFY 12-13.

Collegiate Science and Technology Entry Program (CSTEP): The proposed budget includes \$8.2 million for this program. This is level funding from SFY 12-13.

Liberty Partnerships: The proposed budget includes \$12.5 million for this program. This is level funding from SFY 12-13.

Teacher Opportunity Corps Program Awards: The proposed budget includes \$450,000 for this program. This represents level funding from SFY 12-13.

BUNDY Aid: The proposed budget includes \$35 million for this program. This represents level funding from SFY 12-13.

High Needs Nursing at Independent Colleges: The proposed budget includes \$941,000. This

represents level funding from SFY 12-13.

### **NYS Higher Education Capital Matching Grant Program**

The Capitol Matching Grant Program was created in 2006 and allocated \$150 million to support capital projects at the State's various independent colleges. The program is set to expire on March 31, 2013. To date, 151 projects totaling \$142.3 million has been allocated. The proposed budget would extend HECap program for one year and amend the current reallocation process so that the remaining \$7.7 million in funds will be provided on a competitive basis. Under the reallocation process, funds that were available in the first instance in Nassau and Suffolk counties as well as NYC will remain in those areas. Funds allocated outside of those areas will be available in other areas of the State. The Dormitory Authority will be responsible for issuing a request for proposals.

### **State University of New York (SUNY)**

**SUNY Hospital Subsidy Payment:** The proposed budget includes \$60 million in support for SUNY Hospitals, a decrease of \$28 million from last year.

**State-Operated Colleges:** The proposed budget includes \$969 million in operating aid, the same level as SFY 12-13. In addition, the proposed budget allows the agreed upon multi-year tuition increase to move forward. The increase will result in \$106 million in additional funding for SUNY.

### **Department of Economic Development/ (NYSTAR)**

#### **Innovation Hot Spots**

The budget proposes \$1.25 million initiative to “create or designate ten high-tech innovation incubators at locations affiliated with higher education institutions to encourage private-sector growth. The incubators will help to foster innovation and commercialization by offering inventors and entrepreneurs a low-cost, collaborative environment within which to work, and access to essential shared business services.”

This program will work closely with the Regional Economic Development Councils (REDCs), as each REDC will designate an existing or newly created incubator for their region. Five winners will be designated in each of the next two years to receive benefits and support. Designated Innovation Hot Spots will become tax-free zones where start-ups and other businesses tied to the incubator will be exempt from business and sales taxes for a five-year period.

The initial \$1.25 million will grow to \$5 million as the program is fully actualized.

#### **NYS Innovation Venture Capital Fund**

The proposed budget includes a new \$50 million venture capital fund in his budget, which will “provide critical seed and early-stage funding to incentivize new business formation and growth in New York State and facilitate the transition from ideas and research to marketable products.” The Fund will be administered through Empire State Development (ESD) and program funding will be sourced from the New York Power Authority and funds redirected from underutilized investment programs administered by ESD.

#### **Innovation NY Network**

According to the Governor, this program will “build collaboration among academics, venture

capitalists, business leaders, patent lawyers and other professionals.” The organization will be established on a university-based, not-for profit foundation model, and will not require taxpayer support.

### **New York Works Economic Development Fund Program**

The proposed budget includes \$165 million to provide capital grants that support job creation and retention and fund capital investments that facilitate business expansion and the attraction of new businesses.

### **New York Works Task Force**

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### **Regional Economic Development Council Awards**

The 2013-14 Executive proposed budget includes core capital and tax-credit funding that will be combined with a wide range of existing agency programs for a third round of REDC awards.

The core funding remains the same as the enacted SFY 12-13 budget and includes:

\$150 million in new capital funding and

\$70 million in tax credits from the Excelsior Jobs tax credit program to fund regional priority projects.

### **Buffalo Regional Innovation Cluster**

The proposed budget provides an additional \$100 million in funding as part of the Governor’s agreed to ten year \$1 billion commitment to Buffalo. This includes \$75 million in new capital funding and \$25 million in tax credits.

The budget also includes over \$60 million in state funding to support the recently agreed multiyear

agreement to keep the Buffalo Bills in Western New York. This includes a \$54 million contribution towards the \$130 million in capital improvements to the Ralph Wilson Stadium.

### **Centers of Excellence**

The proposed budget includes \$5.234 million, level funding from SFY 12-13, for services and expenses related to the operation of the centers of excellence.

- \$872,333 - Buffalo Centers of Excellence in Bioinformatics and Life Sciences and Materials

- \$872,333 - Greater Rochester Center of Excellence in Photonics and Microsystems

- \$872,333 - Syracuse Center of Excellence in Environmental and Energy Systems

- \$872,333 - Albany Center of Excellence in Nanoelectronics

- \$872,333 - Stony Brook Centers of Excellence in Wireless and Information Technology and Advanced Energy Research

- \$872,333 - Binghamton Center of Excellence in Small Scale Systems Integration and Packaging

### **Centers for Advanced Technology**

The proposed budget includes \$13.8 million for the centers for advanced technology. Funding is maintained at SFY 12-13 levels.

### **High Technology Matching Grants**

The proposed budget includes \$4.6 million for the high technology matching grants program. Funding is maintained at SFY 12-13 levels.

### **Empire State Economic Development Fund**

The proposed budget includes \$31.2 million for this program, an increase of \$11.2 million over SFY 12-13.

### **General Health Highlights**

- **Extension of Across-the Board 2% Cut.** The Governor's Executive Budget would extend the 2% reduction in Medicaid payments to all health sectors through 2015. The annual savings target remains \$357m.
- **Extension of the Medicaid Spending Cap.** The Global Cap on Medicaid expenditures would be extended through 2015, with 3.9% growth built in for 2013-14.
- **Elimination of Trend Factors.** This proposal would permanently eliminate mandatory trend factors in provider reimbursement for hospitals, nursing homes, hospital-based and free-standing clinic services, certified home health agency services, personal care provider services, adult day health care services, assisted living program services, and hospice services.
- **Minimum Wage Increase.** The Executive Budget proposal would raise the minimum wage in one step from \$7.25/hour to \$8.75/hour, effective July 1, 2013. In addition, the minimum hourly wage for food service workers, including those subject to food and lodging deductions by their employer, would be increased from \$5.00 per hour to \$6.03 per hour
- **Sandy Aid.** The Executive Budget provides support for Superstorm Sandy recovery and rebuilding projects, programs, and other initiatives. Specifically, the Budget includes appropriations of \$21 billion for disaster-related recovery, rebuilding and mitigation. An estimated \$30 billion of additional Federal aid will flow through these appropriations or be directly administered by the Federal government, local governments and other entities. In addition, the Governor has proposed \$2 billion in grant support to fund community reconstruction and mitigation plans to help eligible communities impacted by either Superstorm Sandy, Hurricane Irene, or Tropical Storm Lee.
- **Corporate Owned Health Care Facility Pilot Program.** The proposed budget includes a provision that would establish a pilot program that would allow for increased capital investment in health care facilities. The proposal would allow PHHPC to approve the establishment of two business corporations, one as the operator of a hospital in Kings County and one in another county in the state. The corporations would have the authority to operate certified home health agencies; licensed home care services agencies or hospices.

### **Health Insurance / Affordable Care Act Implementation**

The Governor's Executive Budget makes numerous changes to the Insurance law and market. Some changes are purely fiscally based (*see Early Intervention below*). Other changes are made

in preparation for implementation of the Affordable Care Act (“ACA”).

**ACA conforming/preparation changes include:**

- **Individual Market Reforms.** Currently, HMOs are mandated participants in the individual market with two standardized products. These standardized products are the only comprehensive, expense-incurred policies permissible. The Executive Budget proposes the following amendments to the Insurance Law that impact the individual health insurance market:
  - Effective October 1, 2013, HMOs may no longer issue the standardized direct pay HMO and HMO/POS policies. Instead, the Executive Budget would require HMOs to offer at least one individual enrollee direct pay contract and also one child-only plan at each metal level defined in the ACA. These new contracts may be offered either on or off the Exchange.
  - If the HMO chooses to only offer these contracts on the Exchange, the proposal would require the HMO to make the contract available off-Exchange on “a limited basis” to individuals not eligible for coverage through the Exchange, e.g., undocumented aliens.
  - An HMO may offer a catastrophic health plan only through the Exchange.
  - The proposal provides a limited open enrollment period for the individual direct payment contracts both on- and off-Exchange that would comport with the federal law and regulations.
  - The proposal codifies the federal ACA requirements that the direct payment contracts contain no preexisting condition provisions and that eligibility for coverage involve no underwriting for health status.
  - The new individual contracts must be community rated with “community rating” defined as a method whereby the premium for all persons covered by the contract form is the same, based on the experience of the entire pool of risks without regard to age, sex, health status, tobacco usage or occupation.
  - Carriers other than HMOs may offer expense-incurred coverage in the individual market as long as the coverage meets essential health benefit requirements.
  - HMOs are permitted to maintain the existing non-grandfathered standardized contracts in effect provided that they are amended to meet essential benefit requirements. If the HMO chooses to discontinue either the nongrandfathered and/or the grandfathered contracts, it must comply with the discontinuance provisions of the Insurance Law in doing so.
  
- **Conversion Policies.** Currently, HMOs must offer their standardized direct pay HMO and HMO/POS contracts when a member converts from group coverage, while Article 43 corporations have the option of using an affiliated HMO’s standardized products for conversion or developing their own. Group commercial insurers are required to offer conversion to statutorily defined policies that are much more limited in nature than the other conversion policies.

The Executive Budget changes the conversion requirements, effective January 1, 2014, to require HMOs, Article 43 corporations and group commercial carriers to offer conversion policies at each of the metal levels under the ACA and that contain essential benefits. It

would appear from the Bill language that an Article 43 corporation would not be permitted to substitute an affiliated HMO's individual contracts to meet its conversion obligations. Further, insurers writing individual commercial policies would not be subject to these conversion contract requirements but, as drafted, the Bill would require individual contracts written by Article 43 corporations to provide enrollees the option to select from among all metal levels upon conversion.

- **“Make Available” Benefits.** The Executive Budget clarifies that any benefit that is required to be “made available” for sale to groups or individuals selecting such benefit would no longer need to be “made available” if it is an essential health benefit. Furthermore, the language indicates that with respect to policies offered on the Exchange, no other “make available” benefits need be offered.

- **Healthy New York (“HNY”).** The Governor’s Executive Budget proposal makes extensive changes to the HNY program but does not completely eliminate or repeal it. The salient features of the budget proposal are as follow:

- HMOs, except for PHSPs, continue to be mandated to provide HNY coverage.
- After January 1, 2014, only small employers of fewer than 50 employees will be eligible for HNY. Small employers that are sole proprietors and qualified individual (those working for small employers that do not provide coverage to employees) will no longer be eligible for coverage.
- Coverage for sole proprietors and qualified individuals must be discontinued effective December 31, 2013 upon at least 180 days’ prior notice.
- The Superintendent will design a new standardized HNY contract that will meet essential health benefit requirements and that will meet a level of benefits actuarially equivalent to 80 percent of the full actuarial value of the benefits of the plan. The benefits and the cost sharing requirements will be consistent with coverage offered through the Exchange. Existing small employers will be transitioned to this coverage.
- The small employer coverage must be community rated and pooled with the HMO’s small group business for rate setting purposes. Standardized rating regions, rate tiers and rate relativities will be established by the Superintendent.
- The Budget Proposal continues the HNY Stop Loss Fund for the small employer program with reimbursement for 90% of claims paid between \$5,000 and \$35,000.

- **Navigators:** The Executive Budget proposal includes language indicating that persons/entities certified as Navigators by the Exchange are exempt from the definitions of insurance agent, insurance broker, insurance producer and insurance consultant provided that the individual has completed training required by the Exchange.

- **Autism Mandate:** In order to address ACA-compliance issues that prohibit dollar caps on benefits, the Executive Budget proposes to convert the \$45,000/year cap on applied behavior analysis to an annual limit of 680 hours of treatment.

- **Student Health Plans:** The Executive Budget proposal contains new language defining “student accident and health insurance.” The section applies to policies and contracts

offered on or after January 1, 2014 and the provisions appear consistent with federal regulatory requirements related to student health coverage. For example, the language requires student health plans to provide essential health benefits, prohibits pre-existing condition limitations or eligibility conditioned on health status, medical condition, claims experience, etc. and requires a ratio of benefits to premiums that is not less than 82%.

- **Definition of Employee:** The Executive Budget proposal bifurcates the definition of “employees” such that the federal ACA definition will apply with respect to group hospital, medical, major medical or similar comprehensive-types of coverage whereas the existing New York definition will continue to apply for other types of insurance (e.g. disability insurance). Further, in this context, full time employee is defined as someone who works an average of at least 30 hours a week, consistent with federal guidance. This language would address the “eligible” versus “actual” employee issue and impose an “actual” count. This provision is not effective until January 1, 2016.

- **Medical Loss Ratio:** The Executive Budget proposal amends existing law to adjust the timeline by which “back end” MLR reports must be provided to the State. For practical purposes, the inconsistency between state and federal requirements had been addressed by Circular Letter # 15 (2011) which indicated that New York will follow federal MLR rules. The Executive Budget proposes to require Plans to submit MLR reports by August 31 of the year following the reporting year. This date, however, remains inconsistent with proposed changes included in the federal Draft Notice of Benefit and Payment Parameters which requires reports to be submitted by July 31.

- **Premium Stabilization Pools:** The Executive Budget includes new language that would permit the Superintendent to suspend or terminate, in whole or in part, any risk sharing mechanism established pursuant to Insurance Law § 3233. The Superintendent may take such action without convening a technical advisory committee. This language would give the Superintendent authority to eliminate the Regulation 146 risk adjustment mechanism, which is anticipated in light of inconsistent federal risk adjustment requirements which are effective beginning in 2014.

- **Standardized Rating Requirements:** Consistent with Exchange implementation discussions and requirements, the Executive Budget proposes a number of statutory changes related to rating rules. The Superintendent will set standard premium tiers and relativities, including a standard relativity applicable to child-only policies. The language allows the Superintendent to adjust the tiers and relativities based on the aggregate experience of insurers. Also, beginning January 1, 2014, standardized rating regions will be applicable for policies providing physician services, medical, major medical or similar comprehensive-type coverage (excluding Medicare supplemental plans).

- **Ian’s Law:** The Executive Budget proposal includes a streamlined “Ian’s Law” process applicable when Plans are discontinuing a class of policies in order to conform with ACA requirements. The process is available if the Plan discontinues the class either as of December 31, 2013 or the policy renewal date occurring in 2014. Plans are still required to provide written notice to each policyholder and member, in a form satisfactory to the

Superintendent, at least 90 days prior to the date of discontinuance, and must offer each policyholder the option to purchase other hospital, surgical and medical expense coverage that complies with the ACA. Plans must act uniformly without regard to the claims experience of policyholders or any health-related factor. Finally, Plans must provide the Superintendent with written notice of the discontinuance, along with the certification of an officer or director that the reason for the discontinuance is to comply with ACA requirements and that the replacement coverage will not result in a loss of any benefit covered under the discontinued policy, at least 120 days prior to the date of discontinuance.

- **Group Size/Sole Proprietors:** The Executive Budget proposal changes the current definition of small group from 2-50 to 1-50 and increases the definition to 1-100 beginning in 2016. It is unclear why the lower threshold is dropped from 2 to 1 as such an approach is inconsistent with federal guidance. Furthermore, the proposal contains language that explicitly indicates sole proprietors shall be classified in the individual rating category beginning in 2014, a position which is consistent with federal guidance. We will seek clarification from the Department with respect to this issue.

- **Association Business/PEOs:** The Executive Budget proposal includes language consistent with federal requirements that requires members of an association or trust to be rated consistent with the market to which they belong irrespective of association membership. In other words, association members meeting the definition of small group must be rated as such and members who are individuals must be rated as individuals. The Executive Budget also extends this principle to Professional Employer Organizations and requires small group members to be included in the insurer's small group risk pool and rating requirements, a change from current New York practice.

#### **Department of Financial Services (“DFS”) Funding.**

Funding for SFY 2013-14 remains consistent with 2012-13 funding at \$326,630,832 for SFY 2013-14 (re-appropriation is \$2,500,000), with \$66,344,000 earmarked for the Administration Program; \$71,383,000 earmarked for the Banking Program, and \$188,903,823 earmarked for the Insurance Program. DFS Sub-Appropriations include:

- To DOH for enhanced newborn screening = \$11,900,000
- To DOH for forge-proof pharmaceutical prescription program = \$14,500,000
- To Criminal Justice for TraCS program = \$1,950,000
- To Department of Law for investigating broker/insurance practices = \$1,789,451
- To DOH for Center for Community Health Program = \$14,000,000
- To DOL for appointing AG as special prosecutor for no-fault insurance litigation = \$5,253,413
- To division of homeland security and emergency services for expenses related to fire inspections and fire safety training programs at privately operated colleges and universities in New York State = \$1,169,765
- To division of homeland security and emergency services for expenses related to the repair and rehabilitation of the state fire training academy = \$500,000
- To division of homeland security and emergency services for expenses related to developing and promulgating fire safety standards for cigarettes pursuant to

section 156-c of the executive law = \$1,019,781

- o To the office of the inspector general for services and expenses = \$250,000
- o To the division of homeland security and emergency services for services and expenses related to the fire prevention and control program and the state fire reporting system = \$15,241,739
- o To the division of homeland security and emergency services for expenses related to the urban search and rescue program = \$497,301
- o To DOH for expenses incurred in the approval of managed care implementation plans = \$300,000
- o To DOH for expenses incurred in the certification of managed care implementation plans = \$300,000
- o To DOH for expenses incurred in the development of inpatient hospital rates for insurance payments = \$365,000
- o To the department of state for expenses incurred in the enforcement, development and maintenance of the state building code = \$7,787,513
- o To the office of the inspector general for services and expenses = \$227,000
- o To DOL or Department of Taxation for services and expenses related to the crime

proceeds task force = \$938,000

### **Government Programs - Affordable Care Act Implementation**

The Executive Budget also proposes a number of changes to Government programs to ensure compliance with and prepare for implementation of the ACA. Specific changes include:

- **Conforming Medicaid Eligibility.** The Executive budget would conform Medicaid eligibility categories to the categories provided by the ACA for the purposes of determining eligibility based on modified adjusted gross income (MAGI), identifies the categories of eligibility that will receive benchmark coverage, and defines benchmark coverage. Under the federal Maintenance of Effort requirements, eligibility cannot change for children and adults until out years, but eligibility determinations must conform to federal rules regarding MAGI. Additionally, in accordance with federal requirements, application to Medicaid could be made online and by phone. Further, the Department of Health or its agent would be permitted to make eligibility determination at initial application and during recertification. Recertification would be completed based on information available to the Department to the extent possible. Eligibility documentation requirements would be amended to comply with federal requirements.
- **Continuous Coverage.** This provision would provide for a 12-month continuous eligibility coverage for any adult who was determined eligible based on MAGI and who does not lose eligibility due to citizenship, lack of residency, or failure to provide a valid SSN.
- **MMC Guaranteed Coverage Eliminated.** This provision would eliminate the guaranteed eligibility period for individuals enrolled in MMC who become ineligible during the first six months of enrollment.
- **Repeal of Family Health Plus (“FHP”) and FHP Employer Buy-In.** The budget

provides for the transfer of FHP enrollees to qualified health plans through the Health Benefits Exchange and repeals the FHP and FHP Employer Buy-In programs effective January 1, 2015. FHP would essentially become a wrap program whereby subsidy payments would be provided for premiums, co-insurance, deductible amounts and other cost sharing for individuals who are transitioned out of the FHP and do not qualify for Medicaid and are enrolled in a qualified health plan in the silver level to the extent such costs would have exceeded the FHP applicable cost sharing and will continue for as long as the MAGI income exceeds 133% but is less than 150% FPL.

- **ACA Conforming Changes to CHP.** The Budget proposal makes ACA conforming changes to the eligibility categories for CHP enrollment and repeals the sunset of certain CHP provisions.

- **Takeover of CHP Eligibility by the State Enrollment Center.** All CHP eligibility determinations and recertifications would transition to the state enrollment center. The enrollment center would be responsible for receiving applications, obtaining documentation, and determining eligibility for CHP. Upon the transition of eligibility determinations to the enrollment center, presumptive enrollment pending documentation of eligibility would no longer be applicable.

### **Medicaid Managed Care (MMC), Managed Long Term Care (MLTC), and Child Health Plus (CHP)**

- **Allow More than One Fiscal Intermediary.** The Department would be authorized to use more than one fiscal intermediary to issue provider payments. Language is also added permitting the Department to make payments to providers temporarily unable to comply with Medicaid billing requirements.

- **Health Home Contracts and Funding.** The Department would be authorized to amend or modify contracts with Health Homes without a competitive bidding process to allow for the purchase of additional personnel or services and implementing MRT initiatives related to Medicaid Managed Care (MMC), Managed Long Term Care (MLTC), Medicaid waivers, and Medicaid Global Spending Cap. Up to \$15 million would be available to fund infrastructure for the development of Health Homes.

- **Pharmacy.** A number of changes were made to the Medicaid prescription drug benefit (*see below*).

- **Preferred Incontinence Supply Program.** The Department of Health would be permitted to implement a preferred incontinence supply program that would provide coverage for incontinence products through existing Medicaid program providers for incontinence supplies from preferred manufacturers in order to obtain enhanced rebates and may implement a prior authorization program for non-preferred incontinence supplies.

- **Social Work Services for Minors and Pregnant Women.** The Social Services Law

would be amended to permit Medicaid reimbursement for psychotherapy services provided by licensed social workers to recipients under the age of 21 or as a result of pregnancy or giving birth.

- **Integrated Mental Health Services.** This proposal would provide Medicaid coverage for integrated mental health services, physical health services, substance abuse services and services provided to recipients with developmental disabilities provided by facilities licensed to provide such services.
- **MMC Inpatient Psych Rates.** This provision would allow the Commissioner to determine the implementation date for the default reimbursement rate for inpatient psychiatric services covered by MMC Plans in order to avoid the requirements for retroactive claims adjustments.
- **MMC Payment to Nursing Homes.** MMC Plans would be required to pay rates to nursing homes sufficient to ensure Nursing Homes pay employees standard rates of compensation as determined annually by Commissioner of Labor. *(See detailed explanation under “Nursing Homes” below)*
- **Special Needs Plans.** The Budget expands the definition of Special Needs Plans to allow for flexibility in applying for federal waivers. References to “mental health special needs plan” would be eliminated. The provision also adds the term “credentialed alcoholism and substance abuse counselor (CASAC) to the MMC law and requires Plans to cover services provided by such counselors.
- **Expansion of Benefits Provided by MMC.** The Budget would allow for the following benefits to be included in the MMC benefit package once program features and reimbursement rates are established by the Commissioner upon consultation with OMH, OPWDD, OCFS, and OASAS:
  - Day treatment for individuals development disabilities;
  - Comprehensive Medicaid case management;
  - Maternal Child Health Services;
  - School Supportive Health Services;
  - Mental health day treatment program services;
  - Long term services provided to individual with developmental disabilities;
  - TB directly observed therapy;
  - AIDS adult day health care;
  - HIV COBRA case management; and
  - Other services as determined by the Commissioner.
- **Expansion of Populations Enrolled in MMC.** The Governor’s proposal would eliminate the remaining exemptions and exclusions for mandatory enrollment into managed care and would permit the Commissioner to mandate the following populations enroll in MMC when program features and reimbursement rates are established upon consultation with OMH, OPWDD, OCFS, and OASAS:

- Dual eligibles, provided they shall not be required to disenroll from an MLTC plan;
- Infants living with incarcerated mothers;
- People expected to be eligible for less than six months;
- Persons eligible for TB related services only;
- Persons in receipt of hospice care;
- Persons enrolled in TPHI;
- Persons receiving family planning services only;
- Persons eligible pursuant to the Breast and Cervical Cancer Treatment Act;
- Individuals with a chronic medical condition treated by a non-participating physician; and,
- Native Americans.

• **Expansions of Populations Enrolled in MLTC.** This proposal would eliminate the exemptions or exclusions of the following populations from the MLTC program:

- Native Americans,
- People expected to be eligible for less than six months,
- Persons eligible for TB related services only,
- Persons in receipt of hospice care,
- Persons enrolled in TPHI,
- Persons receiving family planning services only, and
- Persons eligible pursuant to the Breast and Cervical Cancer Treatment Act.

• **Mandate Payment of APGs by MMCs for OASAS Services.** This proposal would provide for OASAS to transfer money to the Department of Health to increase MMC Plan premiums and require MMC Plans to reimburse OASAS services at rates equivalent to rates established under APGs.

• **Sunsets the Transfer of Funds for the Mandatory Payment of APGs by MMC for OMH Services.** This provision would sunset the transfer of funds from OMH for the purposes of funding the mandatory APG rates for OMH services covered by MMC Plans on March 31, 2015.

• **CHP Rate Reduction and Transfer of Rate Setting Authority.** This provision would sunset the automatic rate reduction for the portion on the CHP premium above the 2010 Statewide average premium effective March 31, 2013 and move CHP Rate Setting to the Department of Health beginning January 1, 2014.

• **Use of Enrollment Broker for MMC and MLTC.** The Department would be authorized to expand the use of an enrollment broker for MMC and MLTC in every county.

• **MLTC Extender.** The Executive Budget proposes to permanently extend the MLTC program and eliminate the 75 slot cap.

- **Exclusion of Certain Capital Adjustments for MMC Default Inpatient Rates.** The Executive Budget proposal would eliminate retroactive volume-based and average per diem capital adjustments to the capital add-on portion of the default inpatient rates for MMC and FHP Plans in order to avoid retroactive claims and premium adjustments.

- **Medicaid Rate consolidation.** To more effectively and uniformly determine Medicaid rates, the Executive Budget proposes to consolidate the rate making functions of most state agencies within the Department of Health.

## **Pharmacy**

The Executive Budget includes a number of changes to the Medicaid prescription drug program, including:

- **Prescriber Prevails.** Effective July 2013, eliminates “prescriber prevails” in both the fee-for-service (\$1.04m state share; \$1.35m fully annualized) and the recently enacted changes to Medicaid Managed Care programs (atypical antipsychotics- \$9.38m state share; \$12.5 fully annualized).

- **Adjusts the threshold at which prior authorization is necessary to refill a prescription.** Current law requires prior authorization when less than 75% of the prescription should be exhausted. Beneficiaries are also allowed up to an extra 90 day supply over the course of 360 days. The Executive Budget proposes to change this threshold to when “more than a six day supply” should remain. Further, language is added allowing the program to deny a refill of an opioid prescription if it is determined to not be medically necessary after allowing the prescriber a reasonable opportunity to justify the refill. (\$400k state share)

- **Allows the Medicaid program to require a minimum supplemental rebate from manufacturers whose drug has not been reviewed by the current PDL process.** Products for which the minimum supplemental rebate is not provided may be subjected to prior authorization. (\$450k state share; \$890k fully annualized)

- **Consolidate Prescription Drug Program Board oversight in the fee-for-service program.** Specifically, the Pharmacy and Therapeutics Committee (“P&T Committee”) is eliminated and its powers are subsumed within the Drug Utilization Review Board (“DUR Board”). The proposal includes specific language regarding collaboration between the DUR Board and Medicaid Managed Care Plans with respect to drug utilization concerns and the implementation of consistent management strategies across the fee-for-service and MMC programs. (\$180k state share)

- **DUR Board.** Makes a number of membership changes to the DUR Board and changes notice provisions related to proceedings of the Board.

- **Acquisition Cost.** The Executive Budget proposes to change the definition of acquisition cost for brand name drugs from AWP-17% to AWP-17.6%.

## Health Planning and Public Health Promotion

- **Eliminating CON for Primary Care Facilities:** The Executive Budget would eliminate the CON requirement for hospitals or diagnostic and treatment centers to construct a primary care facility or to undertake construction that does not involve a change in capacity, the types of services provided, major medical equipment, facility replacement, or the geographic location of services. The proposed language takes into account a PHHPC CON Redesign recommendation to eliminate CON for primary care facilities. The proposed language would provide the Commissioner with the option to consider the adequacy of financial resources and sources of future revenue in relation to applications that would no longer require CON. While the PHHPC recommendation stressed that primary care facilities would still be required to obtain an operating certificate, the proposed language provides that PHHPC may approve operating certificates diagnostic or treatment centers providing primary care without considering public need or financial requirements.

- **State Aid for General Public Health Work.** The Executive Budget proposes to change the process by which counties apply for GPHW funding and update the core public health service requirements for which funding are available. Specifically, the core public health services are expanded to include chronic disease prevention and emergency preparedness and response as independent core services, while eliminated health education as a core service. The proposed language would also require municipalities to obtain third-party coverage or indemnification.

- **GPHW Incentive Program.** The proposed budget establishes an incentive performance program for the delivery of core public health services. The program would authorize the Commissioner of Health to increase state aid to any municipality that meets statewide incentive performance standards, up to one million dollars annually.

- **Outcome Based Health Planning.** The proposed budget authorizes the Commissioner to make grants, awarded on a competitive basis, based on the achievement of outcomes six areas: Chronic Disease Prevention and Treatment; Environmental Health and Infectious Disease; Maternal and Child Health Outcomes; HIV, AIDS, Hepatitis C and STDs; Health Quality and Outcomes; and Workforce Development.

- **Patient Centered Medical Homes.** The Governor's Budget proposes to extend authorization of the Patient Centered Medical Homes (PCMHs) initiative for an additional three years, through April 1, 2016. This initiative was originally enacted in the 2009 State Budget and authorized the Commissioner to certify clinicians and clinics and health care homes in order to improve health outcomes and efficiency through patient care continuity and coordination of health services. PCHMHs are eligible for enhanced payments for services that are provided to recipients eligible for Medicaid FFS, MMC, FHP and CHP.

### Early Intervention Program

The Executive Budget Proposal contains a number of changes both to the administration of the Early Intervention (EI) Program and to the responsibilities imposed on insurers and HMOs

regarding coverage of EI services. On the administrative side, several provisions provide the EI Program with flexibility to determine a child's eligibility for services, including establishing eligibility solely through a medical records review, through a partial evaluation and through a full evaluation of the type currently required.

Provisions that address the role of insurers and HMOs include the following:

- **New Requirements Imposed on HMOs and Insurers.**

The Bill amends the Public Health Law to nearly mirror certain provisions regarding EI coverage found in the Insurance Law. The provisions in the Insurance Law have historically been applied to HMOs so to that extent don't involve new requirements. For example, current provisions in the Insurance Law prohibit carriers from excluding coverage solely on the basis that the services provided are EI services or from applying EI benefits toward annual or lifetime maximums would be carried over to specifically apply to HMOs.

The most significant of the proposed requirements involves provider networks. HMOs, and insurers that use a provider network with their policies, would be required to have an adequate network of approved EI providers that are geographically accessible and representative of each area of specialty to meet the needs of the enrollees. If a child is required to go out-of-network for services, then the Bill proposes that payment for those services will be at the rates for any out-of-network benefits under the contract or policy, if any.

In addition, the Bill proposes that both HMOs and insurers be required to provide a municipality and a child's service coordinator with a list of providers in the HMO's or insurer's network that are approved EI providers. The list must be updated quarterly.

This is a change to the prior subrogation process.

Further, the Bill would require that an insurer accept claims from the Department of Health's Fiscal Agent and also to provide the Department with reports on claims submitted for service and the disposition of each claim.

Although the Bill does not propose an insurance mandate with respect to EI benefits, it does require the insurer to refer to the Individualized Family Services Plan ("IFSP") when authorizing a setting for care, thus leading to the likelihood that services provided in the home would be covered even if not provided by a home health care agency.

Finally, it is important to note that the Bill proposes an amendment to the Child Health Plus benefit package to specifically include EI services within the definition of covered health services, but would allow the Commissioner to define those covered EI services.

- **Provider Contracting.** The Bill contains several new requirements for provider contracting, in addition to the obligation on carriers noted above. It requires the EI providers, including the evaluators, to contract with insurers and HMOs and to provide information on contracting status to the Department of Health. Providers that fail to contract with health plans could be refused the ability to contract with the DOH.

- **Enhanced Procedural Role for Insurers, HMOs and Other Payors.** The Bill authorizes greater participation of third party payors in the EI process. It permits a representative of an insurer, HMO, Medicaid Managed Care Plan, CHPlus Plan or other government program that covers the child the ability to participate, either in person or

telephonically, in the meeting held to develop the Individualized Family Services Plan (IFSP). It also permits the representative to be part of the annual meeting to evaluate the continued effectiveness of the IFSP, again either in person or by telephone.

- **Referral Process on and after January 1, 2014.** If a child eligible for EI services has insurance coverage, including Medicaid Managed Care and CHPlus, the service coordinator or the parent, must select a network provider, if applicable under the terms of the policy. There are listed exceptions to required use of a participating provider, including, (1) where there are no participating providers available that are appropriate for the case or that can begin service timely; (2) where the insurance benefits have exhausted and (3) where the insurer or HMO determines that because of the child's needs, a nonparticipating provider would be more appropriate.

## Hospitals

- **Revise Indigent Care Pool Funds and Disproportionate Share Hospital Payments (DSH).** The Governor proposes to revise the formula for determining Indigent Care and DSH payments for general hospitals. Specifically, the proposal would add a new PHL statute (§ 2807-k (5-d) that would create a new Indigent Care Pool (ICP) methodology with a new definition of uncompensated care that would be based on uninsured units of care provided and not on bad debt. The ICP would take effect January 1, 2013 and continue until December 31, 2015. In addition, the proposal also includes a set-aside for the creation of a Financial Assistance Compliance Pool and \$25 million reduction in Hospital Outpatient APG payments to fund the Indigent Care Transition Pool Payments.

- **State/Local Transfer of Medicaid Funds.** The Governor's Budget proposes to *permanently* extend the State's authority to make "intergovernmental transfer" (IGT) payments to non-New York City public general hospitals, which include those general hospitals operated by the State, SUNY, or a county, other than the counties of New York City. IGTs involve transfers of public funds between governmental entities (usually from the State to the counties) and are authorized under the Federal Social Security Act (Section 1903(w) (6) (A)).

- **Trend Factor for Hospitals:** *See above section for more information on this proposal.*

- **Detoxification.** The proposed budget eliminates the statutory listing of the Diagnostic Related Groups (DRGs) for inpatient detoxification reimbursement. The Health Department website is directed to provide the current detox DRGs subject to separate reimbursement.

- **Inpatient Rebasing.** The proposed budget provides for an updated base year effective January 1, 2014 for inpatient hospital services to allow calculation on a calendar year basis rather than December 1 2013.

- **Children's Specialty Hospital rates.** The proposed budget authorizes, for rate periods

on and after April 1, 2014, that the operating component of outpatient children's specialty rates be determined by the Commissioner, by regulation and in consultation with specialty outpatient facilities.

- **Hospital Capital Reimbursement.** The proposed budget authorizes the Department of Health, in consultation with the hospital industry, to establish capital reimbursement methodologies, through regulation, for facilities beginning on and after January 2014.
- **“Cooling Off” Extender.** The insurer/hospital statutory 60 day “cooling off” period is proposed to be extended for an additional two years.
- **Office of Professional Medical Conduct.** The proposed budget extends for two years (March 31, 2015) the authority to use OPMC funding for patient safety activities.
- **Potentially Preventable Readmissions (PPRs) and PPNOs.** The Governor's Executive Budget proposes to extend Medicaid payment rate adjustments for PPRs and PPNOs through March 31, 2014.
- **Temporary Operator.** This proposal would allow for the appointment of a temporary operator in hospitals, adult care facility and diagnostic and treatment centers where DOH finds that: (1) there are conditions that seriously endanger the life, health or safety of residents; or (2) the facility is experiencing serious financial instability that is jeopardizing access to essential services in the community.

### **Adult Home/Assisted Living**

- **New ALP beds and Capital Reimbursement to convert Transitional Adult Homes in New York City.** The Executive Budget recommends the creation of up to 4,000 new assisted living program (ALP) beds for “transitional adult homes” – which have a certified capacity of 80 beds or more and 25% or more residents with serious mental illness – located in New York City. DOH shall not be required to review applications for such ALP beds on a comparative basis. In addition, any transitional adult home that “houses exclusively” ALP beds pursuant to this new section will be eligible for some capital debt reimbursement for real property construction costs. However, DOH will establish a cap on such capital reimbursement through regulations.
- **Temporary Operator.** This proposal would allow for the appointment of a temporary operator in an adult care facility where DOH finds that: (1) there are conditions that seriously endanger the life, health or safety of residents; or (2) the facility is experiencing serious financial instability that is jeopardizing access to essential services in the community.
- **Funding Related to the DAI Court Case.** The budget proposal includes \$16.8M to provide education, assessments, training, in-reach, care coordination, supported housing and services to mentally ill residents of adult homes identified in the Disability

Advocates Inc. (DAI) court case.

- **Supported Housing Beds.** The budget narrative states that the State is in the process of developing 4,000 supported housing beds for individuals currently living in adult homes, including 1,400 beds by the end of 2014. It is unclear whether this proposal is merely referencing last year's supported housing initiative or is a new initiative. We will obtain additional clarification.

- **No ALP Trend Factor.** Similar to all other health care sectors, the budget proposal provides that there shall be no trend factor for ALPs.

- **EQUAL.** There is no individual appropriation for the EQUAL program in the Executive Budget proposal. Instead, it appears that the EQUAL program, like many other individual programs administered by DOH, has been "lumped" into a general appropriation to be distributed at the discretion of DOH and DOB.

- **Home Health Aides.** Scope of practice would be expanded to include the administration of medication that is routine and premeasured while supervised by a professional nurse and successfully completed a competency examination provided by the Department.

- **Certified Home Care Aides.** Authorizes certified advanced home care aides to provide nursing services when such services are provided to a self-directing individual assigned by and performed under the supervision of a registered professional nurse employed by a home care agency and pursuant to the practitioner's ordered care.

- **Minimum Wage Increase.** *Please see the "General Health Highlights" section for more information.*

- **Extension of certain Medicaid income disregards.** Currently, nursing home residents who transition in to the community and managed long term care (MLTC) plans are eligible for certain Medicaid income disregards. The budget proposal would extend such income disregards to adult home residents who likewise transition in to the community and MLTC plans.

- **Limited LHCSA Program.** The budget proposal would repeal the expiration date and make permanent the limited licensed home care services agency ("limited LHCSA") program in adult homes or enriched housing programs.

- **Other Miscellaneous Appropriations.**

- Services and expenses of a quality program for adult care facilities, including enriched housing facilities = \$2,605,000 (reappropriation from 2012)
- Reappropriation from 2011 = \$52,000
- Reappropriation from 2010 = \$34,000
- Services and expenses of a quality program for adult care facilities, including enriched housing facilities = \$4,311,700 (from special revenue fund)

- Reappropriation from 2010 = \$4,311,700
- Operating assistance subprogram for enriched housing = \$502,900
- (reappropriation from 2012)
- Reappropriation from 2011 = \$3,000
- Reappropriation from 2010 = \$3,000
- EnAble Program = \$1,347,000 (reapprop from 2009)
- Assisted Living Residence Quality Oversight Account \$2,109,200
- (SFY 12-13 = \$2,109,200)
- Adult Home Quality Enhancement Account = \$500,000
- (SFY 12-13 = \$500,000)

## **Nursing Home**

- **Sunset Financially Disadvantaged Payments.** The proposed budget, effective December 31, 2012, sunsets the \$30 million in payments for financially disadvantaged nursing homes. The proposal is to redirect such funding to the Vital Access Provider (VAP) program.
- **Extend Audit Authority for 2002 Cost Reports.** The Executive Budget extends from 2014 to 2018 the audit authority for 2002 calendar year cost reports filed by nursing homes.
- **Rebasing Transition Payments.** The Executive Budget eliminates the requirement for the Health Department to have to reconcile the rebasing transition payments made in 2007 and 2008.
- **Nursing Home Capital Rates.** The Executive Budget authorizes the Department of Health, in consultation with the nursing home industry, to establish capital reimbursement methodologies, through regulation, for facilities beginning on and after January 2014.
- **Standard Wage.** The Executive Budget includes a requirement that all managed care contracts include a provision requiring a standard rate of compensation be paid to employees who provide inpatient nursing home services, including nurses, nursing aides, orderlies, attendants, therapists, any other “occupations determined by the commissioner, in consultation with the commissioner of labor”. Such standard rate shall include a basic hourly cash rate and a supplemental benefit rate which are annually determined by the commissioner of health, in consultation with the commissioner of labor. Failure to comply includes penalties and admission denials.
- **Quality Pool.** It is our understanding that the executive Budget includes an additional \$10 million in the 2013 NH Quality Pool. This exact appropriation, however, does not appear to be lined out in the Budget. Further clarification is needed.
- **Upper Payment Limit.** The Executive Budget provides for additional flexibility in the

Upper Payment Limit distribution to public nursing homes allowing up to \$16 million to be redistributed to those public facilities that were subject to retroactive reductions in payments made beginning in April 2006.

- **Trend Factor for Nursing Home Inpatient Services.** The Governor proposes to permanently continue the exclusion of the 1996-97 trend factors that are used to project reimbursable operating costs for nursing home inpatient services.
- **Trend Factor for Nursing Homes and Hospitals:** The Executive Budget would permanently continue the .25% trend factor reduction for inpatient and outpatient services provided by general hospitals, and inpatient services and outpatient adult day health care services provided by nursing homes.
- **Managed Long Term care.** The Executive Budget eliminates the statutorily imposed cap of 75 MLTC certificates.
- **Specialty Nursing Home Rates.** The proposed budget authorizes the Commissioner, in consultation with affected providers, to develop a pricing reimbursement methodology for specialty nursing homes, such as pediatric nursing homes, for all rate periods on or after April 1, 2014.
- **Spousal Support.** The proposed budget requires spousal support for the costs of community-based long term care and all managed long term care enrollees. The Commissioner of Health is directed to make any amendments to the state plan or apply for any waiver to implement the provisions.
- **Medicaid Inpatient Capital Cost Reimbursement.** The Executive Budget proposes to permanently extend provisions relating to Medicaid inpatient capital cost reimbursement that would otherwise expire March 31, 2013. Such provisions that would be extended include current reductions to capital over-budgeting.
- **Nursing Home Reimbursable Cash Assessment.** The Governor's Executive Budget proposes to permanently extend the 6% percent nursing home reimbursable cash assessment. This amount is based on a nursing home's gross receipts from all patient care services and other operating income on a cash basis, and includes any adult day health care program services as well. All payments from Medicare services are excluded from the assessment.
- **Maximize Medicare Revenue.** The Governor proposes to extend a series of Statewide payment reduction calculations that are made for health care facilities that provide services for Medicare beneficiaries. Specifically, a Medicare revenue target is established that LTHHCP, CHHA, nursing home, and hospital providers must meet or face payment reductions.
- **Miscellaneous Appropriations.**

- Continuing Care Retirement Community Account = \$247,500  
(SFY 12-13 = \$247,500)
- Quality of Care Improvement Account = \$2,017,600  
(SFY 12-13 = \$2,017,600)
- Nursing Home Receivership Account = \$2,000,000 (re.)  
(SFY 12-13 = \$2,000,000)
- Program for background checks on patient contact personnel in Long-term care facilities = \$2,000,000  
(SFY 12-13 = \$2,000,000)
- Administration of the housing subsidies = \$2,303,000  
(reappropriation from 2012)  
2011 = \$2,303,000  
2010 = \$2,303,000  
2009 = \$2,303,000  
2008 = \$2,303,000

### **Long Term Care/Home Health Care**

- **Certified Home Health Care Attestation.** The proposed budget appears to provide recruitment and retention adjustments for special needs CHHAs; however, the Budget memorandum indicates that these provisions eliminate the attestation requirements for certain CHHA providers receiving recruitment and retention payments consistent with the transition to managed long term care. Further clarification is needed on this proposal.
- **Bad Debt & Charity Care for Certified Home Health Agencies.** The Governor's proposal would extend authorization for certified home health agencies (CHHAs) to receive allowances for bad debt and charity care for an additional five years (June 30, 2018). The authorization is currently set to expire June 30, 2013. Current eligibility for such funds are limited to voluntary non-profit, private propriety and publicly sponsored non-hospital based CHHAs.
- **CHHA Cap on Administrative and General Costs.** The Executive Budget proposes to remove a \$1.5 million reconciliation limit for the CHHA administrative and general cap from April 1, 2013 through March 31, 2018.
- **Long Term Home Health Care Program Administrative and General Costs.** The Executive Budget proposes to permanently extend the cap on reimbursement for LTHHCP general and administrative costs that is tied to a statewide average cap for such costs.
- **Home Health Aides.** Scope of practice would be expanded to include the administration of medication that is routine and premeasured while supervised by a professional nurse and successfully completed a competency examination provided by the Department.
- **Certified Home Care Aides.** Authorizes certified advanced home care aides to provide nursing services when such services are provided to a self-directing individual assigned

by and performed under the supervision of a registered professional nurse employed by a home care agency and pursuant to the practitioner's ordered care.

- **Home Care Aide Certification.** The proposed budget authorizes the Department to certify advanced home care aides and to establish the minimum training and qualifications required for certification.
- **Chronic Illness Demonstration Program.** The Governor's Budget proposes to extend this program for an additional year, through March 31, 2014. The program is intended for DOH to test innovative ways of providing care for Medicaid beneficiaries with multiple co-morbidities. In addition, the Budget also proposes eliminating a requirement that the Commissioner of Health provide a report to the Governor and Legislature on the demonstration's effectiveness by 2010.

### **Clinics**

- **Limited Services "Retail" Clinics.** The Executive Budget authorizes diagnostic or treatment centers established to provide health care services within the space of a retail business operation, such as a pharmacy, to be operated as limited services clinics. The proposal would require PHHPC to promulgate regulations regarding the establishment and operation of limited service clinics.

### **Provider Scope of Practice**

The proposed budget includes the following provisions that expand, restrict or clarify the scope of practice of the following professions:

- **Home Health Aides.** *Please see the "Long Term Care" section for more information.*
- **Certified Home Care Aides.** *Please see the "Long Term Care" section for more information.*
- **Home Care Aide Certification.** *Please see the "Long Term Care" section for more information.*
- **Dental Hygienists.** *Please see the "Dentistry" section for more information.*
- **Nurse Practitioners.** The proposal eliminates the requirements for written collaboration agreements and practice protocols between certified nurse practitioners and licensed physicians for nurse practitioners providing only primary care services when it can be demonstrated that such agreement is not feasible.
- **Physicians.** The proposal expands the number of physician assistants that can be supervised by a physician from two to four in the physician's private practice and from four to six assistants when the physician renders services to DOCCS.

- **Radiologic Technologists.** The proposal requires radiologic technologists licensed in New York to immediately report to DOH any out-of-state criminal convictions or disciplinary actions.

## **Dentistry**

- **Dental Hygienists.** The proposed budget clarifies that a registered dental hygienist may not administer or monitor nitrous oxide analgesia or local infiltration anesthesia except under limited circumstances. In addition, the proposed budget expands the scope of practice to include be conducted pursuant to a collaborative arrangement with a licensed dentist when the registered dental hygienist works for a hospital. In order to work under this arrangement, the proposal requires a dental hygienist to be certified in CPR. Dental hygienists would only be permitted to perform x-rays of the patient's mouth or teeth under the direct supervision of a dentist.

## **Mental Health & Human Services**

- **Office of Alcoholism and Substance Abuse Services (OASAS) Provider Funding.** The Governor proposes language in the Article VII bill which would insure, through technical and clarifying amendments to Articles 25 and 26 of the Mental Hygiene Law, the OASAS Commissioner's continued authority to fund substance abuse program providers either directly or through funds allocated to the Counties. This proposed action is in response to new Office of State Comptroller contracting requirements and would save OASAS \$210,000 related to new contracting staff.

- **Community Reinvestment of Office of Mental Health (OMH) Inpatient Bed Reduction Savings.** The Governor's proposal would continue the practice of reinvesting inpatient service reduction savings in community program development. The proposal would continue the OMH Commissioner's authority to close, consolidate or redesign hospitals, facilities and programs operated the agency and, reinvest the savings from those actions in to community-based mental health services. The proposal would also continue criteria and notice provisions governing the Commissioner's inpatient service reduction decision-making.

- **Office of Mental Health (OMH) Recovery of Medicaid Exempt Provider Income.** The Governor's budget would "permanently clarify" the authority of the OMH Commissioner to recover Medicaid Exempt Income from community residence providers, as allowed in prior year legislation. Medicaid Exempt Income is defined as the amount of revenue received by providers which exceeds the fixed amount of annual budgeted Medicaid revenue as established by OMH. The Governor's proposal would allow the OMH Commissioner to recover 50% of the Medicaid Exempt Income.

- **Amend OMH Commissioner Appointing Authority.** The Mental Hygiene Law currently gives OMH facility directors authority to appoint and remove facility employees. The Governor's proposal would amend the Mental Hygiene Law to vest appointing authority for all employees of the Office of Mental Health with the OMH

Commissioner.

- **Mental Health Incident Review Panels.** In an attempt to provide a mechanism for a clinical review and examination of violent incidents involving persons suffering from mental illness, the OMH Commissioner would be authorized to establish mental health incident review panels. The Panels would consist of State and local officials and could also include members from local law enforcement and social services agencies. The Mental Hygiene and Education Laws would be amended to insure that the panel would have access to confidential information concerning the subjects of the reviews. The Panels would be tasked with determining whether there were service gaps or failures which contributed to a violent incident in the community involving a person with a mental illness.
- **Health Home Plus Programs.** The Budget establishes a Health Home Plus program to more effectively manage the care of people assigned to Assisted Outpatient Treatment (AOT).
- **Integration of Behavioral and Physical Health Clinic Services.** This initiative funds two separate integration programs: the Service Integration licensure Program and the Collaborative Care Model designed to better integrate behavioral and physical services.
- **Human Services Cost of Living Adjustment (COLA) Deferral .** The Governor's budget proposal would delay for one year, the Human Services COLA. The proposed budget would continue the State's commitment to the originally agreed upon 3year COLA but, would delay the start of the 3 years until 2014. Human services agencies impacted by the COLA delay include those under the auspices of the Office of Mental Health; the Office for People with Developmental Disabilities; the Office of Alcoholism and Substance Abuse; the department of Health; the State Office for the Aging; and the Office of Children and Family Services.

## **OPWDD Managed Care Initiatives**

- **Fully Integrated Duals Advantage Program (FIDA).** The proposed budget authorizes the Commissioner of Health to establish a fully integrated duals advantage program (FIDA) to provide dually eligible individuals with developmental disabilities with comprehensive health services that includes primary and acute care, prescriptions drugs, behavioral health services and long-term supports through managed care and managed long-term care providers. The proposed budget provides that up to three managed longterm care plans would be authorized to exclusively enroll individuals with developmental disabilities.
- **Developmental Disability Individual Support and Care Coordination Organizations (DISCO).** The proposed budget establishes Developmental Disability Individual Support and Care Coordination Organizations to provide health and long term care services for a population of individuals with developmental disabilities. Eligible applicants under the

proposed language are entities controlled by a non-profit organization with a history of providing health services to persons with developmental disabilities. The proposed language authorizes managed care plans to offer expanded plans to individuals with developmental disabilities.

## **Housing**

- **Supported Housing.** The Governor’s proposed budget would dedicate inpatient bed reduction savings to support the development of: 1,000 supported housing units for residents of nursing homes (including 400 by the end of 2014); 4,000 supported housing beds for residents of adult homes (including 1,400 by the end of 2014); and 3,400 beds for the homeless housing program in New York City (including 634 by the end of 2014).
- **“House NY” Expansion of Affordable Housing.** The Executive budget proposes to invest \$1 billion over 5 years to preserve and create 14,300 affordable housing units statewide. The “House NY” program would include the revitalization of 45 Mitchell Lama affordable housing projects experiencing significant physical deterioration (\$706 million), the creation of 5,000 affordable housing units through various housing and community development programs (\$231 million) and “other initiatives”.
- **Streamline Administration of Homeless Housing Development.** In an effort to eliminate a duplication and inefficiency of administrative effort, the Governor proposes that the Housing and Community Renewal (HCR) State agency assume the housing development responsibilities of the Office of Temporary and Disability Assistance (OTDA) and the Homeless Housing and Assistance Program (HHAP). The Governor argues that the consolidation of housing development efforts at HCR would create a more streamlined process for developers and eliminate inefficiencies. OTDA and HHAP staff would be transferred to HCR and the agencies would work together to achieve a smooth transition.