

BROWN & WEINRAUB, PLLC

2015-16 *LEGISLATIVE RESPONSE TO EXECUTIVE BUDGET* ***HIGHLIGHTS: HEALTH & MENTAL HYGIENE***

We have distributed detailed matrices of how the Senate and the Assembly responded to the Governor's SFY 15-16 Health and Mental Hygiene Budget proposals. The following provides highlights of what is contained in those bills – and what was mentioned in Budget documents (but not necessarily linked to specific legislative language). If there was a theme in the Legislature's counter-proposals, it was "transparency," with lots of reporting and disclosure requirements around the Department of Health's activities.

Capital Funds for Healthcare Restructuring

- Vital Access Provider program
 - While both houses accepted with some modification a special \$10M (state share) fund for essential community providers, the Senate put language around Governor's proposal to earmark 40% of the new VAP funds for these type of areas, and would also require reporting on the applications and projects.
 - VAP funding for Behavioral Health providers is carried over (\$50M)
 - VAP funding for Article 28 providers remains funded at \$902M
- The Assembly accepted the Governor's \$1.4B capital proposal for Brooklyn, Oneida County and upstate hospitals, although it would require a community stakeholder process for Brooklyn. The Senate struck out the language earmarking the funds and put the entire amount into the Capital Restructuring Financing Program pool, amended the CRFP language to have a streamlined and transparent application process open to all providers, and struck the reappropriation of the original \$1.2 billion funding for the CRFP
- The Assembly rejected the Governor's private equity for hospitals demonstration program proposal, but the Senate accepted and expanded on the proposal.

Certificate of Need Reform

- There was mixed response to the Governor's CON reform proposals, with the Senate and Assembly both generally agreeing on changes related to primary care facilities, character and competence, and disposition of stock. The remainder of the proposals only had one house's or the other's support.
- The Senate included a number of additional CON reform proposals, including legislative language that would eliminate and substitute the "public need" requirement; eliminate the role of all health systems agencies except the

Finger Lakes HSA; and redefine “construction” to generally reduce the need and scope of CON review.

Block Granting of Public Health Programs

- Both houses rejected the Governor’s proposal to consolidate, and cut funding for, 41 public health appropriations into five funding pools aimed at providing flexibility to finance emerging health needs. The houses restored line item funding for these proposals.

Value Based Reimbursement

- Both houses rejected the Governor’s proposal to establish broad authority within DOH regarding the regulation of value based payments, which would have extended beyond the DSRIP Program.

State Health Information Network of New York

- While the Assembly accepted the Governor’s proposal to include \$45M in funding for the SHIN-NY, the Senate grouped the SHIN-NY capital appropriation with the CRFP (see above). The Senate would also make appropriation of SHIN-NY funds contingent on the submission of an investment plan, and would also make changes to the State’s existing HIT work group.

Medicaid and Medicaid Reform

- Both houses rejected codifying the Medicaid Global Cap, and would continue the cap for one SFY.
- While the Assembly accepted up to \$5M in grants for criminal justice health homes (to coordinate services between health homes and the criminal justice system), the Senate rejected the Governor’s proposal.

Basic Health Plan

- While the Assembly accepted proposals to amend Basic Health Plan language to allow for coverage of non-citizens in a valid nonimmigrant status, the Senate not only rejected the proposals, but would repeal the statute authorizing the BHP.

Health Benefit Exchange Tax

- The Assembly accepted the Governor’s proposal to institute a new assessment on domestic accident and health insurers to fund the Exchange’s direct and indirect operating expenses, although they inserted language that would prohibit plans from passing on the tax to consumers. The Senate rejected the proposal to fund the Exchange.

Population Health Improvement Programs

- Both houses included funding for PHIPs, although they did so for one year funding (consistent with their approach to all Medicaid spending) rather than two year funding.

Roswell Park Cancer Institute

- Both houses would restore full funding adding \$15.5M to Roswell Park.

Pharmacy

- Most of the Governor's proposals were rejected by both houses. (The exception was that the Assembly would modify one proposal regarding supplemental rebates.) Both houses also included language to restore "prescriber prevails."

Rochester GME/Covered Lives

- Both houses included a proposal to treat the covered lives assessment differently for the Rochester area. This was not in the Governor's bill.

DOH Transparency

- The Senate would impose several provisions for heightened transparency within the Department, including an Office of Accountability and requiring an annual report. Both houses included reporting and other transparency features in modifications to several of the Governor's proposals.

Behavioral Health and Substance Abuse

General:

- Capital and Other funds for Restructuring: The Assembly includes a \$20 million appropriation for OMH or OASAS licensed providers to acquire IT, EHRs, billing systems and other hardware or infrastructure associated with integrating behavioral health services into Medicaid managed care.
- Temporary and Lump Sum Medicaid payments: The Senate includes up to \$30 million annually to provide eligible OMH or OASAS providers with temporary adjustments to the capital components of rates and to make lump sum Medicaid payments. Eligible providers include those undertaking closures, consolidations, mergers, acquisitions, or other restructuring.
- Vital access provider program (VAP) funding for behavioral health providers is carried over from last year (\$50M).
- Extends APG managed care rates for ambulatory behavioral health services provided by OMH and OASAS providers: the Assembly extends the rates through December 31, 2017; and the Senate through December 31, 2018.

Office of Alcoholism and Substance Abuse Services:

- The Senate and Assembly agree with the Governor's proposal to provide a total of \$7.8 million to combat heroin addiction, including an additional \$5 million this year.
- The Senate would authorize districts, BOCES, vocational schools, charter and other non-public schools to provide and maintain opioid antagonists on-site for emergency use.
- The Assembly would require OASAS to conduct a statewide evaluation of gambling and report by December 1, 2017; create a Problem Gambling Education Program; and develop educational materials regarding problem gambling.

Office of Mental Health:

- The Senate and Assembly agreed with the Governor's proposal to appropriate \$22 million for enhanced services for high-risk mentally ill inmates from State prison: services would include in-prison assessments and treatment, supported housing, ACT teams and enhanced community services.
- The Senate adds back \$8.1 million rejecting the Governor's recommendation to reduce 137 state hospital beds. The Assembly would authorize the closure of such beds, as long as they are not associated with a facility closure.
- Assembly authorizes OMH to approve Inpatient Diversion Programs to help to prevent individuals in crisis from inpatient hospitalization.
- The Assembly accepted the Executive proposal to provide up to \$5M in grants for health homes (to coordinate services between health homes and the criminal justice system), the Senate rejected the Governor's proposal.
- The Senate includes adds \$4.1M for veteran's mental health initiatives and additional funding for research and other initiatives.
- Both houses would provide authorization and funding to OMH for mental health crisis intervention programs to train law enforcement officers when responding to crisis situations involving persons with mental illnesses.

- Assembly authorizes OMH to approve Inpatient Diversion Programs to help to prevent individuals in crisis from inpatient hospitalization.
- Both houses restored medication “prescriber prevails.”

Office of Persons with Developmental Disabilities:

- The Assembly accepted the Governor's proposal to set aside funds to reimburse the Federal Government for past liabilities related to reimbursement for services to persons with developmental disabilities, but sets aside only \$600M as opposed to \$850M by the Executive. The Senate did not set aside such funding.

We have provided matrices that provide details on the Appropriation and Article VII bills. We will update this analysis upon final enactment of the budget.