Report on Governor Cuomo’s 2017-18 Executive Budget Proposal:

$152.3 BILLION (ALL FUNDS) PLAN FOR NEW YORK, LEGISLATURE RELEASES PUBLIC HEARING SCHEDULE AS BUDGET PROCESS STARTS (APRIL 1 DEADLINE)

While Governors typically present their executive budget proposal before a gathering of the full Legislature, reporters and other stakeholders, breaking with tradition, yet again, Governor Cuomo opted instead to privately and separately brief lawmakers before unveiling it to the public and reporters in a press conference late in the evening on Tuesday, January 17, 2017, only hours before the midnight constitutional deadline. Earlier in the day, the Governor offered to similarly brief reporters though only if they adhered to a five-hour embargo on the information. Not surprisingly, they refused and along with the Albany regulars, spent much of the day wondering when the budget bills would be seen.

Nevertheless, this ushers in the budget season in earnest in Albany as the Governor and Legislature will now work toward the adoption of a state budget in advance of the April 1 deadline, which, if achieved, will mark New York’s seventh consecutive on-time budget. Legislators, staff and lobbyists have begun the arduous task of combing through budget bills, in preparation of the next phase: joint Senate and Assembly public hearings. The Hearings begin next Tuesday (full schedule enclosed in report). While we continue to review the thousands of pages of appropriations and legislation comprising the 2017-18 budget proposal, we provide you with the following snapshot with further detail to follow in the coming days.
State Fiscal Picture
In terms of the overall numbers, Governor Cuomo proposes a $152.3 billion budget for 2017-18, an increase of 3.4 percent, which factors in state operating funds, federal operating funds, and capital project funds. Regarding state operating funds, Governor Cuomo’s 2017-18 budget keeps the increase below the 2.0 percent benchmark coming in at 1.9 percent for a total of $98.6 billion.

The proposal closes a $3.5 billion budget deficit, which arose in part due to weaker than expected tax receipts. Efforts to close the budget deficit include an extension of the so-called millionaires tax for three years, which will bring in $683 million in revenue in the fiscal year, rising to $4 billion by 2021, and keeping spending on state agency operations flat in most cases. The 2017-18 budget proposal invests an additional $1 billion in education, a 3.9 percent increase for School Aid totaling $25.6 billion, and $567 million in State spending for Medicaid, an increase of 3.2 percent for a total of $18.3 billion pursuant to the Medicaid global spending cap (total Medicaid spending which includes federal funds rises to $65.2 billion). A breakdown is provided in the box above.

Notably, the budget proposal also allocates the $1.4 billion the State has received as a result of the monetary settlements with financial institutions as follows: $400 million for Buffalo Billion Phase II; $200 million for Health Care Capital Grants; $300 million for Life Sciences; $203 million for Counter-Terrorism and Emergency Response Preparedness; $100 million for Downtown Revitalizations; $20 million for the Division of Military and Naval Affairs (DMNA) armories; and, $150 million to be set aside for the State’s rainy day reserves.

Finally, in a move that is likely to encounter resistance, the Governor’s budget includes language to give the Executive unilateral authority to make mid-year changes if tax receipts or federal aid do not materialize as projected. What follows is a report by summarizing appropriations and policy proposals by programmatic area.

Mental Hygiene
The mental hygiene agencies, which includes the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), Office of Alcoholism and Substance Abuse Services (OASAS), as well as the Developmental Disabilities Planning Council (DDPC) and Justice Center for the Protection of People with Special Needs, serve more than 1 million individuals on an annual basis, including an estimated 700,000 with mental illness, 240,000 with substance use disorders or gambling problems and 130,000 with developmental disabilities. The Executive Budget proposes $8.4 billion in funding, reflecting an annual spending growth of $223 million or 2.7 percent. Here is the breakdown:

<table>
<thead>
<tr>
<th>Category</th>
<th>FY 2017 (millions)</th>
<th>FY 2018 (millions)</th>
<th>Change Dollar (in millions)</th>
<th>Percent</th>
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<tr>
<td>OPWDD</td>
<td>4,115.8</td>
<td>4,251.2</td>
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<tr>
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<td>42.1</td>
<td>1.0</td>
<td>2.4</td>
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<tr>
<td>DDPC</td>
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<td>4.2</td>
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<td>(1,314.0)</td>
<td>(188.8)</td>
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</table>

NOTE: These adjustments reflect spending for Mental Hygiene Services that are attributed to DOH Medicaid spending.
Notable provisions for OPWDD

- Continued investment in new service opportunities including certified housing supports, rental subsidies to allow for more independent living, and increasing respite availability. The 2017-18 budget proposal commits $15 million to develop additional independent living housing and appropriations to expand crisis services, while also supporting the OPWDD transition to Medicaid Managed Care.

Notable provisions for OMH

- **Reinvestment in Community-Based Services** – OMH budget includes $11 million to invest in community-based services to offset reduction in inpatient bed capacity.
- **Redesign of OMH State-Operated Outpatient Clinics** – As part of an effort to transform OMH outpatient clinics, OMH will be reviewing the services provided at its 85 clinics with the goal of reducing any overlap and assuring the clinics are operating at “optimal capacity.” As detailed in the budget materials, reductions are expected at “low-performing facilities.”
- **Plan for Hutchings Children & Youth Services** – OMH will assess and prepare a plan for achieving efficiencies with respect to Hutching’s Children and Youth inpatient services. While we assess the budget documents for further detail on this initiative, the briefing material states the plan includes “…working closely with an Article 28 hospital that could be utilized to deliver existing OMH services, expand access to inpatient bed capacity, and improve the coordination and delivery of medical and mental health services for children in the central New York region.” ¹
- **Jail-Based Restoration Programs** – OMH would be authorized to permit the establishment of jail-based restoration-to-competency programs within locally-operated jails and State prisons operated by the Department of Corrections and Community Supervision. Restoration to competency would be authorized in mental health units at such facilities with the budget appropriating $850,000 to OMH to provide grants to county jails to assist with infrastructure improvements. The jail-based restoration program has been implemented in other states and has been identified as a best practice with an estimation it would save OMH $3.5 million when annualized and also lower costs for local governments.

Notable provisions for OASAS

As part of the Governor’s six point plan to combat the heroin and opioid epidemic, as outlined in [NASW-NYS’s recap of the State of the State addresses](#), the budget authorizes and includes funding for OASAS to:

- Add 80 new residential treatment beds
- Open 600 additional opioid treatment program slots
- Establish 10 new regional coalitions, bringing together a number of stakeholders, including among others families, providers, educators, law enforcement and local leaders, to facilitate greater cross-sector collaboration on prevention and treatment for substance use disorders;
- Establish 10 additional family support navigator programs, which assists individuals and families in locating services and supports (bringing total number to 20 statewide);
- Establish 10 additional peer engagement programs (bringing total number to 20 statewide);
- Establish 8 new adolescent clubhouses, which assist youth in developing social skills necessary for achieving long-term health, wellness and recovery;
- Establish 5 additional recovery community and outreach centers (bringing total number to 14 statewide);
- Establish 10 urgent access centers (part of Governor’s six point plan, refer to State of State report for additional detail);

¹ Budget Briefing Book
Establish 2 recovery high schools (one upstate and one downstate, part of Governor’s six point plan, refer to State of State report for additional detail);

While the budget proposal defers a human services Cost of Living Increase for one year, it provides $17 million to assist non-profits with the minimum wage increase to support direct care, direct support and other workers at these entities, which are providing services on behalf of OPWDD, OMH and OASAS.

HEALTH CARE

There are a number of provisions in the budget impacting health care including:

- Maintaining funding for the Physician Excess Medical Malpractice Program at $127.4 million, while proposing a requirement that physicians receive a “tax clearance” as a condition for receiving coverage through the program.
- Elimination of “prescriber prevails” in Medicaid Fee-for-Service and Medicaid Managed Care for all drug classes except for atypical anti-psychotics and anti-depressant medications.
- Authorizing physicians or nurse practitioners and pharmacists to develop “written comprehensive medication management protocols” for patients with chronic disease or diseases, focusing on those who are at risk for hospitalization, have not met clinical goals of therapy, or whom the physician or nurse practitioner deems to need comprehensive medication management services. Patient participation in this initiative is voluntary.
- Defining inappropriate prescribing of opioids as an unacceptable practice in the Medicaid program, which could result in the prescriber’s exclusion from the program.
- Establishment of the Health Care Regulation Modernization Team – The team would consist of up twenty-five members appointed by the Governor to examine New York’s complex health care regulations and framework. The team would begin working on July 1, 2017 and be required to prepare recommendations by December 31, 2017. Areas of focus for the team would include among others: “(1) streamlining the certificate of need process and other licensure or construction approval processes; (2) creating more flexible rules related to scopes of practice for clinicians and caregivers; (3) integrating, standardizing and increasing flexibility of state agency regulations governing the delivery of and reimbursement of telehealth programs; (4) modernizing licensing and regulations of services provided in homes.”

In addition, where permanent changes in statute or regulation may not be appropriate, the proposal empowers the Commissioners of Health, Mental Health and OASAS to implement pilot programs to test and evaluate new and innovative models of health care. While the budget does not address the social work licensure issue directly this year, this is an issue likely to be examined by team. Recommendations would have to be approved by a majority of the members on the team.

- To combat the rising cost of prescription drugs, the budget includes plan to:

  - Require drug manufacturers to pay a supplemental rebate when certain high cost drugs are sold to New York’s Medicaid Program and exceed the benchmark price set by the Drug Utilization Review Board, while also establishing a surcharge on the first sale of such high cost drugs in New York State. The surcharge would be collected by the Department of Financial Services and placed into the High Priced Drug Reimbursement Fund. The money in the fund is to be distributed to health insurers and the Medicaid program based on the proportion of their respective costs for such drugs with the expectation the funds will be used to lower health insurance premiums for the next policy year.

    - Regarding the definition of high priced drugs, the Department would be authorized to review drugs which meet the following conditions: “(1) when first introduced on the market, are prohibitively expensive for patients who could benefit from the drug; (2) suddenly or over a relatively brief period of time experience a large increase and such increase is not explained by a significant increase in ingredient costs or by some other relevant factor; or, (3) are priced disproportionately given that they offer limited therapeutic benefits.” The drugs identified for review can include: “brand name or

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2 Health and Mental Hygiene Article VII Legislation
generic; drugs produced by multiple manufacturers or by a single manufacturer; drugs reimbursed by commercial and/or public payers and prescription and non-prescription items.” The Department of Health would be tasked with posting the list of high priced drugs on its website along with the date the drug first appeared on the list and the benchmark price. Regarding the imposition of the surcharge, the budget legislation explains, “There is hereby imposed a surcharge on the excess charge amount of the gross receipt from the first sale in the state of a high priced drug by an establishment at the rate of sixty percent.”

- Require pharmacy benefit managers (PBMs) to register and be licensed by the Department of Financial Services (DFS) to operate in New York. PBMs would be subject to regulations, including requirement to disclose certain information to DFS, such as the final incentives for promoting the use of certain drugs. The information provided to DFS would be kept confidential. DFS will promulgate regulations outlining the requirements for a PBM to receive a license and a fee would be placed on PBMs to support the regulation of them.

- New York Health Benefit Exchange (New York State of Health) – While the new Presidential administration and Congress weigh the repeal of the Affordable Care Act, the Governor’s proposed budget includes $553 million for the operation of the exchange/marketplace, which includes $17.2 million in grants provided by the federal government. Of note, more than 3.4 million have enrolled in coverage through the marketplace during the open enrollment period for 2017 coverage, a 22 percent increase compared to last year.
- In what appears to be a response to the demise of Health Republic, the budget would provide authority to the Department of Financial Services (DFS) to order an insurer into administrative supervision proceedings in cases where the insurer has become insolvent or refused to comply with DFS requests to have its financial statements examined. DFS would be permitted to place insurers under its supervision for a period of up to 180 days, which can be extended, and prohibit insurers from certain activity.
- E-cigarettes – Budget proposes regulating and taxing electronic cigarettes in the same manner as tobacco cigarettes. As such, e-cigarettes would be included in the Clean Indoor Air Act and impose a tax rate of ten cents per milliliter.
- Consolidation of Health Care Resources – Citing the duplicative nature and the overlap, the Governor proposes the consolidation of 39 public health appropriations into four pools with funding for each pool reduced by 20 percent, which would achieve $24.6 million in savings for the State. These are public awareness and prevention programs covering a variety of disease entities and public health initiatives.

The Governor’s proposed budget does not include provisions to allow retail clinics (or limited services clinics) to operate in malls or big box stores, a perennial proposal put forth as part of the budget for the last several years but ultimately rejected.
HUMAN SERVICES

- Education – While we noted above the increase appropriated for school aid, the budget also includes the Governor’s plan to phase-in Tuition-Free College at SUNY and CUNY for students of families making under $125,000, a program the Governor projects will cost $163 million annually when fully implemented.

- Raising the Age of Criminal Responsibility – Governor’s budget would phase in raising the age of criminal responsibility to 17 on January 1, 2019, and to 18 on January 1, 2020, while raising the lower age of juvenile jurisdiction from age 7 to age 12 on January 1, 2019 for all offenses except homicide. Proposal includes other comprehensive reforms as have been proposed in the past:
  
  o “Expand Family Court jurisdiction to include youth who are 16 and 17 charged with non-violent felonies, misdemeanors, or harassment or disorderly conduct violations.
  
  o Establish Youth Parts in Superior Court (adult court) to handle juvenile offender cases for those age 16 and 17 for the following crimes: all violent felony offenses, class A crimes, homicide offenses, sexually motivated felonies, crimes of terrorism, felony vehicular assaults, aggravated criminal contempt in violation of a duly served order of protection where the juvenile intentionally or recklessly causes physical injury or serious physical injury to a person for whose protection such order was issued, and conspiracy to commit any of these offenses or tampering with a witness related to any of these offenses.
  
  o Provide for the removal of Juvenile Offender cases to Family Court for 16 and 17 year old cases in Youth Part and upon consent of the District Attorney allow for removal to Family Court for the current juvenile crime of second degree robbery and for violent felony offenses not defined as juvenile offender crime for youth under the age of 15;
  
  o Prohibit confinement of youth in an adult jail or prison;
  
  o Prohibit detention and placement of youth who are low risk pursuant to risk assessment;
  
  o Expand current practice regarding parental notification and use of rooms for questioning approved by the Office of Court Administration;
  
  o Mandate diversion attempts for low-risk misdemeanor cases;
  
  o Establish family engagement specialists to assist with adjustment and “a continuum of evidenced-based diversion services;”
  
  o Establish Family support Centers to provide an array of services to children at risk of person in need of supervision (PINS) adjudications;
  
  o Prohibit use of detention in PINS proceedings (effective January 1, 2020);
  
  o Access to weekend arraignments for Family Court cases;
  
  o Post-supervision release for youth released from OCFS facilities to assist in the re-entry process;
  
  o Provide for the sealing of records for certain convictions upon application (must meet certain criteria).”

  4 Education, Labor and Family Assistance Article VII Legislation Memorandum in Support

Reactions to Governor’s Executive Budget Proposal

“All the elements of the Governor’s proposal are important, but particularly important are the Raise the Age provisions. We know that young people are brutalized by uniformly putting them through a justice system designed for adults. We know that adolescent brains are not fully developed. And we know that the life chances of young people put through our justice system are severely impacted by this policy. That’s part of the reason 48 other states have taken a different path than New York. It is time for us to bring our justice system up to the high standard ‘equal justice under law’ demands.”

-Senator Jesse Hamilton (D-Brooklyn), Member of Senate Independent Democratic Conference
in fiscal hardship; (2) county has complied with the requirements of the tax cap; and (3) county has developed a plan for how it will implement the provisions of the law to raise the age.

- Employment Opportunities for Youth
  - The Urban Youth Jobs program, which connects youth to employment opportunities, would be renamed as the “New York Youth Jobs Program” and expanded to cover youth statewide with an investment of $50 million over the next five years.
  - YouthBuild – $300,000 re-appropriated for YouthBuild programs located in New York State, which assist low-income youth in obtaining the skills necessary for employment.

- Affordable Housing
  - Budget includes a number of proposals to create additional affordable and supported housing units, continuing the $20 billion five year commitment initiated in last year’s budget.
  - Services for Homeless and Runaway Youth – While the budget continues level funding for services under the Runaway and Homeless Youth Act at $4.84 million, it would allow local municipalities to extend the time a youth could stay in short-term crisis programs to 120 days and extend the time a youth could in stay in long-term living programs and raise the age of youth allowed in the long-term programs to 24 years of age.

**ECONOMIC DEVELOPMENT/INFRASTRUCTURE/TAXES**

- Transportation Networking Companies – Ridesharing companies, such as Uber and Lyft, would be permitted to operate in upstate New York under the Governor’s budget proposal, which would establish uniform licensing requirements and provide local municipalities with the option of licensing such companies. Rides provided by such companies upstate would be subject to a 5.5 percent tax, while in New York City an 8.875 tax would be applied.
- Taxes
  - Middle Class Tax Cuts – Budget includes proposal to continue the reduction in tax rates for those making under $300,000. For those earning between $40,000 and $150,000 the rate is reduced to 6.45 percent from 6.85 percent in 2018. For those earning between $150,000 and $300,000, the rate is reduced to 6.65 percent from 6.85 percent for 2018.
  - Millionaires Tax – This would be extended for three years, keeping the top rate of 8.82 percent for individuals making more than $1 million or couples making more than $2 million a year, which is expected to impact 45,000 taxpayers, half of whom are non-residents and 3 percent are from upstate.
- Taxes and Fees – Budget includes a number of taxes and fees to bring in additional revenue to the State. The plan to modernize sales tax collection in face of the growing internet economy calls for online retailers, such as Amazon and eBay, to collect sales tax “…when they facilitate the sale to residents, whether the seller is located within, or outside, New York.” Other proposals range from increasing the fees for services at the Department of Motor Vehicles to “cigar tax reform.” Also included is a proposal to establish a motion picture theater alcohol permit to allow alcoholic beverages to be sold in movie theaters. A recent report from The Buffalo News provides a detailed breakdown, available at: [http://buffalonews.com/2017/01/19/cuomo-budget-plan-offers-cornucopia-of-tax-fee-hikes/](http://buffalonews.com/2017/01/19/cuomo-budget-plan-offers-cornucopia-of-tax-fee-hikes/).

**VETERANS**

- Re-appropriation of $450,000 or $150,000 per organization for the New York State Psychiatric Association, the Medical Society of the State of New York and the National Association of Social Workers – New York State to continue the Veterans Mental Health Training Initiative, which educates and trains primary care physicians and providers, as well as community mental health providers on combat-related mental health disorders including post-traumatic stress disorder, traumatic brain injury, substance use disorder and suicide prevention.
- Proposal to enhance the services provided through veterans’ treatment courts and expand the availability of such courts, supported by a $1 million appropriation. Regarding the services provided by such courts, the funding would be used in part to support the peer mentoring programs. The proposal also calls for allowing courts, in misdemeanor and felony
cases that are pending in local criminal court which has jurisdiction, to move such action to a local criminal court in the same county or adjoining county that has been designated a veterans’ treatment court. The defendant would have to make a motion to move the case to a veterans’ treatment court and the district attorney would have to consent.

**ENVIRONMENT**

- $2 billion Clean Water Infrastructure Act, or $400 million over five years, to protect and enhance our water systems.
- Maintain funding for the Environmental Protection Fund at $300 million, which is earmarked for solid waste programs, parks and recreation, open space and climate change mitigation programs.
- $53 million for Phase I of establishing the Empire State Trail, which when finished will be a 750-mile multi-use trail connecting New York City to the North Country and Albany to Buffalo.
- Special assessment on gas and electric corporations, which is not to exceed $19.7 million and will be used to fund activities of New York State Energy Research and Development Authority, the Department of Environmental Conservation’s climate change initiatives and the Department of Agriculture and Markets’ Fuel New York program.
- Proposal to reform the Investment Tax Credit, which would exclude costs related to the production of natural gas, steam, or water as an activity eligible for the tax credit.

**OTHER RELEVANT PROGRAMMATIC CHANGES**

- The chair of the New York Athletic Commission would be removed from the list of salaried officers, pursuant to New York’s Executive Law, thereby eliminating the salary requirement for the position. The rationale for the change is “…to provide flexibility in the compensation structure for the Chair and operation of the Commission.”
- In an effort to combat food waste, high volume generators of food waste, including manufacturers, supermarkets, restaurants, institutions for higher education, and health care facilities would be required to donate excess edible food to food banks, animal feed operations, anaerobic digesters or to other composting and organics recycling facilities. Local and secondary schools would be exempt from this requirement, while the Department of Environmental Conservation is empowered to oversee food waste. The requirement would be effective January 1, 2021.

**ETHICS REFORM**

- While there are no fiscal implications attached, the Governor’s budget incorporates the ethics reforms he outlined in his State of the State addresses, including putting forth constitutional amendments to: (1) limit the outside income for legislators; (2) create a full-time legislature; and, (3) establish term limits.

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3 Transportation, Economic Development and Environmental Conservation Article VII Legislation
# Schedule Of Joint Legislative Public Hearings On 2017-2018 Executive Budget Proposal

*(Hearings to be held in Hearing Room B, Legislative Office Building, Albany)*

<table>
<thead>
<tr>
<th>Date</th>
<th>Day</th>
<th>Time</th>
<th>Subject</th>
<th>Contact</th>
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<tbody>
<tr>
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<td>10:00AM</td>
<td>Mental Hygiene</td>
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**Important Links for 2017-18 Budget**

- Schedule of Legislative Budget Hearings: [http://assembly.state.ny.us/comm/WAM/20170118/](http://assembly.state.ny.us/comm/WAM/20170118/)
- Other Budget Information: [https://www.budget.ny.gov/](https://www.budget.ny.gov/)