

**2010-11 NEW YORK STATE EXECUTIVE BUDGET**

**HEALTH AND MENTAL HYGIENE  
ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

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## MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor in  
Accordance with Article VII of the Constitution

AN ACT to amend the public health law, the insurance law, the state finance law, the elder law and the county law, in relation to the early intervention program for infants and toddlers with disabilities and their families; to amend the public health law, in relation to requiring physicians to register and maintain an account with the department of health's health provider network; to amend the public health law and the state finance law, in relation to cardiac service information; to amend the public health law, in relation to the health information technology demonstration program; to amend part C of chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to eligible programs; and to repeal certain provisions of the public health law, the state finance law, section 1 of chapter 462 of the laws of 1996, relating to establishing a quality incentive payment program, and the elder law relating thereto (Part A); to amend the public health law, in relation to the assessment of general hospitals, Medicaid rates of reimbursement general hospital indigent care pools, and preferred drug programs; to amend the public health law and chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, in relation to reimbursements; to amend the social services law and the public health law, in relation to prescription drug coverage for needy persons; to amend the public health law, in relation to funds for tobacco control and insurance initiative pools, and health care initiatives pools; to amend the general business law and the social services law, in relation to authorizing moneys paid in advance for funeral merchandise or services for family members; to amend the social services law, in relation to authorizing the commissioner of health to assume responsibility for transportation costs; to amend the public health law, in relation to covering medically necessary orthodontia, covering persons declaring to be a citizen for child health insurance; to amend the public health law, the social services law

and the tax law, in relation to imposing parental fees in the early intervention program; to amend the public health law and the social services law, in relation to establishing express lane eligibility for child health insurance and copayments for certain individuals enrolled in family health plus plans; to amend the public health law and the education law, in relation to interactions between pharmaceutical companies and health care professionals; to amend the public health law, in relation to general hospital reimbursement rate periods; to amend the public health law, in relation to a physician loan repayment program and in relation to transitional care units; to amend part B of chapter 58 of the laws of 2005, amending the public health law and other laws relating to implementing the state fiscal plan for the 2005-2006 state fiscal year, in relation to the expiration thereof; to amend the social services law, in relation to eligibility for medical assistance; to amend the public health law, in relation to general hospital reimbursement rate periods; to amend the social services law, in relation to coverage of certain treatment for individuals at risk of substance abuse; to amend section 17 of part C of chapter 58 of the laws of 2005 amending the public health law and other laws relating to implementing the state fiscal plan for the 2005-2006 state fiscal year, in relation to extending coverage for specialty outpatient services; to amend the public health law, in relation to violations of health laws or regulations, penalties and injunctions; to amend part C of chapter 58 of the laws of 2005 amending the tax law and other laws relating to implementing the state fiscal plan for the 2005-06 state fiscal year, in relation to Medicaid fraud and abuse; to amend the public health law, in relation to audits of service providers; to amend the public health law, in relation to hospital mortgage loan construction; to amend chapter 392 of the laws of 1973 constituting the New York medical care facilities finance agency act, in relation to special hospital project bonds and secured hospital projects reserve funds and appropriations; to amend the social services law, in relation to documentation and eligibility under the medical assistance program; permitting the commissioner of health to enter into contracts for the purpose of conducting audits of

hospital costs; to amend the public health law, in relation to reimbursements to certain diagnostic and treatment and ambulatory care centers; to amend the social services law, in relation to providing smoking cessation counseling services to adolescents to the age of nineteen; to amend part A of chapter 57 of the laws of 2006 amending the social services law relating to medically fragile children, in relation to the effectiveness of provisions; to amend the social services law, in relation to participation in certain federal medical assistance programs; to amend chapter 33 of the laws of 1998 amending the social services law relating to authorizing payment of Medicare part B premiums for certain Medicaid recipients, in relation to making the provisions of such chapter permanent; to repeal paragraph (f) of subdivision 9 of section 367-a of the social services law relating to payment of prescription drugs; and providing for the repeal of certain provisions upon expiration thereof (Part B); to amend the public health law and the social services law, in relation to residential health care facilities; to amend chapter 58 of the laws of 2009, amending the public health law and other laws relating to Medicaid reimbursements to residential health care facilities inpatient services, in relation to such reimbursements; to amend chapter 109 of the laws of 2006, amending the social services law and other laws relating to Medicaid reimbursement rate settings, in relation to such rate settings; to amend the social services law, in relation to personal care services and the nursing home transition and diversion program; to amend the social services law, in relation to creating the county long term care financing demonstration program; to amend the public health law, in relation to requiring a study of resident data, in relation to matters regarding fiscal solvency, in relation to certificates of authority, in relation to reporting requirements and in relation to the voluntary residential health care facility rightsizing demonstration program (Part C); to amend the insurance law, in relation to prior approval of health insurance premium rates (Part D); to amend the mental hygiene law, in relation to the receipt of federal and state benefits received by patients receiving care in facilities operated by an office of the department of

mental hygiene (Part E); to repeal chapter 119 of the laws of 2007, directing the commissioner of mental health to study, evaluate and report on the unmet mental health service needs of traditionally underserved populations (Part F); to amend the mental hygiene law, in relation to electronic court appearance in relation to article 10 of the mental hygiene law (Part G); in relation to authorizing the office of mental health to close patient wards and establish transitional placement programs, notwithstanding the provisions of section 7.17 or section 41.55 of the mental hygiene law; to amend chapter 62 of the laws of 2003 amending the mental hygiene law and the state finance law relating to the community mental health support and workforce reinvestment program, the membership of subcommittees for mental health of community services boards and the duties of such subcommittees and creating the community mental health and workforce reinvestment account, in relation to the effectiveness thereof; to amend the mental hygiene law, in relation to community mental health support and workforce reinvestment program; and repealing certain provisions of the mental hygiene law relating thereto (Part H); in relation to the recovery of exempt income by the office of mental health for community residences and family-based treatment programs (Part I); to amend the mental hygiene law, in relation to payments made by the office of mental retardation and developmental disabilities and the office of mental health to operators of family care homes and to increasing the number of days that substitute caretakers may be provided to family care homes by the office of mental retardation and developmental disabilities and the office of mental health, and in relation to payments made to the operators of community residential facilities for the needs of persons with mental retardation or other developmental disabilities residing therein (Part J); to amend the mental hygiene law, in relation to discrete units of a hospital or other facility possessing an operating certificate for the purpose of providing residential or nonresidential chemical dependence services (Part K); to amend the mental hygiene law and the vehicle and traffic law, in relation to the transfer of the alcohol and drug rehabilitation program

from the department of motor vehicles to the office of alcoholism and substance abuse services (Part L); to amend the mental hygiene law, in relation to unified services; and repealing certain provisions of such law relating thereto (Part M); and to amend chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to foregoing such adjustment during the 2010-2011 state fiscal year (Part N)

**PURPOSE:** This bill contains provisions needed to implement the Health and Mental Hygiene portions of the 2010-11 Executive Budget.

This memorandum describes Parts A through N of the bill which are described wholly within the parts listed below.

**Part A - Improve public health services and achieve savings by modifying the Early Intervention and Elderly Pharmaceutical Insurance Coverage programs; consolidating programs with similar purposes, eliminating programs which are less central to the core missions of the Department of Health and the State Office for the Aging; and implementing various other changes.**

Purpose:

This bill would implement cost savings for the Department of Health (DOH) and the State Office for the Aging (SOFA) and authorize various other changes.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would generate State Financial Plan savings by modifying the Early Intervention (EI) program, reforming the Elderly Pharmaceutical Insurance Coverage (EPIC) program, streamlining efforts related to the consolidation of cancer related programs, and eliminating programs which are less central to the core missions of DOH and SOFA.

- Section 1 would amend Public Health Law (PHL) § 2559 to require EI service providers who receive more than \$500,000 in annual Medicaid revenue for EI services to first seek reimbursement directly from Medicaid prior to seeking payment from municipalities for these services.
- Section 2 would amend Insurance Law § 3235-a to prohibit insurance companies from denying claims for medical services covered under the terms of the policy and provided under the EI program when such denials are due to prior authorization requirements, the location where services are provided, the



duration of the insured's condition, the likelihood of significant improvement in the insured's condition, or the network status of the service provider.

- Section 3 would add new PHL § 2557-a to establish a sliding scale parental fee for the EI program. The fee, paid on a quarterly basis, would range from \$45 for family incomes ranging from 251 percent to 400 percent of the Federal Poverty Level (FPL) to \$540 for family incomes above 1,001 percent of the FPL per child enrolled in the EI program. The quarterly fee charged to families with more than three children receiving services in the EI program would be capped at the quarterly fee charged for parents who have three children receiving services in the EI program.
- Section 4 would add new State Finance Law (SFL) § 99-t to establish the EI Program Account to collect revenue from the new EI parental fee.
- Sections 5 through 7 and Sections 10 and 11 would revise the heading of PHL Article 24, Title 1-A, and amend PHL §§ 2405, 2406, and 2406-a to consolidate several specific cancer programs and authorize the Commissioner of Health (Commissioner) to make grants without consulting with the Breast Cancer Detection and Education Program Advisory Council.
- Sections 8, 9 and 9-a would repeal PHL § 2409 to eliminate the "New York State Innovation in Breast Cancer Early Detection and Research Awards program" and make conforming amendments to SFL § 95-a and PHL § 2407(3-a).
- Sections 12, 13, and 13-a would amend Chapter 462 of the Laws of 1996 and PHL § 2807-v to repeal the Quality Incentive Payment Program (QUIP) and restructure funding for the EnAble program to allocate funding for a new quality improvement program for adult homes.
- Sections 14 and 14-a would repeal Elder Law § 217 to repeal the Congregate Services Initiative Program that provides services at senior centers and other congregate settings within the State Office for the Aging and make a conforming change to Elder Law § 214.
- Sections 15 through 19 would amend PHL §§ 2799-f, 2799-g and 2799-h and repeal PHL §§ 18 and 19 to revise various provisions related to the development of Comprehensive Care Centers for Eating Disorders.
- Sections 20 through 25 are intentionally omitted.
- Section 26 would amend PHL § 207 to add several health conditions to the current list of health care matters in the Health Care and Wellness Education and Outreach Program on which the Commissioner may conduct education and outreach programs.

- Section 27 would amend PHL § 201 to require DOH to inspect hotels, boarding houses and temporary residences when inspections do not otherwise occur under the State Uniform Fire Prevention and Building Code, in response to complaints, or when otherwise necessary.
- Section 28 would repeal PHL Article 43-C to repeal the Public and Private Umbilical Cord Blood Banking Program.
- Section 29 would repeal PHL § 2745 to repeal the Shaken Baby Syndrome Public Education Campaign.
- Sections 30 through 32 would amend Elder Law § 242 and repeal Elder Law § 250(6) to reform the EPIC Program and maximize Federal Medicare Part D benefits by: (1) eliminating coverage for drugs that are not covered by Part D, also known as the "drug wrap" and (2) requiring all Medicare Advantage members to enroll in Medicare Part D drug coverage as a condition of eligibility for the EPIC program.
- Section 33 would amend PHL § 602 to codify DOH's consistent construction of its existing authority under the General Public Health Works program, by clarifying that activities contained in a municipal health services plan for which state reimbursement may be available include a municipality's efforts to assure that public health nuisances are abated by responsible parties, meaning that such reimbursement is not available for the performance of abatement by municipalities.
- Section 34 would amend County Law § 677 to clarify that when the Commissioner exercises his existing authority to request and obtain reports and records related to a death, including autopsy and toxicology reports, from a coroner, coroner's physician or medical examiner, such reports and records shall be provided promptly.
- Section 35 would repeal PHL Article 27-I to eliminate the reflex sympathetic dystrophy program.
- Section 36 would amend PHL § 2819 to change the annual deadline for the Commissioner to submit a report on Hospital Acquired Infections from May 1st to September 1st.
- Section 37 would amend PHL § 2995-a to require licensed physicians to register and maintain an account with DOH's health provider network or provide DOH with an e-mail address for the purpose of allowing DOH to disseminate information in a timely and cost-effective manner.

- Section 38 would add new PHL § 2816-a to authorize DOH to release certain cardiac data collected from hospitals for use in research projects and set forth the conditions under which such data shall be released.
- Section 39 would amend Chapter 57 of the Laws of 2006 to make technical corrections related to the cost of living adjustment (COLA) for human services programs, consistent with the proposed consolidation of AIDS, cancer, and obesity/diabetes programs, and makes other conforming changes.
- Section 40 would amend PHL § 206 to authorize DOH to promulgate rules and regulations related to the development of a Statewide Health Information Network of New York (SHIN-NY), in conformance with federal stimulus requirements and to enable widespread interoperability among health information systems.
- Section 41 would make the bill effective April 1, 2010, with certain exceptions.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget, which recommends State Financial Plan savings of \$45.3 million in 2010-11 and \$102.5 million in 2011-12 as follows:

- \$36.4 million savings in 2010-11 (\$59.3 million in 2011-12) associated with reforming the EPIC program to maximize federal Medicare Part D;
- \$6.3 million savings in 2010-11 (\$39.9 million in 2011-12) to implement changes in the EI program; and
- \$2.6 million savings in 2010-11 (\$3.3 million in 2011-12) associated with the elimination of lower priority programs.

Effective Date:

This bill would take effect April 1, 2010, with the following exceptions:

- Section 3 would take effect March 1, 2011;
- Sections 30, 31 (with respect to the amendment of Elder Law § 242(3)(g)), 32, and 37 would take effect July 1, 2010;
- Section 31, with respect to the amendment of Elder Law §§ 242(3)(f) and (h), would take effect January 1, 2011; and

Section 38 would take effect 180 days after enactment of the bill.

**Part B - Reform Medicaid reimbursement to hospitals and achieve cost savings; increase assessment on hospital inpatient services; extend Health Care Reform Act surcharges to certain physician services; reduce pharmacy costs; and, authorize other cost containment initiatives.**

Purpose:

This bill is necessary to implement cost saving and revenue proposals for Medicaid and the Health Care Reform Act (HCRA). The bill expands on the efforts of prior years to reform Medicaid reimbursement to hospitals, reduce pharmaceutical costs and authorize other cost containment initiatives. In addition, the bill increases the assessment on hospital inpatient services and extends the HCRA surcharge to certain physician services.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill includes the following provisions:

Section 1 would discontinue the remaining portion of the trend factor for calendar year 2010 – projected to be 1.7 percent – for general hospitals, nursing homes (excluding pediatric nursing homes), and home and personal care providers. This continues the trend reduction enacted in the 2009-10 Deficit Reduction Plan.

Section 2 would amend Public Health Law (PHL) § 2807-d(2)(a)(vi) to increase the cash assessment on hospital inpatient gross receipts from 0.35 percent to 0.75 percent.

Section 3 would amend PHL § 2807-c(35)(b) to create Statewide quality benchmarks for hospitals in order to limit the number of potentially preventable readmissions and conditions.

Sections 4 through 6 would amend PHL § 2807-c(35)(b) and add new PHL § 2807-c(35)(i) to reduce reimbursements to hospitals for indirect medical education (IME) and reinvest savings to increase obstetrical access and quality and supplement other hospital costs. Pursuant to a later provision of the bill, savings would also support continuation of Doctors Across New York. Investments would be contingent upon the reduction in hospital IME payments.

Section 7 would add new PHL § 2807-k(5-c) to reduce payments to hospitals for indigent care and establish a methodology distributing funds based on services provided to the uninsured, rather than on an accounting of bad debt. A portion of the savings is reserved to transition facilities to this new methodology over three years.

Section 8 is intentionally omitted.

Sections 9 and 10 would amend Chapter 474 of the Laws of 1996, as subsequently amended, to update Disproportionate Share Hospital (DSH) base year payments to more accurately reflect facility costs for serving the uninsured.

Section 11 would amend PHL § 272(8) to reduce the public notice requirements for the Pharmacy and Therapeutics Committee from 30 days to 5 days.

Section 12 would amend Social Services Law (SSL) § 365-a(4) to eliminate “wrap around” coverage for drugs that are covered by Medicare Part D.

Sections 13 and 14 would amend SSL § 367-a(9) to eliminate the HIV Specialty Pharmacy designation and the associated higher drug reimbursement rates.

Section 15 would amend SSL § 365-a to permit reimbursement for pharmacists who administer vaccinations within their scope of practice.

Section 16 would add PHL § 2807-j to establish a fee on surgical and radiological procedures performed in private ambulatory surgery centers, physicians’ offices and urgent care settings.

Sections 17 and 21 through 23 would amend PHL § 2807-v to discontinue HCRA funding for the Roswell Park Cancer Institute Anti-Tobacco , Disease Management Demonstration, and Long Term Care Education and Outreach programs and to reduce funding for the Infertility program by 50 percent.

Sections 18 through 20 are intentionally omitted.

Section 24 would amend PHL § 2807-l to consolidate funding for Regional Poison Control Centers.

Sections 25 and 25-a would amend SSL § 369 to expand the definition of “estate” to enable recoveries from assets that individuals could otherwise shelter from recovery by bypassing the probate process.

Sections 26 through 30 would amend General Business Law § 453 and SSL §§ 141 and 209 to require that all pre-need funeral accounts established by, or for the benefit of, a Medicaid recipient be deemed irrevocable, including those established for family members.

Sections 31 would amend SSL § 365-h to authorize the Department of Health (DOH) to manage non-emergency transportation through a contract with an external organization.

Sections 32 through 33 would amend PHL § 2510(7) and add new PHL § 2511(2-b) to add medically necessary orthodontia to the Child Health Plus (CHPlus) benefit package and require proof of citizenship for participation in the program, in conformance with the requirements of the 2009 Federal Child Health Insurance Reauthorization Act.

Sections 34 through 34-d would amend PHL § 2511(2), SSL § 366-a(8) and Tax Law §§ 171-b(4), 171-a(5) and 697(e) to clarify the respective roles of DOH and the Department of Taxation and Finance with respect to the verification of income information for purposes of CHPlus and Medicaid eligibility, to be reflected in a cooperative agreement between the agencies, and to include income verification provisions for the Early Intervention Program.

Sections 35 and 36 would add new PHL § 2511(2-c) and SSL § 366-a(11) to establish express lane eligibility for CHPlus and Medicaid consistent with Federal guidelines.

Section 37 would add new SSL § 369-ff(3-a) to establish co-payments for the Family Health Plus Buy-In program.

Sections 38 through 38-b would add new PHL § 279 and Education Law §§ 6509(15) and 6530(5) to prohibit pharmaceutical companies and their representatives from providing to physicians and other prescribers, and prohibit such prescribers from accepting, inappropriate gifts and payments, and to require that information provided to prescribers by pharmaceutical companies about their products be accurate and not misleading.

Sections 39 and 39-a would amend PHL § 2807-m to increase funding for the Doctors Across New York Physician Loan Repayment and Physician Practice Support programs (contingent upon the reduction in hospital IME payments) and make technical corrections to the Physician Loan Repayment program.

Sections 40 and 41 would amend PHL § 2802-a and Chapter 58 of the Laws of 2005 to expand from five to ten the number of general hospitals that the Commissioner of Health (Commissioner) can approve to operate Transitional Care Units as part of a demonstration program and to extend the program by five years.

Sections 42 would add new PHL §12(2) to enhance the enforcement capabilities of the Office of Medicaid Inspector General (OMIG) by increasing civil penalties for first-time and repeat offenders who commit Medicaid fraud.

Sections 43 through 43-b would amend Chapter 58 of the Laws of 2005, as subsequently amended, to limit the State's liabilities under the local Medicaid cap.

Sections 44 and 45 would authorize DOH to establish a HCRA surcharge/assessment amnesty period and extend authorization for the Commissioner to enter into audit settlements.

Sections 46 through 46-i would add new PHL §§ 2872(3-b) and 2874-b, amend Chapter 392 of the Laws of 1973 and add a new provision of unconsolidated law to provide authority for certain hospitals whose debt is secured by the State to refinance outstanding debt.

Sections 47 and 47-a would add new SSL §§ 366-a(2)(d) and 369-ee(b-1) to allow for personal interest income attestation and requires that adequate documentation be provided to DOH in the event of an inconsistency.

Sections 48 would amend SSL § 366-a(5)(d) to allow Medicaid attestation of income and residency at renewal.

Sections 49 and 50 would amend SSL § 366(4) to conform with the Federal American Recovery and Reinvestment Act (ARRA) changes to the transitional medical assistance program.

Section 51 would authorize DOH to contract, without a competitive bid or request for proposal, with one or more firms for the purpose of conducting audits of DSH payments and audits of hospital cost reports.

Section 52 would amend Chapter 58 of the Laws of 2005 to extend the selective contracting demonstration program for an additional five years and expand it to outpatient services, allowing outpatient facilities to participate in selective contracting and negotiate reimbursement rates with the State for services provided.

Section 53 would amend PHL § 365-a to allow professionals affiliated with programs certified by specified entities including the Federal Centers for Medicare and Medicaid Services to serve as diabetes educators.

Sections 54 through 68 would provide for technical corrections to various statutory provisions regarding hospital reimbursement.

Sections 63 and 69 are intentionally omitted.

Sections 70 through 73 would extend expiring laws, set timeframe and notice requirements, and provide for severability.

Section 74 sets forth the effective dates of the bill.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget which assumes State Financial Plan savings totaling \$381.5 million in 2010-11 and \$563.0 million in 2011-12 as follows:

- \$214.4 million savings in 2010-11 (\$284.6 million in 2011-12) to implement various hospital cost containment measures including: increasing the hospital assessment; limit preventable readmissions/conditions; reducing IME payments; aligning misallocated IME funds with appropriate hospital costs; increasing obstetrics access and quality; and reducing indigent care reimbursement and reforming the methodology.

- \$6.1 million savings in 2010-11 (\$7.6 million in 2011-12) related to pharmacy initiatives, including: reducing the public notice requirements for the Pharmacy and Therapeutics Committee from 30 days to 5 days; eliminating Medicare Part D wrap around coverage; eliminating the HIV specialty pharmacy designation and the associated higher drug reimbursement rates; and limiting inappropriate influence over prescribing decisions by restricting gifts from pharmaceutical companies to prescribers.
- \$161.0 million savings in 2010-11 (\$270.8 million in 2011-12) related to insurance and HCRA initiatives, including: extending the HCRA surcharge to certain physician services; discontinuing funding for HCRA programs that are less central to DOH's core mission; consolidating poison control centers; expanding the definition of estate; requiring pre-need funeral accounts to be irrevocable trusts; managing transportation services; instituting Federal CHPlus mandates; and eliminating the 2010 inflationary trend factor for hospitals, home care services providers and personal care services providers (including the assisted living program).

Effective Date:

This bill would take effect immediately and would be deemed to be in full force and effect by April 1, 2010, with the following exceptions:

- Eliminating the Medicaid Part D Drug Wrap (section 12 of the bill) would be effective June 1, 2010;
- Reducing Indigent Care / Reform Methodology (section 7), requiring pre-need funeral accounts to be irrevocable trusts (sections 26 through 30, and the co-payment requirement for the Family Health Plus Buy-In (section 37) would be effective January 1, 2011; and

Conforming CHPlus to federal requirements (sections 32 and 33) would be effective July 1, 2010.

**Part C - Reform Medicaid reimbursement of Long Term Care (LTC) services and achieve other cost savings, establish utilization controls for Personal Care Services; and, increase assessments for nursing homes and home and personal care providers.**

Purpose:

This bill would implement Medicaid cost savings and revenue proposals that impact providers of long term care services (e.g., nursing homes, home care providers and personal care providers), expanding on reforms enacted in previous years and offsetting Medicaid program costs.



Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The bill includes the following provisions:

- Section 1 would amend Public Health Law (PHL) § 2808(17) to institute a two-year cap on the aggregate increase in nursing home reimbursement rates processed as a result of rate appeals and would authorize the Department of Health (DOH) to prioritize rate appeals for facilities facing financial hardship and to negotiate settlements of multiple appeals to allow for timely resolution of issues.
- Section 2 would add PHL § 2808(25) to impose an annual limit on the bed reservation days for nursing homes of up to 14 days for a hospitalized resident and up to 10 days for a resident on a therapeutic leave of absence, and would reduce provider reimbursement for such days to 95 percent (from 100 percent). Pediatric nursing homes are excluded from this limitation.
- Sections 3 and 4 would amend PHL §§ 2807-d(2) and 2807-d(10) to increase nursing home assessments by one percent (from six to seven percent) and provide that such increase is not reimbursable under Medicaid.
- Sections 5 through 5-c would amend PHL §§ 2808(2-b) and 2808(2-c), Chapter 58 of the Laws of 2009 and Chapter 109 of the Laws of 2006 to: (1) extend nursing home reimbursement rebasing payments until February 28, 2011; (2) delay implementation of regional pricing reform until March 1, 2011; (3) implement a quality of care incentive pool; and (4) extend reporting deadlines for the nursing home workgroup established in the 2009-10 Budget.
- Section 6 would add new PHL § 2808(26) to carve out Medicaid prescription drug pharmacy costs from the nursing home reimbursement rate and allow for such costs to be reimbursed on a fee-for-service basis.
- Sections 7 through 12 would amend PHL §§ 3614-a and 3614-b and Social Services Law (SSL) § 367-i to increase the cash assessment on personal care providers, certified home health care agencies (CHHAs), long term home health care programs (LTHHCPs) and licensed home care services agencies (LHCSAs) from 0.35 percent to 0.7 percent and provide clarification regarding calculations of assessment delinquencies.
- Sections 13 through 13-b would amend SSL § 365-a and add new SSL §§ 365-f(2-a) and 366(6-a)(i) to cap personal care services and consumer directed personal care services to 12 hours per day (360 hours per month) and re-direct individuals who require service hours in excess of these caps to other

community-based settings (e.g., LTHHCP, the Nursing Home Transition and Diversion waiver and managed long term care).

- Section 14 would add new PHL § 3614(12) to implement recommendations on episodic pricing and utilization for certified home health agencies (CHHAs) made by the Home Health Care Reimbursement Workgroup.
- Section 15 amends PHL § 3616(2) to extend the time period for LTHHCP reassessments from 120 to 180 days.
- Section 16 would require the Commissioner of Health to establish procedures permitting LTHHCPs and providers of other services covered by federal waivers to collaborate on case management services, subject to the availability of federal financial participation.
- Section 17 is intentionally omitted.
- Section 18 would amend PHL § 3612(3) to increase penalties for LHCSAs that fail to file required annual reports.
- Section 19 would require DOH to seek federal approval of a demonstration program designed to achieve savings and efficiencies in serving individuals who are eligible for both Medicaid and Medicare.
- Section 20 would add new SSL § 366-i to authorize DOH to implement a long term care financing demonstration program, subject to federal approval, for up to 5,000 individuals using alternative approaches to the establishment of eligibility under the Medicaid program.
- Section 21 would add new SSL § 367-v to authorize a county long term care financing demonstration program to operate in up to five counties for the purpose of encouraging transformation of county nursing home beds into other long term care options.
- Section 22 would add new PHL § 3614(6) to require DOH to identify a uniform assessment tool and conduct a study of its effectiveness in evaluating and adjusting reimbursement rates for assisted living programs.
- Section 23 would amend PHL § 2801-e(2) expand the Voluntary Nursing Home Rightsizing program to authorize the conversion of an additional 2,500 nursing home beds to other long term care options.
- Sections 24 through 27 would repeal PHL § 4403-f(4), replacing it with new PHL §§ 4403-f(4) and (4-a), and amend PHL §§ 4403-f(6), 4403-f(7) and 4403-f(9) to transition the responsibility for rate setting for Managed Long Term Care services from the Insurance Department to DOH.

- Sections 28 would amend PHL § 2808(5)(b) to make technical corrections to equity withdrawal requirements for nursing homes.
- Sections 29 through 31 contain provisions regarding references to the federal Medicare and Medicaid programs, the suspension of time frames for notice, approval or certification of reimbursement rates, and severability.
- Section 32 sets forth the bill's effective date.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget, which recommends State Financial Plan savings of \$141.8 million in 2010-11 and \$175.8 million in 2011-12 as follows:

- \$93.6 million in 2010-11 (\$106.4 million in 2011-12) associated with the rate appeal settlement, reducing the bed reservation days, increasing the nursing home assessment, implementing changes in nursing home rebasing and regional pricing, and carving out Medicaid prescription drugs from nursing home rates.
- \$48.2 million in 2010-11 (\$69.4 million in 2011-12) associated with increasing the cash assessment on personal care, CHHAs and LTHHCPs, capping and redirecting the utilization of personal care services, and advancing LTHHCP efficiencies.

Effective Date:

This bill takes effect upon enactment and would be deemed to be in full force and effect as of April 1, 2010, except for sections 13, 13-a and 13-b, which would take effect on July 1, 2010.

**Part D - Authorize the Insurance Department to approve health insurance premium rate adjustments before they take effect.**

Purpose:

This bill would amend the Insurance Law to restore the authority of the Superintendent of Insurance ("Superintendent") to approve health insurance premium rate adjustments made by health maintenance organizations ("HMOs"), Article 43 corporations, and commercial insurers authorized to write accident and health insurance ("commercial insurers") before those rates take effect. Prior authorization would ensure that premium increases are appropriate and minimize the shift of enrollees from employer-sponsored health insurance coverage to public health insurance programs (i.e., Medicaid, Family Health Plus, Child Health Plus and Healthy New York).

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Currently, the Insurance Department does not have the authority to approve health insurance premium rate increases before they go into effect. This authority was completely phased-out in January 2000. Under Insurance Law §§ 3201 and 4308, HMOs, Article 43 corporations and commercial insurers may utilize a “file and use” rate setting procedure, under which premium rate adjustments are deemed approved by the Superintendent if the rate filing meets statutory minimum loss ratio requirements and is accompanied by an actuarial certification of compliance.

This bill would restore prior approval of health insurance premiums to protect consumers, discourage anti-competitive practices, contain escalating premiums and reduce State costs. This bill would also increase minimum loss ratios to place downward pressure on premiums and ensure a greater percentage of premium dollars are used to pay medical claims. This proposal would improve the affordability of health insurance coverage in New York, reduce the number of individuals that lose employer-sponsored health insurance coverage and enroll in public health insurance programs, and is a necessary precursor to federal reform proposals under active discussion that will require everyone to purchase health insurance. Currently, 24 other states require prior approval of premium rate increases.

Specifically, this bill includes the following provisions:

Section 1 of the bill amends Insurance Law § 3231(e)(1) to provide that no premium rate adjustments to community rated policy forms issued by commercial insurers may take effect on or after October 1, 2010 without the Superintendent’s prior approval. The Superintendent may modify or disapprove a premium rate adjustment filing if the Superintendent finds that the premiums are unreasonable, excessive, inadequate or unfairly discriminatory, and may consider the financial condition of the insurer. Section 1 of the bill would also require the expected minimum loss ratio for a policy subject to this paragraph, other than a Medicare supplement policy, to be at least eighty-five percent. With the Superintendent’s approval, policy forms may be aggregated consistent with community rating requirements to meet the expected minimum loss ratio. The superintendent may direct the insurer to take corrective action if the expected loss ratio is not met. Additionally, the section provides that an insurer must provide advance written notice to policy holders of both the proposed rate adjustment and the final approved premium rate. The superintendent would be required to hold a public hearing on a rate adjustment of more than ten percent.

Section 1 of the bill also amends Insurance Law § 3231(e)(2) and adds a new paragraph (3) to phase out the alternative rate adjustment procedure and increase the minimum loss ratio requirement from 75 percent to 85 percent. Insurers may not utilize the alternate rate adjustment procedure to implement a change in rates to be effective on or after October 1, 2010. However, an insurer may use the alternate rate adjustment

procedure to adjust premium rates in order to meet the required minimum loss ratio for calendar year 2010.

Section 2 of the bill amends Insurance Law § 4308(b),(c),(g),(h),(i) and (j) to make the same changes to rate adjustment requirements for community rated contracts issued by Article 43 corporations and HMOs as are made in section one of the bill with respect to rate adjustment requirements for community rated policy forms issued by commercial insurers.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget and achieve \$70 million in State savings in 2010-11 and \$150 million in 2011-12. These savings are generated by lowering the State cost of public health insurance programs by minimizing unnecessary enrollment.

Effective Date:

This bill takes effect immediately.

**Part E - Clarify the role of facility directors as representative payees and the use of Federal entitlement benefits in accordance with Federal laws and regulations.**

Purpose:

This bill would clarify that facility directors may receive Federal benefits as representative payees and must use funds received in accordance with Federal laws and regulations.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Generally, patients who reside in State-operated Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMRDD) facilities receive benefits such as Social Security retirement benefits, Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). Often, directors of such facilities are appointed as representative payees by the applicable Federal agency to manage patient benefits where appropriate. Prior to using State or Federal benefits to pay for the cost of care and treatment in such facilities, OMH and OMRDD establish a personal needs allowance for each patient and OMH funds a discharge reserve account to assist patients upon discharge.

This bill would clarify that facility directors of State-operated facilities may continue to act as representative payees for patients, consistent with all applicable Federal laws and regulations. The bill would also clarify that Federal and State benefits received by such directors acting as representative payees are not subject to the \$5,000 limit set

forth in Mental Hygiene Law § 29.23 on funds or property that may be held by facility directors and that such funds shall be used in accordance with applicable Federal laws and regulations. Patients would still receive the personal needs allowance, OMH would still fund a discharge reserve account and the \$5,000 limit would still apply to monies received other than such benefits.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget in order to ensure that OMH and OMRDD will not lose significant revenue, which is currently estimated at \$70 million annually.

Effective Date:

This bill takes effect immediately.

**Part F - Eliminate the requirement that the Office of Mental Health issue a discreet report on the provision of mental health services to traditionally underserved populations.**

Purpose:

This bill would amend Chapter 119 of the Laws of 2007 and remove the requirement that the Office of Mental Health (OMH) submit a report on unmet mental health needs.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

OMH is currently required to perform a comprehensive review, assessment and analysis of the needs of those with mental disabilities pursuant to Mental Hygiene Law (MHL) § 5.07. MHL § 5.07 requires OMH to identify needs and problems which must be addressed during the ensuing five years. The plan prepared pursuant to MHL § 5.07 includes an analysis of unmet needs. As such, this reporting requirement is largely duplicative.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget because the elimination of this report reduces unnecessary preparation and production costs, representing a savings of approximately \$700,000 to the 2010-11 Financial Plan and modest annual savings thereafter.

Effective Date:

This bill takes effect immediately.

**Part G - Authorize electronic appearances in proceedings conducted under the Sex Offender Management and Treatment Act.**

Purpose:

This bill would reduce costs related to the Sex Offender Management and Treatment Act (SOMTA) by authorizing a respondent or a witness to appear by video teleconference.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would authorize the use of video teleconferencing for psychiatric examiners, respondents or a witness in SOMTA proceedings, other than trials, when good cause can be shown. At SOMTA trials, respondents or witnesses would be authorized to appear by video teleconference, upon good cause shown, and consent of the parties.

Video teleconferencing is currently used in various proceedings by the Division of Parole and the Department of Correctional Services.

Budget Implications:

Enactment of this bill would generate net savings of \$1 million in 2010-11. Certain travel, security, and staffing costs would be reduced as a result of the use of video teleconferencing in certain court proceedings.

Using a video teleconference approach instead of requiring an appearance "in person" is a cost effective and efficient use of the State's limited fiscal resources.

Effective Date:

This bill takes effect immediately.

**Part H - Extend Community Mental Health Support and Workforce Reinvestment Program and Reduce and Convert Inpatient Wards operated by the Office of Mental Health.**

Purpose:

This bill would ensure that ward closures and conversions designed to provide for the efficient operation of hospitals by Office of Mental Health (OMH) will not be subject to the one year notification and reinvestment provisions of the Mental Hygiene Law. Further, this bill would extend the community mental health support and workforce reinvestment program for an additional year.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would authorize the closure or restructuring of inpatient capacity in OMH adult psychiatric facilities. Implementation of these efficiencies would allow OMH to reconfigure staff resources, including redirecting resources into new State-operated Transitional Placement Programs.

This bill would also extend the community mental health support and workforce reinvestment program for an additional year and remove associated statutory reporting requirements.

Implementation of this proposal is consistent with overall agency goals associated with transforming the locus of care from inpatient settings to community-based settings.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget, and would generate \$9 million of net savings in 2010-11, growing to \$19 million in 2011-12 as the full savings from this bill are realized.

Effective Date:

This bill takes effect immediately.

**Part I - Amend Unconsolidated Law to clarify the Office of Mental Health's existing authority to recover exempt income for community residences and family based treatment programs.**

Purpose:

This bill would amend Unconsolidated Law to clarify the Office of Mental Health's (OMH) authority to recover exempt income for community residence and family based treatment programs.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would clarify the Office of Mental Health's (OMH) authority with regard to the recovery of exempt income from community residence and family based treatment programs. Specifically, this bill would clarify OMH's authority to recoup exempt income, which is Medicaid income received in excess of budgeted amounts set forth in the fiscal plans of OMH providers operating residential programs. This authority is consistent with conditions of contractual agreements between such programs and OMH.



Budget Implications:

This bill is necessary to implement the Financial Plan and is consistent with appropriation and cash estimates contained in the 2010-11 Executive Budget.

Effective Date:

This bill takes effect immediately.

**Part J - Amend the Mental Hygiene Law in relation to payments made by the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities to family care homes.**

Purpose:

This bill would amend the Mental Hygiene Law (MHL) in relation to payments made by the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD) to operators of family care homes.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would amend MHL §§ 16.23, 31.03 and 41.36 to be consistent with 2009-10 and proposed 2010-11 appropriations. Specifically, it would: (1) eliminate the current limits on payments and authorize the Commissioners of OMH and OMRDD to set the amounts paid for clothing, personal needs, and recreation and cultural activities for individuals living in family care homes; (2) increase the number of days, from 10 to 14 days per year, for respite services; and (3) provide the Commissioners of OMH and OMRDD with the flexibility to include these payments with regular payments already being paid to providers for the operation of these homes.

This bill is necessary to make the language of the MHL consistent with the language of yearly appropriation bills with respect to the annual amounts of payments, number of days per year for respite care services and flexibility in the timing of payments to family care providers licensed by OMH and OMRDD.

Budget Implications:

This bill is necessary to implement the Financial Plan and is consistent with appropriation and cash estimates contained in, the 2010-11 Executive Budget.

Effective Date:

This bill takes effect immediately.

## **Part K - Ensure quality care in detoxification units.**

### Purpose:

This bill would require the Office of Alcoholism and Substance Abuse Services (OASAS) to certify chemical dependence crisis services provided in a hospital or other facility possessing an operating certificate pursuant to Article 28 of the Public Health Law in certain circumstances.

### Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would require OASAS certification of chemical dependence crisis services if a hospital or other Article 28 facility provides 2,000 patient days per year, or more than ten percent of total patient days per year, of such services. This will help preserve the quality of care in detoxification units.

### Budget Implications:

This bill would allow for the preservation of Financial Plan savings, which in the aggregate total approximately \$40 million.

### Effective Date:

This bill takes effect April 1, 2010.

## **Part L - Transfer the Alcohol and Drug Rehabilitation Program from the Department of Motor Vehicles to the Office of Alcoholism and Substance Abuse Services.**

### Purpose:

This bill would transfer the Alcohol and Drug Rehabilitation Program from the Department of Motor Vehicles (DMV) to the Office of Alcoholism and Substance Abuse Services (OASAS).

### Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would transfer oversight of the Alcohol and Drug Rehabilitation Program (known as the Drinking Driver Program or DDP) from DMV to OASAS. Transfer of the program would ensure that persons involved in offenses related to operating a motor vehicle while under the influence of alcohol or drugs pursuant to Vehicle and Traffic Law §§ 1192 and 1192-a are properly screened, assessed and, where appropriate, referred to chemical dependence treatment programs. As a result of proper screening, assessment and referrals, recidivism rates will decrease.

Budget Implications:

This bill is intended to facilitate a more comprehensive and cost effective delivery of service.

Effective Date:

This bill takes effect on January 1, 2011.

**Part M - Eliminate enriched funding for mental hygiene services in the five Unified Services Counties.**

Purpose:

This bill would eliminate enhanced funding to five counties for Unified Services.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would amend various sections of the Mental Hygiene Law (MHL) to delete references to the Unified Services system.

Article 41 of the MHL was enacted in 1973 to assist counties with the development of community mental hygiene services in response to the closure of State-operated facilities. Five counties (Rensselaer, Rockland, Warren, Washington, and Westchester) applied for and received enhanced funding beyond the 50/50 cost sharing used for all other counties. After the initial approval of Unified Services plans for these five counties, no other counties were permitted to submit such plans.

Since the enactment of Unified Services, an extensive community care system has been developed throughout the State. As such, no programmatic reasons exist to continue providing these five counties with enriched State aid. Additionally, the 2009-10 Enacted Budget included appropriation language to eliminate the enhanced funding for Unified Services effective July 1, 2010, enabling affected counties to prepare.

Budget Implications:

Enactment of this bill is necessary to implement the 2010-11 Executive Budget in order to achieve savings already assumed in the Financial Plan totaling \$2.087 million, fully annualizing at \$2.78 million in 2011-12.

Effective Date:

This bill takes effect on July 1, 2010.

## **Part N - Establish a one-year deferral of the Human Services Cost-of-Living Adjustment.**

### Purpose:

Defers the Human Services Cost-of-Living Adjustment (COLA) for 2010-11 and extends the adjustment for an additional year, through March 31, 2014.

### Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would defer the 2010-11 COLA for designated Human Services programs under the auspices of several State agencies, including the Office of Mental Retardation and Developmental Disabilities, Office of Mental Health, Office of Alcoholism and Substance Abuse Services, Department of Health, State Office for the Aging, and Office of Children and Family Services.

This action is necessary to hold harmless the not-for-profit providers contracting with these agencies against the current statutorily mandated -2.1 percent COLA for 2010-11. Additionally, this bill seeks to honor the State's commitment to support the COLA for three years by continuing the adjustment for one additional year, through SFY 2013-14.

### Budget Implications:

Eliminating the formula for the 2010-11 Human Services COLA would avoid a cut in funding of roughly \$66 million to the not-for-profit sector.

### Effective Date:

This bill takes effect on April 1, 2010.

The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.