

**2012-13 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 amend the public health law, in relation to requiring the use of network providers for evaluations or services under the early intervention program, state aid reimbursement to municipalities for respite services, and service coordination; to repeal subdivision 7 of section 2551 and subdivision 4 of section 2557 of the public health law, relating to administering early intervention services; to amend the public health law, in relation to requiring that each municipality be responsible for providing early intervention services; to amend the public health law, in relation to removing the authorization of the commissioner of health to collect data from counties on early intervention programs for the purpose of improving efficiency, cost effectiveness and quality; to amend the public health law, in relation to requiring health maintenance organizations to include coverage for otherwise covered services that are part of an early intervention program; to amend the insurance law, in relation to payment for early intervention services; to amend the education law, in relation to special education services and programs for preschool children with handicapping conditions; and to repeal subdivision 18 of section 4403 of the education law, relating to the power of the education department to approve the provision of early intervention services (Part A); to amend the public authorities law, in relation to funding and operations of the Roswell Park Cancer Institute (Part B); to amend the public health law, in relation to establishment of an electronic death registration system (Part C); to amend the public health law, in relation to establishing the supportive housing development reinvestment

program; to amend the social services law, in relation to applicability of the assisted living program; to amend the social services law, in relation to including podiatry services and lactation services under the term medical assistance; to amend the public health law and education law, in relation to medical prescriptions for limited English proficient individuals; to amend the social services law, in relation to education, outreach services and facilitated enrollment activities for certain aged, blind and disabled persons; to amend the public health law, in relation to including certain violations by a pharmacy as professional misconduct; expanding prenatal care programs, establishing the primary care service corps practitioner loan repayment program, requiring changes in directors of not-for-profit corporations that operate hospitals to be approved by the department, authorizing the commissioner of health to temporarily suspend or limit hospital operating certificates, revoking of hospital operating certificate appointment and duties of temporary operators of a general hospital or diagnostic and treatment center, authorizing moneys in the medical indemnity fund to be invested in obligations of the United States or the state or obligations where the principal and interest are guaranteed by the United States or the state and moneys distributed as non-Medicaid grants to non-major public academic medical centers; to amend the social services law, in relation to prescriptions of opioid analgesics and brand name drugs covered by medical assistance; to amend the public health law, in relation to notice requirement for preferred drug program, payment to the commissioner of health by third-party payors, audit of payments to the commissioner of health, electronic submission of reports by hospitals, and changing the definition of eligible applicant; to amend the social

services law, in relation to medical assistance where relative is absent or refuses or fails to provide necessary care; to amend the public health law, in relation to third-party payor's election to make payments; to amend the elder law, in relation to the elderly pharmaceutical insurance coverage program; to amend the public health law, in relation to reserved bed days; to amend the social services law, in relation to the personal care services worker recruitment and retention program; to amend the public health law, in relation to the tobacco control and insurance initiatives pool distributions; to amend the social services law, in relation to certain public school districts and state operated/state supported schools; to amend the public health law, in relation to the licensure of home care services agencies; to amend the social services law, in relation to managed care programs; to amend the public health law, in relation to the distribution of the professional education pools; to amend chapter 584 of the laws of 2011, amending the public authorities law, relating to the powers and duties of the dormitory authority of the state of New York relative to the establishment of subsidiaries for certain purposes, in relation to the effectiveness thereof; to amend chapter 119 of the laws of 1997 relating to authorizing the department of health to establish certain payments to general hospitals, in relation to costs incurred in excess of revenues by general hospitals in providing services in eligible programs to uninsured patients and patients eligible for Medicaid assistance; to amend subdivision 1 of section 92 of part H of chapter 59 of the laws of 2011, relating to known and projected department of health state funds Medicaid expenditures, in relation to the effectiveness thereof; to amend section 90 of part H of chapter 59 of the laws of 2011, relating to types of

appropriations exempt from certain reductions, in relation to certain payments with regard to local governments; to amend section 1 of part C of chapter 58 of the laws of 2005, relating to authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, in relation to Medicaid reimbursement; and to repeal certain provisions of the public health law, the social services law and the elder law relating thereto (Part D); to amend the public authorities law and the public officers law, in relation to the establishment of the New York Health Benefit Exchange (Part E); to amend chapter 58 of the laws of 2005 authorizing reimbursements for expenditures made by or on behalf of social services districts for medical assistance for needy persons and the administration thereof, in relation to an administrative cap on such program; to amend chapter 59 of the laws of 2011, amending the public health law and other laws relating to general hospital reimbursement for annual rates, in relation to the cap on local Medicaid expenditures; and to amend the social services law, in relation to the department assumption of program administration for medical assistance (Part F); to amend the public health law, in relation to regulations for computing hospital inpatient rates and to amend chapter 58 of the laws of 2005 relating to the preferred drug program, in relation to the effectiveness thereof (Part G); 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 2012-2013 state fiscal year; and in relation to directing limits on state reimbursement for executive compensation and administrative costs (Part H); in relation to contracts by the office for people with developmental

disabilities made under section 1115 of the federal social security act (Part I); to amend the mental hygiene law, the public health law, the general municipal law, the education law, the social services law, and the surrogate's court procedure act, in relation to the office for people with developmental disabilities and the creation of developmental disabilities regional offices and state operations offices (Part J); to amend chapter 723 of the laws of 1989 amending the mental hygiene law and other laws relating to comprehensive psychiatric emergency programs, in relation to extending the repeal of certain provisions thereof (Part K); to permit the commissioners of the department of health, the office of mental health, the office of alcoholism and substance abuse services and the office for people with developmental disabilities the regulatory flexibility to more efficiently and effectively integrate health and behavioral health services (Part L); to permit the office of mental health and the state education department to enter into an agreement for purposes of providing education programming for patients residing in hospitals operated by the office of mental health who are between the ages of five and twenty-one; and providing for the repeal of such provisions upon expiration thereof (Part M); to amend the mental hygiene law and the public health law, in relation to the statewide comprehensive services plan for people with mental disabilities and in relation to the local planning process; and to repeal certain provisions of the mental hygiene law relating thereto (Part N); to amend the mental hygiene law, in relation to the closure and the reduction in size of certain facilities serving persons with mental illness (Part O); to amend the mental hygiene law, in relation to amending procedures under the sex offender management and treatment act, and to

amend the penal law, in relation to providing criminal penalties for certain violations of orders of commitment and strict and intensive supervision and treatment (Part P); to amend the criminal procedure law, in relation to providing for outpatient capacity restoration of felony defendants, or restoration at psychiatric units of jails or article 28 hospitals (Part Q); and to amend chapter 111 of the laws of 2010 relating to the recovery of exempt income by the office of mental health for community residences and family-based treatment programs, in relation to the effectiveness thereof (Part R)

**PURPOSE:** This bill contains provisions needed to implement the Health and Mental Hygiene portions of the 2012-13 Executive Budget.

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

### **Part A – Reform the Early Intervention Program.**

#### **Purpose:**

This bill would reform the Early Intervention (EI) program by implementing a series of initiatives that would enhance the program’s ability to identify and serve infants and toddlers with developmental disabilities and protect vital services while providing almost a \$100 million in local savings over five years by reducing fiscal and administrative burdens on local governments.

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

The EI program is the statewide system of early intervention services for infants and toddlers with disabilities and their families. Children are eligible for a comprehensive array of therapeutic and support services if they are under three years of age and have a confirmed disability or developmental delay in physical, cognitive, communication, social-emotional, or adaptive development. The program is financed by a combination of federal, state and local funding.

This bill would implement a series of programmatic modifications to enhance the program’s ability to identify and serve infants and toddlers with developmental disabilities while providing tens of millions in mandate relief by significantly reducing fiscal and administrative burdens on local governments. The changes would create

efficiencies that would allow resources to be focused on direct care for children in the EI program. Specifically, the bill would:

- transfer the responsibility for paying provider claims from the counties to a statewide fiscal intermediary, relieving the counties of this administrative burden;
- eliminate the authorization for municipalities to contract with providers, granting that authorization instead to DOH, but reserving to municipalities the ability to monitor service delivery and seek new service coordinators or providers as necessary;
- require that EI evaluators and qualified professionals that provide services covered in the program, belong to the provider networks of third party insurers and require that such networks be adequate; and
- permit DOH the flexibility to increase the State aid percentage for EI services as well as eliminate the current lag on payment of claims from counties. Collectively, these changes would bring administrative and fiscal relief to local governments.

The bill would also require service coordinators, with parental consent, to provide notice to the Office for People with Developmental Disabilities (OPWDD) if a child appears eligible for OPWDD services, which will help eligible children with disabilities obtain earlier access to certain home and community based service waivers in addition to or in lieu of EI services if appropriate. This could potentially avoid an unnecessary transition between programs at a later time.

Section 1 of the bill would amend Public Health Law (PHL) § 2554 to provide that in order to be selected by parents to evaluate their child's eligibility for EI services, an evaluator must belong to the provider network of the parents' HMO or other insurer, if any. Additionally, the bill would require that the service coordinator notify OPWDD if a child is potentially eligible for OPWDD services.

Section 2 of the bill would amend PHL § 2545 to allow a representative of a covered child's third party payor, including HMOs, Medicaid, and Child Health Plus (CHP), to attend the meeting at which the Individualized Family Service Plan (IFSP) is developed.

Section 2-a of the bill would amend PHL § 2545 to require that the EI service coordinator implement the IFSP in a timely manner but no later than 30 days after the projected dates for the initiation of the services. This codifies an existing requirement imposed by DOH in guidance.

Section 3 of the bill would add new PHL § 2545-a to require children with third party insurance to select a provider approved by DOH and within the insurer's network, except in certain circumstances. This would apply to children referred to the program on or after January 1, 2013.

Section 4 of the bill would amend PHL § 2547 to permit the State to increase the percentage of State aid reimbursement to municipalities for EI respite services at the

discretion of DOH and with the approval of the Division of the Budget (DOB), pursuant to an amendment to PHL § 2557 made by section 9-a of the bill.

Section 5 of the bill would amend PHL § 2548 to shift the responsibility for notifying the Committee on Preschool Special Education in the child's school district of the potential transition of the child to the preschool special education system from the municipality's EI official to the service coordinator.

Section 6 of the bill would amend PHL § 2550 to clarify that approved providers may be required to enter into an agreement with DOH regarding evaluations, service coordination and EI services. All approved evaluators and EI providers would be required to maintain contracts with a sufficient number of insurers.

Section 7 of the bill would repeal PHL § 2551, subd. 7 to remove the authority of the State Education Department (SED) to approve providers for the EI program who are already approved through SED to provide services in the Preschool Special Education Program.

Section 8 of the bill would amend PHL § 2552 to remove the authorization for municipalities to contract with EI providers. This section also would require the service coordinator to provide performance reports to municipalities so that municipalities may make recommendations to switch providers or service coordinators if performance standards are not being achieved.

Section 9 of the bill would amend PHL § 2557 to structure the payment process for children without third party payor insurance.

Section 9-a of the bill would amend PHL § 2557 to remove municipality reporting requirements to the State regarding claiming activities. Further, the section would authorize DOH to contract with a fiscal agent for the payment of claims and sets forth an expedited bidding process by which DOH would use to procure the fiscal intermediary. In addition, DOH would be permitted to increase the reimbursement percentage to municipalities as well as the timeliness of the payment of claims, with the approval of DOB.

Section 10 of the bill would amend PHL § 2558 to allow the State to increase the percentage of State aid reimbursement to municipalities for EI services with the approval of DOB.

Section 11 of the bill would amend PHL § 2559 to require providers to directly bill third party payors through use of a fiscal agent retained by DOH. Additionally, this section would require that the rates paid by insurers be negotiated between the insurer and the provider unless it is necessary to utilize an out-of-network provider, in which case payment is at the State established rate.

Section 12 of the bill would amend PHL § 2510 to require coverage of EI services by CHP as defined by the Commissioner of Health.

Section 13 of the bill is intentionally omitted.

Section 14 of the bill would amend PHL § 4403 to require third party payors to make available an adequate number of network providers qualified to perform EI services consistent with the needs of the EI program enrollment. Additionally, this section would require that third party payors make the list of network providers publicly available and update such list quarterly.

Section 15 of the bill would amend PHL § 4406 to prohibit third party payors from denying valid insurance claims solely on the basis that the service was provided under EI. Additionally, covered EI services would not be counted toward an established maximum annual or lifetime monetary limit, but will be subject to an insurer's policy or visit limitations. Insurance providers must provide municipalities and service coordinators with information on the extent of benefits within 15 days. This section also would require insurers to accept claims submitted by the fiscal agent on a provider's behalf.

Section 16 of the bill is intentionally omitted.

Section 17 of the bill would amend Insurance Law § 3235-a to require that insurers who utilize a network maintain an adequate network of approved EI providers. The section further would authorize insurers to negotiate rates for payments to providers. Payments to out-of-network providers would be required to be paid in accordance with rates established by DOH. Additionally, insurance providers would be required to provide municipalities and service coordinators with information on the extent of benefits within 15 days.

Section 18 of the bill would repeal Education Law § 4403, subd. 18 to remove SED's authority to approve providers for the EI program which are already approved by SED to provide services in the Preschool Special Education Program, consistent with the changes made by section 7 of the bill.

Section 19 of the bill would amend Education Law § 4410 to shift the responsibility for notifying the Committee on Preschool Special Education in the child's school district of the potential transition of the child to the preschool special education system from the EI official to the service coordinator, consistent with section 5 of the bill.

Sections 20, 21 and 22 are intentionally omitted.

Section 23 of the bill sets forth the effective dates of the bill.

Budget Implications:

These reforms are intended to reduce the fiscal and administrative burden on local governments and generate \$99 million in cumulative local savings over a five year period.

Effective Date:

This bill takes effect January 1, 2013, except that sections 2-a, 4-5, 7-8, 9a, 10, 18 and 19 would take effect April 1, 2013.

**Part B – Establish requirements for continued State funding to Roswell Park Cancer Institute.**

Purpose:

This bill would require Roswell Park Cancer Institute (RPCI), as a condition of receiving ongoing State funds, to take the necessary steps to become operationally and fiscally independent from the Department of Health.

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

This bill would amend Public Authorities Law § 3555 to require RPCI, as a condition of receiving State funding authorized under the Health Care Reform Act (Public Health Law § 2807) and the Health Care Efficiency and Affordability Law for New Yorkers (Public Health Law § 2818), to take all necessary steps to become financially and operationally independent from the Department of Health by March 31, 2014. These actions would include entering into cooperative agreements with health care, academic or other entities located within the same geographical region as RPCI, which will: (1) promote the continued financial viability of RPCI; (2) protect and promote the health of the patients served by its health facilities; and (3) to the extent possible, contribute to the economic revitalization of the Buffalo region. Further, the bill would authorize the Commissioner of Health to establish benchmarks, monitor progress and, if necessary, intercede to ensure compliance with established goals and timelines.

Budget Implications:

The 2012-13 Executive Budget provides up to \$102 million for RPCI. This bill is necessary to secure the long-term fiscal stability of RPCI and promote regional collaborations.

Effective Date:

This bill takes effect April 1, 2012.

## **Part C – Implement Electronic Death Registration System to modernize the process of issuing burial or funeral permits outside of City of New York.**

### Purpose:

This bill would require the Department of Health (DOH) to establish and oversee the Electronic Death Registration System (EDRS) for counties outside New York City and clarify procedures related to handling death records electronically.

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

Section 1 of the bill would add a new Public Health Law (PHL) § 4148 to authorize the Department of Health (DOH) to design, implement, and maintain the EDRS for counties outside of the City of New York (which already operates its own EDRS). As set forth in legislative findings included in the new section, it is necessary to update and modernize the State's system of filing and maintaining information and documents related to the registration of death. Establishment of the EDRS would promote accuracy and provide for more timely transmission of documentation, promoting efficiency in the operations of DOH and of all parties with statutory responsibilities related to the registration of death. Licensed funeral directors and undertakers, who rely upon prompt access to certificates of death, have expressed their interest in partnering with DOH to support the establishment of such system through a contribution tendered for each burial and removal permit issued to a licensed funeral director or undertaker. The new section would effectuate such partnership.

Section 2 of the bill would amend PHL § 4100-a to provide that a "certified copy" includes an electronically produced print of an original certificate, to add sub-registrars as certifiers, and to define "electronic death registration system."

Section 3 of the bill would amend PHL § 4140 to permit death certificates to be filed in electronic format.

Section 4 of the bill would amend PHL § 4141-a to require death registration of individuals who die in a hospital to be made using the EDRS on or after January 1, 2014.

Section 5 of the bill would amend PHL § 4142 to require funeral directors and undertakers to file death certificates and related information through the EDRS on or after January 1, 2014.

Section 6 of the bill would amend PHL § 4144 to require use of an electronic death certificate to obtain permission for the transportation of dead bodies where verbal permission was once the only permissible way to transport.

Section 7 of the bill would amend PHL § 4161 to require the use of the EDRS to record fetal deaths.

Section 8 of the bill would amend PHL § 4171(3) to permit death certificates to be completed using the EDRS.

Budget Implications:

Enactment of this bill is necessary to obtain revenue of \$2.2 million in 2012-13 and \$2.9 million annually to support the EDRS that will be overseen by DOH.

Effective Date:

This bill takes effect immediately.

**Part D – Make statutory changes necessary to implement Medicaid Redesign Team recommendations, including those advanced through Phase Two workgroups and technical refinements to previous recommendations.**

Purpose:

This bill would make statutory changes necessary to implement proposals made by the Medicaid Redesign Team (MRT), based on the recommendations of various work groups convened by the MRT in the second phase of its work. The bill also would amend certain statutory provisions related to MRT initiatives enacted as part of the 2011-12 budget and make other technical changes to statutory provisions governing the Medicaid program.

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

Section 1 of the bill would add a new Public Health Law (PHL) § 2823 to allow for the re-investment of Medicaid savings from hospital and nursing home closures or bed de-certifications to expand supportive housing and related services.

Sections 2 and 3 of the bill would amend Social Services Law (SSL) § 461-l to allow assisted living programs to contract with multiple long term home health care programs, certified home health agencies and/or other qualified providers.

Section 4 of the bill would repeal SSL § 461-l(3)(i) to eliminate authority to establish assisted living program beds following the decertification of an equal or greater number of nursing home beds.

Section 5 of the bill is intentionally omitted.

Sections 6 and 7 of the bill would amend SSL § 365-a to provide that coverage under the Medicaid program includes podiatry visits for adults with diabetes mellitus, services provided by certified lactation consultants to pregnant and postpartum women, harm reduction counseling and services to minimize adverse health consequences associated with drug use, and services to promote care coordination and integration for individuals with hepatitis C, and to maintain appropriate access to enteral formula for HIV related illnesses.

Sections 8 and 9 of the bill are intentionally omitted.

Sections 10 through 18 of the bill would amend PHL §§ 3332, 3333, 3334, 3337 and 3338, amend Education Law §§ 6804 and 6810, add new PHL Article 33-B, and amend Education Law § 6509 to require that certain pharmacies provide translation or other language services to individuals with limited English proficiency.

Section 19 of the bill would amend PHL § 2522 to require coordination of service delivery by community based organizations among providers and plans using health information technology and uniform screening criteria for perinatal risk.

Sections 20 and 21 of the bill are intentionally omitted.

Section 22 of the bill would amend SSL § 366 to authorize the Commissioner of Health (Commissioner) to contract with one or more entities to engage in education and outreach and enrollment assistance for aged, blind and disabled Medicaid applicants.

Section 23 of the bill would add new PHL Article 9-B to establish the Primary Care Service Corps Loan Repayment Program for non-physician practitioners who agree to practice full-time in an underserved area of the State.

Section 24 through 26 of the bill would amend PHL §§ 2801-a and 2806 to authorize the Commissioner to: (1) temporarily suspend or limit an operating certificate of a not-for-profit corporation participating in the Medicaid program due to repeated violations of PHL § 2806, the indictment on felony charges of any member of the corporation's board of directors, or notice from the Attorney General of an action to remove a member of the corporation's board of directors; (2) preserve access to services within the community by temporarily appointing members of the board of directors during the term of the suspension, as necessary; and (3) revoke the operating certificate of an entity participating in the Medicaid program if a member of the board of the directors has been convicted of a class A, B or C felony in order to ensure the effectiveness of the governing board of the facility.

Section 27 of the bill would amend the PHL by adding a new § 2806-a which would allow the Commissioner to establish a temporary operator of an adult care facility, a general hospital or diagnostic and treatment center on a temporary basis to preserve the best interests of the residents or patients and community served by the facility when a statement of deficiencies has been issued by the Department of Health (DOH) for that

facility and upon a determination by the Commissioner that significant management failures exist in the facility.

Section 28 of the bill would amend Chapter 584 of the Laws of 2011, § 2, to extend the authority of the Dormitory Authority of the State of New York to establish one or more subsidiaries for purpose of limiting the potential liability of the Authority when exercising its powers and duties in pursuit of remedies against a borrower that has defaulted.

Section 29 of the bill would amend PHL § 2999-i to allow monies of the Medical Indemnity Fund that are not required for immediate use to be invested in obligations of or guaranteed by the United States, with the proceeds of any such investments retained by the Fund.

Section 30 of the bill would amend PHL § 2803 to eliminate the requirement that hospitals submit and DOH audit information related to certain hospital medical staff, which is audited by the federal government.

Section 31 of the bill would amend PHL § 2802 to eliminate the requirement that providers issue written notice to DOH for repair or maintenance projects under \$6 million.

Section 32 would amend Chapter 119 of Laws of 1997, § 1, to authorize DOH to establish certain disproportionate share payments to Article 28 hospitals based on uninsured and Medicaid losses to conform to guidance received from the federal Centers for Medicare and Medicaid Services.

Section 33 through 33-g of the bill would amend Elder Law §§ 241, 242, 243, 245, 247, 249 and 253 to replace references to the EPIC panel, which no longer exists, with references to the Commissioner and modify federally established benchmark premiums.

Section 34 of the bill would amend PHL § 2808 to eliminate the requirement that in order for a nursing home to receive bed reservation payments at least 50 percent of its eligible residents must be enrolled in a Medicare Advantage Plan. This section also authorizes the Commissioner to promulgate regulations establishing rates for bed reservation payments for residents over 21 years of age which achieve aggregate savings of at least \$40 million.

Sections 35 through 35-c of the bill would amend SSL § 367-q and PHL § 2807-v to clarify that allocations for home care workforce recruitment and retention funds shall be made “up to” the amounts specified in the existing language.

Section 36 of the bill would amend SSL § 365-a to allow DOH to deny prior authorization when the existing limit of four opioids prescribed within 30 days is exceeded if, upon reasonable opportunity for the prescriber to present a justification, DOH determines the prescription is not medically necessary.

Sections 37 and 38 of the bill would amend SSL §§ 368-d and 368-e to expand beyond New York City the local school districts and social services districts with which the State will share a certain level of savings realized as a result of the use of certified public expenditures in relation to school supportive health services.

Section 39 of the bill would amend SSL § 365-a to allow mandatory generic authorization requirements for drugs subject to the Preferred Drug Program.

Section 40 of the bill would amend PHL § 272 to simplify the information that must be made available on DOH's website regarding meetings of the Pharmacy and Therapeutics Committee.

Section 41 of the bill would amend SSL § 367-a to limit the Medicaid co-insurance for Medicare covered Part B services when the total co-insurance amount would exceed the amount Medicaid would have paid using a Medicaid rate for all qualified individuals, not just persons who are dually eligible for Medicaid and Medicare.

Section 42 of the bill would amend PHL § 2818 to allow diagnostic and treatment centers access to funds under the Health Care Efficiency and Affordability Law for New Yorkers (HEAL-NY) program for the purpose of facilitating closures, mergers or restructuring of such facilities.

Sections 43 through 46 of the bill would amend PHL §§ 2807-j, 2807-t, 2807-d and 2807-c to clarify the existing six-year statute of limitations on audits under the Health Care Reform Act (HCRA) and limit the time for providers to make amendments to their cost reports to the same six-year period.

Section 47 of the bill would amend PHL § 2807 to extend the Commissioner's regulations limiting reimbursement for potentially preventable conditions and complications to outpatient settings.

Sections 48 through 48-c of the bill would amend PHL § 2807 to require electronic reporting and certification of reports by providers for the health facility cash assessment program and hospital quality contributions.

Section 49 of the bill would amend PHL § 3605 to permit licensed home care service agencies who contract with local districts to temporarily serve Medicaid recipients who transition to fee-for-service from managed care or managed long-term care.

Section 50 of the bill would amend SSL § 365-f to require managed care plans and managed long-term care plans to offer the consumer directed personal care program to their enrollees.

Section 51 of the bill would amend SSL § 364-j to require counties operating a mandatory Medicaid managed care program to use the enrollment broker.

Sections 52 through 55 of the bill would amend PHL § 4403-f to eliminate the requirement that an applicant to operate managed long-term care plans be a hospital, licensed or certified home care agency, health maintenance organization or not-for-profit organization with a history of providing or coordinating health care and long-term care services to elderly and disabled persons.

Section 56 of the bill would amend SSL § 366 to prohibit a spouse or parent from refusing to contribute any available income or assets towards the costs of health care services being provided to a spouse or family member to reduce unnecessary Medicaid financing of long-term care services.

Section 57 of the bill would amend Chapter 59 of the Laws of 2011, Part H, § 92, to extend for one year the authorization for the Commissioner to implement a Medicaid Savings Allocation Plan to maintain spending within the Medicaid Spending Cap. In addition, this section would allow the Director of Budget to modify the Medicaid Spending Cap to reflect reductions in local district claiming for Medicaid administration, consistent with the phased takeover by the State of local government Medicaid administration.

Section 58 of the bill would amend Chapter 59 of the Laws of 2011, Part H, § 90, to eliminate the unintended local government impact associated with the across-the-board reduction in the Early Intervention Program payments, avoiding a duplicative rate reduction on such payments.

Section 59 of the bill would amend PHL § 2807 to modify the timing of election revocations to be effective on a monthly rather than a quarterly basis.

Section 60 of the bill would amend PHL § 2807-m to authorize the Commissioner of Health to promulgate regulations relating to grants awarded through DOH's Empire Center for Research and Investigation Program (ECRIP) for periods on and after April 1, 2013.

Section 61 of the bill would amend Chapter 58 of the Laws of 2005, Part C, § 1, to clarify that local governments cannot claim for overburden expenses incurred prior to January 1, 2006, when the "local cap" statute that limited local contributions to Medicaid expenditures took effect. This is necessary to address adverse court decisions that have resulted in State costs paid to local districts for pre-cap periods, which conflict with the original intent of the local cap statute.

Sections 62 through 65 of the bill set forth provisions pertaining to statutory references, time frames for notice, severability and effective dates.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 budget and the State's multi-year Financial Plan because it ensures overall Medicaid spending within DOH

remains within capped levels, which are indexed to the ten-year rolling average of the medical component of the consumer price index (CPI) as proscribed in current statute.

Effective Date:

This bill takes effect April 1, 2012, except that sections 10 through 18 and section 60 would take effect April 1, 2013.

**Part E – Establish the New York Health Benefit Exchange to serve as a marketplace for the purchase and sale of qualified health plans in the State of New York.**

Purpose:

This bill would establish the New York Health Benefit Exchange (“Exchange”), a public benefit corporation that will serve as a marketplace for the purchase and sale of qualified health plans in the State of New York, in accordance with the federal health care reform law.

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

The Patient Protection and Affordable Care Act, Pub. L. 111-148, and the Health Care and Education Reconciliation Act, Pub. L. 111-152, collectively referred to as the “Affordable Care Act” (“ACA”), requires each state to either establish a state American Health Benefit Exchange or participate in a regional exchange, through which individuals and small groups will be able to purchase health insurance in the form of a qualified health benefit plan. If the state does neither, its residents will be required to participate in a federal Health Benefit Exchange.

The purpose of this legislation is to establish a single Exchange in New York – a centralized, customer-service oriented marketplace where individuals and small groups will be able to purchase qualified health plans, receive eligibility and subsidy determinations, and be enrolled in a range of coverage options, including public health coverage programs – operated by a governmental entity with the flexibility to meet the ambitious deadlines set by the ACA.

Section 1 of the bill would provide that the bill, upon enactment, would be known as the “New York Health Benefit Exchange Act.”

Section 2 of the bill would add new Public Authorities Law (“PAL”) Article 10-E to establish the Exchange as a public benefit corporation managed by a Board of Directors. Seven of the nine members of the Board will have expertise in relevant areas, including individual health care coverage, small employer health care coverage, health benefits administration, health care finance, public or private health care delivery

systems, and purchasing health plan coverage. The remaining members – the Superintendent and the Commissioner – will serve as ex officio, voting members of the Board.

The Board will consult with five Regional Advisory Committees, comprised of 25 representatives of stakeholders from sectors that will be impacted by the operation of the Exchange, including health plan consumer advocates, small business consumer representatives, health care providers, agents, brokers, insurers and labor organizations. The Committees will provide advice and recommendations to the Board reflecting findings about regional variations regarding the availability of health insurance coverage and other issues deemed necessary by the Committees and the Board.

The Exchange will make available qualified health plans, including certain qualified dental plans, to qualified individuals and employers beginning on or before January 1, 2014 (to take effect no earlier than such date). Under this legislation, the Exchange will implement procedures for the certification, recertification and decertification of health plans as qualified health plans. The Exchange will also assign ratings to qualified health plans in accordance with the ACA.

The bill also provides certain protections meant to assist individuals in using the Exchange. For example, the bill provides that the Exchange will operate a toll-free telephone line to assist consumers and an Internet website containing standardized comparative information on qualified health plans. The website will feature a calculator allowing individuals to determine the actual cost of coverage. The bill also requires the Exchange to establish a program to award grants to entities to serve as “navigators” to help educate consumers and facilitate enrollment.

In addition, the Exchange will include a Small Business Health Options Program (“SHOP”), which will assist small employers in facilitating the enrollment of their employees in qualified health plans offered in the group market. Until January 1, 2016, a “small employer” will be defined as an employer with an average of less than 50 employees. On January 1, 2016, the term will apply to employers with an average of up to 100 employees. Under this bill, and as permitted under federal law, the Exchange will consider whether to expand the definition before 2016.

The bill also recognizes that there are additional decisions that need to be made and implemented by certain dates, many of which will require the introduction and enactment of additional legislation, and establishes a framework for such decisions to be made. Specifically, the bill requires the Exchange to conduct a study, arrange for a study to be conducted, or rely on existing studies on several of these discussion points, and mandates that the Exchange submit its recommendations on each such issue to the Governor and the leaders of the Legislature by specified dates.

Section 3 of the bill would add new POL § 17(1)(x) to include employees of the Exchange in the list of state employees entitled to representation by the Attorney General in civil litigation.

Section 4 of the bill would add new POL § 19(1)(j) to include employees of the Exchange in the list of state employees entitled to indemnification of damages awarded in a judgment or settlement.

Section 5 of the bill would provide for severability of the bill in the event any part of it is deemed unenforceable.

Section 6 of the bill would provide that in the event the United States Supreme Court finds the ACA unconstitutional or the United States Congress repeals the ACA, the Legislature will convene within 180 days of such decision or repeals to consider legislative options.

Section 7 of the bill would provide that the bill would take effect immediately, and clarifies that the Department of Health or the Department of Financial Services would be authorized to continue administering federal grants already received.

#### Budget Implications:

Enactment of this bill will not require State funding during the upcoming fiscal years. While the ACA requires each Exchange to be “self-sustaining” by January 1, 2015, federal funds will support the planning, implementation and operation of the Exchange through December 2014. New York was selected to receive funding under an Early Innovator Grant (\$27 million) and an Exchange Planning Grant (\$1 million), designed to help the state design and implement the necessary information technology (“IT”) infrastructure needed to operate its Exchange. In addition, New York was awarded a Level 1 Establishment Grant, which makes a year’s worth of funding available to states that have made some progress under their Exchange Planning Grant.

Level 2 Establishment Grants will provide funding through December 31, 2014 to applicants that are further along in the establishment of an Exchange, and are dependent on having a governance structure and the legal authority to operate the Exchange. With the enactment of this legislation, assuming other applicable criteria are met, New York will qualify to apply for such grant.

#### Effective Date:

This bill takes effect immediately.

**Part F – Provide additional relief to counties by reducing growth in local Medicaid expenditures for all counties and New York City and implement a phased-takeover of local government administration of the Medicaid program.**

Purpose:

This bill would provide significant mandate relief to local governments by the State assuming the growth in the local share of Medicaid expenditures for all counties and New York City. In addition, this bill would begin a phased State takeover of local government administration of the Medicaid program and proposes a cap on State reimbursement of local governments for Medicaid administration at fiscal year 2011-2012 levels.

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

Section 1 of the bill would amend §1 of Part C of Chapter 58 of the Laws of 2005 to have the State assume, at a rate of one percent a year commencing April 1, 2013, the current 3 percent annual rate of growth in local Medicaid payments as follows:

- calendar year 2013, the State would assume the cost of one of the three percent growth rate;
- calendar year 2014, the State would assume the cost of two of the three percent growth rate; and,
- calendar year 2015, the State would assume the entire three percent of the growth rate for each succeeding calendar year.

Section 2 of the bill would amend §1 of Part C of the Laws of 2005 to eliminate the annual reconciliation of local government Medicaid expenditures effective April 1, 2015.

Section 3 of the bill would amend §2 of Part C of Chapter 58 of the Laws of 2005 to allow Monroe County to opt into the Local Medicaid Cap in lieu of a sales tax intercept.

Section 4 of the bill would amend Part C of Chapter 58 of the Laws of 2005 to cap State reimbursement of local government Medicaid administration expenses at fiscal year 2011-12 levels, based on each county's relative share of Medicaid administration costs claimed in calendar year 2011. However, local governments would be authorized to continue to claim federal reimbursement above the administrative expenses cap through March 31, 2013. This section of the bill would also allow the State to further reduce the administrative cap to account for the reduction in local government administrative responsibilities, consistent with the State's assumption of the administration of the Medicaid program.

Section 5 of the bill would amend §91 of Part H of Chapter 59 of the Laws of 2011 to modify the Department of Health Medicaid State funds Spending Cap to allow for increased State spending associated with providing local government Medicaid relief.

Section 6 of the bill would add a new §365-n of the Social Services Law to outline the process of transitioning Medicaid administration to the State. Responsibilities transferred to the Department of Health would include, but are not limited to, processing Medicaid applications, making eligibility determinations and authorizing benefits. The bill authorizes the Department of Health to transition certain local district employees to the State to assist with these additional responsibilities.

Section 7 of the bill would amend Social Service Law §369 to authorize the Department of Health to assume sole responsibility for commencing Medicaid recovery actions and proceedings.

Sections 8, 9, 10 and 11 of the bill set forth provisions pertaining to statutory references, time frames for notice, severability and effective dates.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget, as it authorizes the State to implement a cap on State funding to local governments for Medicaid administration expenses that will result in State Financial Plan savings of \$28 million in fiscal year 2012-13 and \$68.4 million in fiscal year 2013-14.

Costs associated with reducing the local share of Medicaid expenditures are \$61.1 million in fiscal year 2013-14. The five-year Financial Plan impact to the State associated with providing relief to local districts is nearly \$1.2 billion.

#### Effective Date:

This bill takes effect April 1, 2012.

### **Part G – Extend the authority for previously enacted Medicaid initiatives.**

#### Purpose:

This bill would maintain Financial Plan savings by continuing previously enacted Medicaid initiatives.

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

- Section 1 would amend Chapter 58 of the Laws of 2005, Part C, § 79, extending until June 15, 2019, the Preferred Drug Program, which promotes access to

effective prescription drugs while ensuring patient safety and reducing the costs of prescription drugs for Medicaid recipients.

- Section 2 would amend Public Health Law § 2807-c, extending until March 31, 2013, certain hospital rate adjustments for potentially preventable re-admissions and negative outcomes.

Budget Implications:

Enactment of this bill is necessary to implement the SFY 2012-13 Executive Budget because it ensures the continuation of previously enacted State Financial Plan savings associated with these programs, totaling \$87.6 million annually.

Effective Date:

This bill takes effect April 1, 2012.

**Part H – Repeal the Human Services Cost-of-Living Adjustment, and provide authorization for future annual increases, and direct agencies to establish limits on reimbursements for the costs of executive compensation and administration.**

Purpose:

This bill would repeal the Human Services Cost-of-Living Adjustment (COLA), provide for future annual adjustments based on actual costs and various performance metrics, and direct agencies to establish limits on reimbursement of costs of administration and executive compensation.

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

This bill would repeal the COLA scheduled to take effect April 1, 2012, for designated Human Services programs under the auspices of several State agencies (the Office for People with Developmental Disabilities, the Office of Mental Health, the Office of Alcoholism and Substance Abuse Services, the Department of Health, the State Office for the Aging, and the Office of Children and Family Services).

The bill further provides that, effective April 1, 2013 and annually thereafter, State agencies shall provide any annual adjustments based on actual costs and performance and/or financial metrics determined by the agencies and subject to the review and approval of the Director of the Budget.

In addition, the bill would require state agencies to place limits on the State's reimbursement of the providers' costs of administration and executive compensation.

Budget Implications:

Repealing the Human Services COLA will result in State savings of \$107 million in FY 2012-13.

Effective Date:

This bill would take effect on April 1, 2012.

**Part I – Establish pilot programs in accordance with the “People First 1115 Waiver” application.**

Purpose:

This bill would authorize the Office for People With Developmental Disabilities to enter into contracts without the need for competitive bids or a request for proposal in order to establish pilot programs in accordance with the People First 1115 Waiver application.

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

This bill would notwithstanding Section 112 and Section 163 of the State Finance Law, and Section 142 of the Economic Development Law, to authorize OPWDD to enter into contracts without competitive bids or a request for proposal related to pilot programs included in the People First 1115 Waiver application.

This bill would enable OPWDD to promptly implement program changes, under the discretion of the Commissioner, consistent with the application submitted to the federal Centers for Medicare and Medicaid Services (CMS) for the People First 1115 Waiver.

Budget Implications:

Without this bill, delays in implementation of pilot programs could occur, resulting in federal Medicaid revenue loss.

Effective Date:

This bill takes effect immediately.

**Part J – Streamline the organizational structure of the Office for Persons with Developmental Disabilities to help improve management oversight of services to individuals with developmental disabilities.**

Purpose:

This bill would reorganize the Office for People With Developmental Disabilities (OPWDD) to create Developmental Disabilities Regional Offices and State Operations Offices that would oversee service delivery in designated areas around the State. The State Operations Offices would provide for the direct delivery of supports and services in State operated programs. The Regional Offices will oversee the administration of supports and services to individuals being served in settings outside of State operated programs.

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

This is a new bill that is designed to streamline decision-making and better align responsibilities to best serve individuals with developmental disabilities. To that end, appointing authority for all positions previously under the jurisdiction of the Developmental Disabilities Services Offices (DDSO) would be moved to Central Office.

Section 1 of the bill would amend Mental Hygiene Law (MHL) § 13.17 to create the Developmental Disabilities Regional Offices and State Operations Offices and remove the list of DDSOs from the statute.

Section 2 of the bill would amend MHL §13.19 to expand the Commissioner’s authority to allow for the appointment of all OPWDD employees.

Section 3 of the bill would amend the MHL §13.21 to remove the appointing authority for employees of the DDSOs, which are being restructured as State Operations Offices, and transfer this authority to OPWDD Central Office.

Section 4 of the bill would amend MHL §13.33 to change wording from DDSO to State Operations Office with regard to the Boards of Visitors and to require at least one Board of Visitors in each State Operations Office Region. It also makes technical amendments to address the name change of the Commission on Quality of Care and Advocacy for Persons with Disabilities.

Sections 5 through 14, 15, 17, & 18 of the bill represent technical amendments necessary to reflect changes made to the listing of facilities operated by OPWDD in Section 13.17 of the MHL advanced in Section 1 of this bill, and to update references to the Office of Mental Retardation and Developmental Disabilities (OMRDD) to reflect the agency’s new name, OPWDD.

Section 16 would amend MHL §13.34 to remove the reference to MHL §13.17 and to define that the Boards of Visitors will be from the catchment area of the State Operations Office that the member serves.

Section 19 of the bill would provide that where the phrase directors of office facilities, directors of schools or director of facilities is used elsewhere in the MHL in reference to a facility operated by OPWDD it shall be substituted with directors of State Operations Offices and where the phrase DDSO is used elsewhere in the MHL it shall be substituted with State Operations Offices.

Section 20 of the bill would provide for an immediate effective date.

Budget Implications:

This bill will create workload efficiencies in OPWDD.

Effective Date:

This bill takes effect immediately.

**Part K – Extend authorization for the Comprehensive Psychiatric Emergency Program.**

Purpose:

This bill would extend the authorization for the Comprehensive Psychiatric Emergency Program (CPEP) for four years until July 1, 2016.

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

This bill would extend until July 1, 2016, the authority of the Commissioner of Mental Health to administer operating certificates for a CPEP. The bill would also extend to July 1, 2016, sections 1, 2 and 4 through 20 of Chapter 723 of the Laws of 1989, which explain the implementation and operation of the CPEP model.

The statutory authority for the CPEP, as established by Chapter 723 of the Laws of 1989, as amended, currently expires on July 1, 2012.

Budget Implications:

Enactment of this bill is necessary to continue essential services to at-risk individuals. This Executive Budget provides funding for the continued operation of hospitals in New York State licensed to provide these services in accordance with the CPEP model.

Effective Date:

This bill takes effect immediately.

**Part L – Permit the Commissioners of the Department of Health, the Office of Mental Health, the Office for People with Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services to integrate health and behavioral health services.**

Purpose:

This bill would grant the Department of Health (DOH), the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD) and the Office of Alcoholism and Substance Abuse Services (OASAS) broad authority and flexibility in order to more fully integrate health and behavioral health services.

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

This bill would provide the Behavioral Health agencies and DOH the authority to jointly establish operating, reporting and construction requirements for service providers that can demonstrate experience and competence in the delivery of health, mental health and alcohol and substance abuse services to persons with developmental disabilities. This bill would also clarify that providers that meet standards established by the State are not required to be an integrated provider. In addition, the bill would authorize the four above State agencies to waive regulatory requirements or determine that compliance with another agency's requirements is sufficient in order to avoid duplication.

The authority granted to the commissioners of these agencies is intended to complement and supplement the authority provided to the commissioners pursuant to section 365-l of the Social Services Law which established health homes for NYS Medicaid enrollees with chronic conditions.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it facilitates the provision of integrated and coordinated care, which will result in a more efficient use of governmental resources.

Effective Date:

This bill takes effect immediately.

**Part M – Establish a pilot program to restructure educational services for children and youth residing in Office of Mental Health hospitals.**

Purpose:

This bill would improve the educational offerings for children who reside in Office of Mental Health (OMH) hospitals by authorizing an agreement between OMH and the State Education Department (SED) to establish pilot programs requiring local educational systems to provide educational programming for such children.

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

This bill would establish a pilot program to provide students residing in OMH hospitals a more appropriate education that comports more closely with the curriculum and related therapy services they would receive in their home school districts. School districts and Board of Cooperative Educational Services (BOCES) programs already provide specialized programs as a matter of routine, and are better qualified than OMH to assume this very critical function. Furthermore, since the early 1980s, the Education Law has required local school districts to be responsible for the education of students who were placed by parents in private hospitals for psychiatric reasons.

Under the bill, OMH and SED will be authorized to enter into an agreement to establish regulations on the provision of educational programming for children residing in OMH hospitals by the school districts or BOCES where the hospital is located. For children residing in OMH facilities in New York City, this programming will begin with the 2012-13 school year; for all other facilities, such programming will begin with the 2013-14 school year. This pilot program will run through the 2014-15 school year. SED is directed to establish a State per pupil methodology for reimbursement of those school districts or BOCES programs that assume the responsibility for the education of youth who reside in OMH hospitals.

This bill will also authorize BOCES to provide educational services at OMH hospitals when requested to do so by the school district where the hospital is located. Additionally, OMH and SED will be required to submit a joint report by February 1, 2015 recommending whether this program should be extended.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it will ensure appropriate educational programming. It is assumed that this proposal will be cost neutral as OMH shifts funds to SED, but total fiscal implications have yet to be determined.

Effective Date:

This bill takes effect July 1, 2012, and shall expire and be deemed repealed on June 30, 2015.

**Part N – Create efficiencies in the Department of Mental Hygiene by: creating a Behavioral Health Advisory Council to replace and assume the responsibilities of the Office of Alcoholism and Substance Abuse Services and the Office of Mental Health; consolidating the statewide comprehensive planning process for OMH; and authorizing other efficiency measures.**

Purpose:

This bill would make efficiencies in the planning and delivery of mental hygiene services by: (1) creating a Behavioral Health Services Advisory Council (Council) to replace and assume the responsibilities of existing bodies that advise the Office of Alcoholism and Substance Abuse Services (OASAS) and the Office of Mental Health (OMH); (2) consolidating the OASAS and OMH roles in the statewide comprehensive planning process required under Mental Hygiene Law (MHL) § 5.07; and (3) including area agencies on aging in the local community planning process required under MHL § 41.06.

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

This bill would create efficiencies in the operations of OMH and OASAS to better serve New Yorkers with mental illnesses and substance abuse disorders. Consolidating the two advisory councils that currently serve these agencies and modifying the statewide comprehensive planning process to allow for more collaborative planning would assist in moving the agencies and the constituencies they serve closer toward a more seamless system of delivering services.

Section 1 of the bill would add definitions to MHL § 1.03 that would define “substance use disorder” and “substance use disorder services.”

Section 2 of the bill would create a new MHL § 5.06 to establish the Behavioral Health Services Advisory Council which would assume the responsibilities of the OMH Mental Health Services Council and the OASAS Advisory Council on Alcoholism and Substance Abuse Services.

Section 3 of the bill would amend MHL § 5.07 to provide a statewide comprehensive planning process for mental hygiene services (including those under the auspices of the Office of People with Developmental Disabilities) that reflects the role of the newly formed Council and permitting the flexibility for OMH and OASAS to collaborate in the planning process.

Section 4 of the bill would repeal MHL § 7.05, which established the Mental Health Services Council, OMH's advisory council.

Section 5 of the bill would make conforming amendments to MHL § 13.05 (c) with regard to the Developmental Disabilities Advisory Council.

Section 6 of the bill would repeal MHL § 19.05, which established the Advisory Council on Alcoholism and Substance Abuse Services to advise OASAS.

Section 7 of the bill would amend MHL § 41.16(c) to include area agencies on aging in the comprehensive planning process required under that section.

Section 8 of the bill would amend Public Health Law § 220 to refer to the new Council instead of the Mental Health Services Council.

Section 9 of the bill sets forth its effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget because it will achieve savings due to increased efficiencies.

Effective Date:

Sections 1 through 6 of the bill takes effect 120 days after enactment and the remaining provisions would take effect on April 1, 2012.

**Part O – Ensure the efficient operation of hospitals by the Office of Mental Health and the provision of appropriate community services.**

Purpose:

This bill would set criteria that the Commissioner of Mental Health (Commissioner) must consider in deciding whether to close or convert wards or facilities and requires the Commissioner to give either 60 or 30 day notice before taking such actions to facilitate timely placement of individuals in the most integrated settings. In addition, this bill will restructure the New York City Children's Psychiatric Centers (Bronx, Brooklyn, and Queens) to create a single appointing authority named the New York City Children's Center.

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

This bill would notwithstanding the requirement in the Mental Hygiene Law that one year notice be given before the Commissioner of Mental Health may close, reduce or

transform wards or facilities that it operates, and the requirement that all resources resulting from such transformations be part of community reinvestment. This will allow the Commissioner the flexibility to reduce inpatient capacity, to implement other reductions and actions that are necessary for the cost-effective and efficient operation of the State mental health system, and to ensure that persons with mental illness can be served in the most integrated settings, as is required by federal law.

These actions include, but are not limited to, the closure of the inpatient program of Kingsboro Psychiatric Center consistent with the recommendation in the November 2011 report of the Brooklyn Work Group of the Medicaid Redesign Team (“At the Brink of Transformation: Restructuring the Healthcare Delivery System in Brooklyn”) and reinvestment of resources to community services in Brooklyn and to inpatient capacity at the South Beach Psychiatric Center in Staten Island.

Further determinations regarding the closure of beds would be made by the Commissioner based on ten criteria including, among other things: the current and long term needs for services provided at the facility within its catchment area; the availability of staff to provide such services; any capital investments needed at the facility; the proximity of the facility to other facilities that could accommodate anticipated need; the relative quality of the services provided at the facility; the obligations of the State to place persons with mental disabilities in community settings rather than in institutions; and the anticipated impact of the closure on access to mental health services.

Implementation of these systemic efficiencies is consistent with the State’s goal and obligation to transform the locus of care from inpatient settings to community-based settings.

This bill also will restructure the New York City Children’s Psychiatric Centers (Bronx, Brooklyn, and Queens) to create a single appointing authority named the New York City Children’s Center. The locations of these psychiatric centers will not change, however there will be a uniform leadership structure. This will improve program flexibility and service delivery.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget and to provide the flexibility needed to meet the requirements of Title II of the Americans with Disabilities Act, to serve individuals in the most integrated setting possible.

Effective Date:

This bill takes effect April 1, 2012.

## **Part P – Amend various provisions of the Sex Offender Management and Treatment Act.**

### Purpose:

This bill would amend the Sex Offender Management and Treatment Act (SOMTA) to improve the care and treatment of sex offenders who are civilly confined and to encourage sex offenders to participate in treatment and to otherwise comply with conditions of confinement and Strict and Intensive Supervision and Treatment (SIST). It also will change the timing of required evaluations of civilly confined sex offenders and will create a new crime to address assaults by sex offenders at a Secure Treatment Facility (STF).

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

This bill would:

- Allow the Commissioner of Mental Health to enter into agreements for the provision of care and treatment to persons confined under SOMTA, or for the provision of appropriate security services, by individuals who are neither Office of Mental Health (OMH) nor Office for People with Developmental Disabilities personnel. This will provide flexibility to ensure the delivery of the most appropriate and cost effective services.
- Require after a judicial determination that there is probable cause to believe that a sex offender requires civil management, that such offender remain in the custody of the Department of Corrections and Community Supervision until he or she reaches the maximum expiration date of the sentence or is approved for release to parole supervision. This will address problems that have arisen when such offenders – who have not yet been found to be in need of civil confinement – refuse to participate in sex offender treatment in STFs and disrupt others' efforts to participate meaningfully in such treatment programs.
- Encourage participation in treatment in an STF by providing that failure to “meaningfully” participate in such treatment will constitute a violation by the confined sex offender of the order of confinement.
- Allow respondents and witnesses to appear in court by means of video-teleconferencing (VTC) to reduce the amount of travel. A large number of SOMTA respondent transports are for non-substantive appearances (e.g., to advise the judge of the current status of the proceeding, to arrange discovery/trial schedules, to exchange expert reports). It is safer to allow VTC than to transport respondents which will necessarily bring them into contact with the public. Respondents will be authorized to object to the use of VTC if there are

“compelling circumstances, requiring the witness's personal presence” at the court proceeding.

- Provide biennial rather than annual examinations of sex offenders and petitions for discharge of a civilly committed sex offender.
- Authorize parole revocation when applicable and criminal penalties for material violations of court-order conditions of SIST. The bill also will amend the Penal Law to provide that a sex offender who intentionally causes physical injury at an STF is guilty of assault in the second degree, a class D felony. These changes will ensure that staff and residents of STFs receive the same degree of protection from violent sex offenders as prison officials, nurses and other public officials who are assaulted while performing their required duties.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget due to the associated savings of \$4.7 million which will increase thereafter as the committed population grows.

Effective Date:

This bill takes effect April 1, 2012.

**Part Q – Provide for outpatient capacity restoration of felony defendants, or restoration at psychiatric units of jails or Article 28 hospitals.**

Purpose:

This bill would amend the Criminal Procedure Law to provide for outpatient restoration of capacity of felony defendants, or restoration at psychiatric units of jails or at Article 28 hospitals.

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

Under current law, if a court determines that a defendant is an incapacitated person, it must issue an order committing the defendant to the custody of the Commissioner of Mental Health or the Commissioner of Developmental Disabilities for care and treatment to restore his or her capacity. The defendant is then held in a hospital operated by the Office of Mental Health (OMH), a developmental center operated by the Office for People with Developmental Disabilities (OPWDD) or a general hospital licensed by the Department of Health that contains an OMH-licensed psychiatric unit.

This bill would amend Criminal Procedure Law (CPL) section 730.10 by adding a definition of “appropriate institution” to include not only an OMH hospital, an OPWDD developmental center and a general hospital, but also a local correctional facility that operates a mental health unit. This amendment also would allow for an incapacitated defendant committed to the jurisdiction of OMH or OPWDD to receive care and treatment on an outpatient basis at an appropriate institution.

Approximately 20 percent of defendants committed to OMH or OPWDD for restoration of capacity under the CPL are deemed to be otherwise in need of hospitalization. Accordingly, the great majority could be restored in jail or in the community. Nationwide, 35 states provide for outpatient restoration, and at least six authorize jail-based restoration.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget due to the associated savings of \$1.5 million (annualizing to \$3.0 M).

Effective Date:

This bill takes effect immediately.

**Part R – Continue the fiscal periods for which the Office of Mental Health is authorized to recover exempt income for community residence and family based treatment programs.**

Purpose:

This bill would extend the fiscal periods for which the Office of Mental Health (OMH) is authorized to recover Medicaid exempt income as authorized pursuant to legislation enacted in 2010. Exempt Income is Medicaid income received in excess of budgeted amounts set forth in the fiscal plans of OMH providers operating residential programs.

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

This bill would extend the fiscal periods for OMH to recoup exempt income from community residences and family-based treatment providers licensed by OMH for specific time periods for programs located in counties outside of the City of New York and for programs located within the City of New York. It would allow for the continuation of such recoveries from January 1, 2011 through December 31, 2013 for programs located outside of the City of New York, and from July 1, 2011 through June 30, 2013 for programs located within the City of New York.

Budget Implications:

Enactment of this bill is necessary to implement the 2012-13 Executive Budget, because it avoids a potential loss of \$3 million on an annual basis.

Effective Date:

This bill takes effect immediately.

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.