FY 2018 NEW YORK STATE EXECUTIVE BUDGET

HEALTH AND MENTAL HYGEINE
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 insurance law and the public health law, in relation to the early intervention program for infants and toddlers with disabilities and their families (Part A); to amend the public health law, in relation to the general public health work program (Part B); to amend the social services law, in relation to requiring monthly premium payments for the Essential Plan (Part C); to amend the public health law, in relation to high cost drugs; to amend the tax law, in relation to surcharges on high priced drugs; to amend the tax law, in relation to secrecy provisions; to amend the state finance law, in relation to the high priced drug reimbursement fund; to amend the social services law, in relation to the drug utilization review board; to amend the social services law, in relation to Medicaid reimbursement of covered outpatient drugs; to authorize the suspension of a provider's Medicaid enrollment for inappropriate prescribing of opioids; to amend the social services law, in relation to refills of controlled substances; to amend the public health law and the social services law, in relation to eliminating prescriber prevails with the exception of mental health medications; to amend the public health law, in relation to authorizing for comprehensive medication management by pharmacists; to amend the social services law, in relation to reducing Medicaid coverage and increasing copayments for non-prescription drugs, to aligning pharmacy copayment requirements with federal regulations, and to adjusting consumer price index penalties for generic drugs; and to repeal subdivision 25-a of section 364-j of the social services law, relating to the coverage of certain medically necessary prescription drugs by managed care providers (Part D); to amend the public health law, in relation to restricting enrollment in the medicaid managed long term care program to individuals who require a nursing home level of care and to eliminate payments to nursing homes for bed hold days; to amend the social services law, in

relation to conforming with federal law with regard to spousal contributions; to amend the social services law, in relation to hospice services covered under title XVIII of the federal social security act; and to repeal subdivision 25 of section 2808 of the public health law relating to reserved bed days (Part E); to amend the social services law, in relation to carving out transportation from the managed long term care benefit; to repeal subdivision 5 of section 365-h of the social services law, relating to rural transit assistance payments to counties; and to repeal section 367-s of the social services law, relating to emergency medical transportation services (Part F); to amend part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state fund medicaid expenditures, in relation to extending the Medicaid global cap; to create an avenue for contract staff and student assistants in the department of health's office of health insurance programs to qualify for open competitive positions and to establish a health care service career internship program; and to amend part C of 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 (Part G); to amend the New York Health Care Reform Act of 1996, in relation to extending certain provisions relating thereto; to amend the New York Health Care Reform Act of 2000, in relation to extending the effectiveness of provisions thereof; to amend the public health law, in relation to the distribution of pool allocations and graduate medical education; to amend the public health law, in relation to health care initiative pool distributions; to amend the social services law, in relation to extending payment provisions for general hospitals; and to amend the public health law, in relation to the assessments on covered lives (Part H); to amend chapter 884 of the laws of 1990, amending the public health law relating to authorizing bad debt and charity care allowances for certified home health agencies, in relation to the effectiveness thereof; to amend chapter 60 of the laws of 2014 amending the social services

law relating to eliminating prescriber prevails for brand name drugs with generic equivalents, in relation to the effectiveness thereof; to amend the public health law, in relation to extending the nursing home cash assessment; to amend 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 the effectiveness thereof; to amend chapter 58 of the laws of 2007, amending the social services law and other laws relating to enacting the major components of legislation necessary to implement the health and mental hygiene budget for the 2007-2008 state fiscal year, in relation to delay of certain administrative cost; to amend chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, in relation to the effectiveness thereof; to amend chapter 109 of the laws of 2010, amending the social services law relating to transportation costs, in relation to the effectiveness thereof; to amend chapter 56 of the laws of 2013 amending chapter 59 of the laws of 2011, amending the public health law and other laws relating to general hospital reimbursement for annual rates relating to the cap on local Medicaid expenditures, in relation to the effectiveness thereof; to amend chapter 2 of the laws of 1998, amending the public health law and other laws relating to expanding the child health insurance plan, in relation to the effectiveness thereof; to amend chapter 19 of the laws of 1998, amending the social services law relating to limiting the method of payment for prescription drugs under the medical assistance program, in relation to the effectiveness thereof; to amend the public health law, in relation to continuing nursing home upper payment limit payments; to amend chapter 904 of the laws of 1984, amending the public health law and the social services law relating to encouraging comprehensive health services, in relation to the effectiveness thereof; to amend chapter 62 of the laws of 2003, amending the public health law relating to allowing for the use of funds of the office of professional medical conduct for activities of the patient health information and quality improvement act of 2000, in relation to extending the provisions thereof; to amend chapter 59 of the laws of

2011, amending the public health law relating to the statewide health information network of New York and the statewide planning and research cooperative system and general powers and duties, in relation to the effectiveness thereof; and to amend chapter 58 of the laws of 2008, amending the elder law and other laws relating to reimbursement to participating provider pharmacies and prescription drug coverage, in relation to extending the expiration of certain provisions thereof (Part I); to amend the insurance law, in relation to pharmacy benefit managers (Part J); to amend the public health law, in relation to the health care facility transformation program (Part K); to amend the public health law, in relation to establishing a health care regulation modernization team within the department of health (Part L); to amend the public health law, in relation to creating the "Emerging Contaminant Monitoring Act" (Part M); to amend the public health law, the real property law, and the environmental conservation law, in relation to creating the "residential well testing act" (Part N); to amend the criminal procedure law, in relation to authorizing restorations to competency within correctional facility based residential settings; and providing for the repeal of such provisions upon expiration thereof (Part O); to amend chapter 56 of the laws of 2013 amending chapter 59 of the laws of 2011 amending the public health law and other laws relating to general hospital reimbursement for annual rates relating to the cap on local Medicaid expenditures, in relation to extending government rates for behavioral services and adding a value based payment requirement; and to amend chapter 111 of the laws of 2010 relating to increasing Medicaid payments to providers through managed care organizations and providing equivalent fees through an ambulatory patient group methodology, in relation to extending government rates for behavioral services and adding a value based payment requirement (Part P); 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 forgoing such adjustment during the 2017-2018 state fiscal year and the effectiveness thereof (Part Q)

PURPOSE: This bill contains provisions needed to implement the Health and Mental Hygiene portion of the FY 2018 Executive Budget.

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

Part A - Enhance appropriate third-party health insurance reimbursement for Early Intervention services

Purpose:

This bill would enhance appropriate third-party health insurance reimbursement for covered Early Intervention (EI) program services by requiring the timely disclosure of third-party insurance coverage, streamlining coverage determinations, requiring providers to appeal coverage denials and authorizing audit recoveries by county governments.

Summary of Provisions and Statement in Support:

The EI program provides a comprehensive array of therapeutic and support services to children under age three with confirmed disabilities (e.g., autism, cerebral palsy, Down syndrome) or developmental delays in physical, cognitive, communication, social-emotional, or adaptive development. EI services are provided at no cost to families participating in the program. The program is financed by a combination of State, local government, Medicaid, and commercial insurance dollars.

New York State has one of the highest percentages of infants enrolled in EI nationally, and delivers services to 4 percent of age-eligible children residing in the State annually. In addition, on a nationwide basis, New York State delivers some of the highest intensity services per week to participating children and families (2.4 units of service per week on average, with 1 percent of children and families receiving 21 units of services or more per week).

EI Providers are required to seek reimbursement from third party payers in the first instance, including health insurers and Medicaid. Even though approximately 40 percent of children in EI have private health insurance, such insurers deny the majority of EI claims submitted. EI services not covered by third party payers (private insurers or Medicaid) are reimbursed by the county in which the child resides. County governments are subsequently reimbursed by the State for 49 percent of the amount they reimburse providers.

Reforms enacted in FY 2013 established a direct relationship between third party payers and a State Fiscal Agent to manage EI claims. However, in FY 2016 alone, nearly 85 percent of claims submitted to private insurers were denied --insurers

received $70 million in claim submissions, of which they only paid $12 million in reimbursement. This is only 2 percent of total EI expenditures ($641 million), compared with 41 percent ($261 million) paid by Medicaid, 27 percent ($173 million) paid by the State, and 30 percent ($195 million) paid by counties.

The most common reasons for denials are that benefits are not covered by the child's insurance policy, lack of prior authorization, and that the provider is not in the insurer's network.

Improving third-party insurance reimbursement would improve the timeliness of provider payments, ensure that consumers receive the covered benefits under their insurance policies, and lower program costs for the State and counties.

Section 1 would amend Insurance Law § 3224-a to add EI providers to the definition of "health care provider" in the Prompt Pay Law to clarify that health insurers are required to adjudicate claims for EI services within the same time limits as claims for non-EI services.

Section 2 would amend Insurance Law § 3235-a to streamline health insurers' EI coverage determinations with respect to EI services:

- Accepting a written order, referral, or recommendation for EI services, or an Individualized Family Service Plan, signed by the child's primary health care provider, as sufficient to meet any precertification, preauthorization, and/or medical necessity requirements;
- Covering services regardless of the location where the services are provided or the habilitative nature of the services;
- Paying for EI services that are covered under the child's insurance policy, including services for autism spectrum disorder; and
- Notifying the county, service coordinator, and provider whether the health insurance policy covering the child is regulated by the State within 15 business days of receipt of a subrogation notice or a request from a county or service coordinator.

Section 3 would amend Public Health Law § 2543 to require services coordinators and providers, in addition to county EI officials, to collect third party insurance information from parents.

Section 4 would amend Public Health Law § 2557 to clarify that counties can conduct audits and when a county submits the results of an EI audit to the Department of Health (DOH), the results shall include any recoveries by the county.

Sections 5 and 6 would amend Public Health Law § 2559 to require the parent to provide, or allow others (the county, service coordinator, or provider) to obtain, the provider's signature on the written order, referral, recommendation, or Individualized Family Service Plan, as required by section 2.

Additionally, section 5 would allow DOH to require providers to appeal insurer payment denials for medical necessity, coordination of benefits, utilization review, or other criteria established by DOH prior to submitting such claims to the county for payment.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget to achieve total net savings of $3.9 million in Fiscal Year 2018 and $14.3 million once annualized. Additionally, this bill would drive local savings of $14.8 million annually.

Effective Date:

This bill would take effect on April 1, 2017.

Part B - Reduce Department of Health's General Public Health Work Program reimbursement to New York City from 36 percent to 29 percent

Purpose:

This bill would reduce Department of Health's General Public Health Work (GPHW) program reimbursement rate for non-emergent expenditures above the base grant for New York City from 36 percent to 29 percent.

Summary of Provisions and Statement in Support:

The GPHW program reimburses local health departments for providing core public health services, individually tailored to the needs of their communities. These core services fall into six categories: Family Health, Communicable Disease Control, Chronic Disease Prevention, Community Health Assessment, Emergency Preparedness, and Environmental Health.

Local governments bear the service costs in the first instance and file claims with the GPHW program. Each locality receives a base grant up to an amount based upon the county's population and the level of services provided: full service counties receive up to the greater of $650,000 or 65 cents per resident; partial service counties receive up to $500,000. The remainder of local government non-emergency claims are then reimbursed at the rate of 36 percent. Emergency claims can be reimbursed up to 50 percent.

This proposal would reduce the reimbursement rate for the non-emergency claims above the base grant to New York City from 36 to 29 percent. This proposal recognizes that New York City, unlike other counties, has direct access to other public health funding sources. For example, New York City directly receives a grant from the Centers for Disease Control and Prevention for epidemiology and laboratory capacity. Over the past three grant periods, grant funding for New York City has been, on average, 22 percent higher than the grant funding directed to New York State.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and would achieve a total net savings of $11 million in Fiscal Year 2018 and $22 million when fully annualized.

Effective Date:

This bill would take effect July 1, 2017.

Part C - Increase cost sharing requirements for the Essential Plan

Purpose:

This bill would increase the cost sharing requirements for beneficiaries of the Essential Plan.

Summary of Provisions and Statement in Support:

Section one of this bill would amend Social Services Law §366-gg to require monthly premium payments of $20 for individuals enrolled in the Essential Plan with incomes between 138-200 percent of the Federal Poverty Level. No payment would be required for individuals with incomes below 138 percent of the Federal Poverty Level. Additionally, beginning in 2018, this maximum monthly premium contribution would be increased by the annual growth percentage in the Medical Consumer Price Index (CPI).

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and the State's multi-year Financial Plan by keeping overall Medicaid spending within capped levels, which are indexed to the ten-year rolling average of the medical component of the CPI as proscribed in current statute.

The provisions of this bill are expected to achieve $5.2 million in savings in FY 2018 and $20.9 million in savings in FY 2019.

Effective Date:

This bill would take effect January 1, 2018.

Part D - Pharmaceutical-related Medicaid Redesign Team recommendations

Purpose:

This bill would make statutory changes necessary to implement pharmaceutical-related Medicaid Redesign Team recommendations.

Summary of Provisions and Statement in Support:

This bill would establish a required supplemental rebate on the sale of certain drugs sold to the State's Medicaid program at prices over a benchmark amount determined by the Drug Utilization Review Board (DURB), established by Social Services Law § 369-bb. It would also establish a surcharge on the first sale of such drugs in New York State. The revenue collected from the surcharge would be held in a dedicated revenue fund and disbursed to health insurers in New York State to lower insurance premiums.

Upon referral by the Department of Health (DOH), the DURB would review information about certain high-priced drugs, including drug utilization, development, manufacturing production and distribution, advertising costs, profit margins, and prices charged to purchasers outside the United States. Based on the review of clinical and economic information submitted by manufacturers, the DURB would determine a benchmark price for the drugs. Drugs designated by DOH as "high cost drugs," i.e. drugs sold at prices above the DURB pricing benchmark, would be subject to a surcharge at the first point of sale in New York, and may be subject to supplemental Medicaid rebates.

The surcharge or rebate would apply to the following three classes of prescription drugs: newly-approved drugs with launch prices deemed prohibitively expensive for patients who could benefit from the drug; drugs with prices that suddenly, or over a relatively brief period of time, experience a large price increase and such increase is not explained by a significant increase in ingredient costs or by some other relevant factor; or drugs that are disproportionately priced given limited therapeutic benefits.

Further detail on the individual sections of the bill are below.

Section one of this bill would add a new Public Health Law § 280 to allow DOH to identify high priced drugs entering or currently in the market place for review by the DURB. DOH may require manufacturers to confidentially report costs associated with research and development, manufacturing, marketing, and advertising for identified high cost drugs.

Section two of this bill would add a new Article 20-C to the Tax Law to impose a surcharge on the difference between the gross receipt amount of the first sale of a high cost drug in New York State and the benchmark price set by the DURB. This surcharge is to be paid by the first establishment making the sale within New York State and cannot be imposed on any subsequent customer or passed down as an additional cost to the consumer. Revenue from this surcharge would be placed in the high priced drug reimbursement fund. Confidentiality requirements would apply to returns, reports, and other information related to the surcharge.

Section three of this bill would amend Tax Law § 1825 to provide that those who violate the confidentiality requirements applicable to the surcharge shall be guilty of a misdemeanor.

Section four of this bill would add a new State Finance Law § 89-j to establish the high priced drug reimbursement fund to hold the revenue collected from the surcharge. The Superintendent of Financial Services would distribute amounts in the fund to health insurers and the Medicaid program in proportion to their respective costs attributable to each pharmaceutical product for which the surcharge was imposed. All moneys distributed from the high priced drug reimbursement fund to a health insurer shall be either (1) credited to the premiums charged by such health insurer for the next policy period or (2) credited to policyholders pursuant to procedures that the Superintendent of Financial Services shall establish by regulation.

Section five of this bill would amend Social Services Law § 369-bb to expand the membership of the DURB to include two health care economists, an actuary, and a representative of the Department of Financial Services.

Section six of this bill would amend Social Services Law § 369-bb to expand the role of the DURB to include the review of the costs and pricing of drugs referred to it by DOH, and to provide a recommendation as to a value-based, per-unit benchmark price for such drugs.

Section seven of this bill would amend Social Service Law § 367-a to conform Medicaid pharmacy reimbursement provisions to Federal regulations governing Medicaid reimbursement of covered outpatient drugs, by aligning reimbursement with drug acquisition cost and a professional dispensing fee in the fee-for-service (FFS) program.

Section eight of this bill would build on the State's effort to combat the opioid crisis by making the inappropriate prescribing of opioids an unacceptable provider practice in the Medicaid program, which could result in the provider’s exclusion from the program.

Section nine of this bill would amend Social Service Law § 365-a to build on the State's effort to combat the opioid crisis by aligning prescription refill controls with New York State Controlled Substance Law.

Sections ten through twelve of this bill would amend Public Health Law § 273 and Social Services Law § 364-j to reduce inappropriate prescribing by eliminating the prescriber’s right of final determination in both FFS and managed care, excluding mental health medications, when the justification for use is not clinically supported.

Section thirteen of this bill would add a new Public Health Law § 280-c to allow physicians/nurse practitioners and pharmacists to establish written protocols to provide comprehensive medication management to patients with a chronic disease or diseases who have not met clinical goals of therapy, are at risk for hospitalization, or whom the physician or nurse practitioner deems to need comprehensive medication management services. Participation by the patient in comprehensive medication management is voluntary.

Sections fourteen and fifteen of this bill would amend Social Services Law § 365-a and § 367-a to align coverage for non-prescription drugs/items (i.e. over-the-counter) with other states and the Federal Medicare Part D program, and to increase the required co-payment amount for such products from $0.50 to $1.00.

Section sixteen of this bill would amend Social Services Law § 367-a to align pharmacy co-payment requirements with Federal requirements.

Section seventeen of this bill would amend Social Services Law § 367-a to lower the State Maximum Allowable Cost threshold for the generic Consumer Price Index penalty from 300 percent to 75 percent.

Section eighteen of this bill is a severability provision providing that if any clause, sentence, paragraph, or subdivision of sections one through six of the bill, relating to high cost drugs, shall be adjudged as invalid, then such judgment shall not affect, impair, or invalidate the remainder of such sections.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and the State's multi-year Financial Plan by keeping overall Medicaid spending within capped levels, which are indexed to the ten-year rolling average of the medical component of the CPI as proscribed in current statute.

The pharmacy proposals in this section account for $92.6 million in net State savings in FY 2018 and $125.8 million in net State savings in FY 2019.

Effective Date:

This bill would take effect April 1, 2017 except that sections nine and fourteen through seventeen take effect July 1, 2017.

Part E - Long-term care-related Medicaid Redesign Team recommendations

Purpose:

This bill would make statutory changes necessary to implement long-term care-related Medicaid Redesign Team recommendations.

Summary of Provisions and Statement in Support:

Section one of this bill would amend Public Health Law §4403-f to restrict enrollment in Managed Long Term Care Plans (MLTCPs) to enrollees who require nursing home level of care. Those enrollees excluded from MLTCPs would still receive comparable services through a mainstream managed care plan. Existing MLTC members would be allowed to continue accessing services through a grandfather clause.

Section two and three of this bill would amend Public Health Law §2808 and §2801-e to eliminate reimbursement to nursing homes for bed hold days while preserving the requirement for nursing homes to hold beds for residents who temporarily leave the nursing home.

Section four of this bill would amend Public Health Law §2808 to preserve eighteen million in savings currently being achieved through authority set forth in the bed reservation statute repealed by section two of this bill.

Section five of this bill would amend Social Services Law §366 to conform with federal law with regard to spousal contributions and responsibilities for spouses residing together in the community.

Section six of this bill would amend Social Services Law §365-a to clarify that Medicaid would not cover hospice-related services otherwise covered by Medicare.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and the State's multi-year Financial Plan by keeping overall Medicaid spending within capped levels, which are indexed to the ten-year rolling average of the medical component of the Consumer Price Index, as proscribed in current statute.

The Long Term Care proposals in this section account for $47.5 million in savings in FY 2018 and $58.4 million in savings in FY 2019.

Effective Date:

This bill would take effect April 1, 2017 except that section one would take effect October 1, 2017.

Part F - Transportation-related Medicaid Redesign Team recommendations

Purpose:

This bill would make statutory changes necessary to achieve efficiencies in transportation related to the Medicaid Redesign Team recommendations.

Summary of Provisions and Statement in Support:

Section one of this bill would amend Social Services Law §365-h(4) to carve-out the transportation benefit from the Managed Long Term Care benefit package. This benefit would be delivered on a fee-for-service basis through the State's Transportation Manager consistent with Mainstream Managed Care.

Section two of this bill would repeal Social Services Law §365-h(5) to eliminate the supplemental payment to rural transportation networks.

Section three of this bill would repeal Social Services Law §367-s*2 to eliminate the supplemental payment to emergency medical transportation providers. The funding associated with the repeal of this payment would be reinvested into transportation reimbursement rates based on recommendations contained within the statutorily required Medicaid Transportation Rate Adequacy Report.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and the State's multi-year Financial Plan by keeping overall Medicaid spending within capped levels, which are indexed to the ten-year rolling average of the medical component of the Consumer Price Index, as proscribed in current statute.

The Transportation proposals in this section account for $8.0 million in savings in FY 2018 and $12.0 million in FY 2019.

Effective Date:

This bill would take effect April 1, 2017 except that section one takes effect October 1, 2017.

Part G - Extend the Medicaid Global Cap and other miscellaneous Medicaid-related proposals

Purpose:

This bill would make statutory changes necessary to extend the Medicaid Global Cap and implement other miscellaneous Medicaid-related proposals.

Summary of Provisions and Statement in Support:

Section one would amend the Laws of 2016 to extend the Medicaid Global Cap budgeting construct through FY 2019 and allows for an adjustment to the Global Cap in event of changes to federal financial participation or federal Medicaid eligibility criteria.

Section two would add a new section to unconsolidated law to establish an insourcing initiative for staff contracted by the Department of Health's Office of Health Insurance Programs.

Section three would amend Chapter 58 of the Laws of 2005 to authorize the Commissioner of Health to enter into a joint savings allocation plan with New York City to increase allowable Federal claiming for School Supportive Health Services. If a savings allocation plan is not approved by the Commissioner by June 30, 2017, the

Commissioner may reduce payments to New York City for the purposes of administering the Medicaid Program by $50 million.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and the State's multiyear Financial Plan by keeping overall Medicaid spending within capped levels, which are indexed to the ten-year rolling average of the medical component of the CPI as proscribed in current statute. In addition to maintaining the Medicaid Global Cap, this bill would generate an additional $51 million in State savings in FY 2018 and FY 2019.

Effective Date:

This bill would take effect April 1, 2017.

Part H - This bill would reauthorize the Health Care Reform Act (HCRA) for three-years

Purpose:

This bill extends the provisions of the Health Care Reform Act (HCRA), which plays a significant role in governing the financing of health care services, through March 31, 2020. Currently, HCRA is scheduled to sunset on March 31, 2017.

Summary of Provisions and Statement in Support:

In 1996, New York enacted the Health Care Reform Act (HCRA) legislation, which replaced the hospital reimbursement system in existence since 1983 with a deregulated system. This Act was designed to improve the fiscal health of hospitals and support critical public health programs. It was subsequently extended and modified several times, most recently Part B of chapter 60 of the laws of 2014 reauthorized HCRA through March 31, 2017.

This bill extends HCRA through March 31, 2020 and amends provisions in order to maximize the use of available revenue sources, modify programs and secure the fiscal viability of HCRA through its proposed extension period. Specifically:

Sections one and two amend various provisions to extend effective dates through December 31, 2020. These provisions include the continuation of the Medicaid inpatient hospital reimbursement methodology and collection of HCRA surcharges and assessments.

Sections three and four amend Public Health Law to extend authorization for the collection of the Covered Lives Assessment through December 31, 2020.

Section five amends Public Health Law to extend authorization to allocate surcharge funds between various financing pools.

Section six amends Public Health Law to extend the authorization for Area Health Education Centers (AHEC), the Empire Clinical Research Investigator Program (ECRIP) and the Doctors Across New York program, which includes the Physician Loan Repayment and Practice Support Programs.

Section seven extends the authorization for certain hospital billing requirements historically extended with HCRA.

Section eight amends Public Health Law to modify the reconciliation of collections for the Covered Lives Assessment in excess of one billion forty-five million dollars through December 31, 2020.

Section nine allows for waiver authority, severability and sets effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget and the State's multi-year Financial Plan, which reflects the continuation of HCRA funding for a number of important health programs and revenue sources.

Effective Date:

This bill takes effect April 1, 2017.

Part I - Extend various provisions of the Public Health and Social Services Laws

Purpose:

This bill would extend various expiring laws to maintain Financial Plan savings by continuing certain previously enacted Medicaid and health savings initiatives authorized in the Public Health and Social Services Laws.

Summary of Provisions and Statement in Support:

Section one of this bill would amend Chapter 884 of the laws of 1990, extending authorization of bad debt and charity care allowances for certified home health agencies through June 30, 2020.

Section two of this bill amends chapter 59 of the laws of 2016, extending authority to hire contract staff to administer fair hearings for the Fully Integrated Duals Advantage program through January 1, 2020.

Section three of this bill would amend Chapter 56 of the laws of 2013, extending the nursing home reimbursable cash assessment program through March 31, 2020.

Section four of this bill would amend Chapter 474 of the laws of 1996, extending the 1996-1997 trend factor projections or adjustments from nursing home and inpatient rates through March 31, 2020.

Section five of this bill would amend Chapter 58 of the laws of 2007, continuing the 0.25 percent trend factor reduction for hospitals and nursing homes through March 31, 2020.

Sections six and seven of this bill would amend Chapter 81 of the laws of 1995, extending a limitation on the reimbursement of long term home health care program administrative and general costs to not exceed a statewide average through March 31, 2020.

Section eight of this bill would amend Chapter 109 of the laws of 2010, permitting an extension of the contract of the State transportation manager through May 31, 2020.

Section nine of this bill would amend Chapter 59 of the laws of 2011, maintaining the elimination of a trend factor for general hospital reimbursement through March 31, 2020.

Section ten of this bill would amend Chapter 2 of the laws of 1998, maintaining the expansion of the child health insurance plan and its benefits through July 1, 2020.

Section eleven of this bill would amend Chapter 19 of the laws of 1998, maintaining the limit on method of payment for prescription drugs under the medical assistance program through March 31, 2020.

Section twelve of this bill would amend Chapter 60 of the laws of 2014, continuing nursing home upper payment limit payments through March 31, 2020.

Section thirteen of this bill would amend Chapter 60 of the laws of 2014, to make the Comprehensive Health Services program permanent.

Section fourteen of this bill would amend Chapter 62 of the laws of 2003, extending authorization for the use of funds of the office of professional medical conduct for activities of the patient health information and quality improvement act of 2000 through March 31, 2020.

Section fifteen of this bill would amend Chapter 59 of the laws of 2011, extending the statewide health information network and statewide planning and research cooperative system through March 31, 2020.

Section sixteen of this bill would amend Chapter 58 of the laws of 2008, extending the expiration of methods reimbursement to participating provider pharmacies and prescription drug coverage through March 31, 2020.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget. These proposals do not result in any increased State cost.

Effective Date:

This bill would take effect immediately.

Part J - Authorizes Pharmacy Benefit Manager registration and disclosure requirements

Purpose:

This bill would make statutory changes necessary to regulate non-Medicaid Pharmacy Benefit Manager (PBM) services through PBM registration and disclosure requirements in order to prohibit business practices that contribute to high prescription drug costs.

Summary of Provisions and Statement in Support:

Section one of this bill would add a new Article 29 to the Insurance Law to regulate non-Medicaid PBM services through PBM registration, licensure, and disclosure requirements. PBMs would disclose any financial incentive or benefit for promoting the use of certain drugs classes or brands of drugs, and any pricing information regarding fee arrangements and rebates. The information collected would be confidential and restricted to analyzing business practices and developing policies to address business practices that appear to be deceptive, unfair, or abusive.

Section 2901 of this article would provide definitions. These definitions exempt PBM services provided to the New York State Medicaid program from this bill in its entirety. A PBM that provides coverage for commercial insurers and Medicaid would be subject to the provisions in this bill for only their non-Medicaid related PBM activities.

Section 2902 of this article would require that all PBMs register with the Department of Financial Services prior to January 1, 2019 and prohibits health insurers from compensating unregistered entities for PBM services.

Section 2903 of this article would add registration requirements for PBMs such that practicing PBMs prior to January 1, 2019 must register with the State and pay a pro-rated registration fee of $1,000 annually.

Section 2904 of this article would authorize the Superintendent of Financial Services to request information from PBMs including but not limited to: disclosure of financial incentives for promoting the use of certain drugs and other financial arrangements affecting health insurers or their policyholders or insureds. Information disclosed by PBMs would be confidential.

Section 2905 of this article would preclude any entity from acting as a PBM on or after January 1, 2019 without having the authority to do so by virtue of a State issued PBM license.

Section 2906 of this article would allow the Superintendent of Financial Services to issue PBM licenses to those entities that meet the requirements of receiving a PBM license. Standards for the issuance of a PBM license would be issued pursuant to regulations established by the Superintendent. These standards may address the elimination of conflicts of interest, deceptive practices, anti-competitive practices, and unfair claims practices of PBMs. This section also states the expiration and renewal requirements and procedures for the PBM license. PBMs that lose their physical license would pay a $100 fine to have it replaced.

Section 2907 of this article would authorize the Superintendent of Financial Services to refuse renewal, revoke or suspend any PBM license in violation of the PBM licensure requirements including, but not limited to, adherence to insurance law, felony convictions and failure to pay income tax.

Section 2908 of this article would set forth financial penalties that the Superintendent of Financial Services may require a PBM to pay in lieu of revocation or suspension of a PBM registration or license. Any entity in violation of this section shall, in addition to any other penalty provided by law, be subject to a penalty of the greater of (1) one thousand dollars for the first violation and two thousand five hundred dollars for each subsequent violation or (2) the aggregate economic gross receipts attributable to all violations.

Section 2909 of this article would require a thirty day stay on actions of the Superintendent of Financial Services upon the commencement of any legal objection, as allowed in civil practice law, presented by the PBM under review.

Section 2910 of this article would prohibit any entity subject to these provisions whose registration or license has been revoked in any state or territory of the United States from becoming employed or appointed by a PBM, engaging in business with a PBM, having interest in a PBM, or becoming a shareholder of a PBM, without written consent of the Superintendent of Financial Services.

Section 2911 of this article would require any PBM registrant or licensee to inform the Superintendent of Financial Services of a change of address within 30 days of the change.

Section 2912 of this article would clarify that PBMs are not exempt from complying with any other applicable State laws.

Section 2913 of this article would authorize an assessment on registered and licensed PBMs for the operating expenses of regulating PBMs.

Section two of this bill would amend Insurance Law § 2402-b to add the PBM violations specified in sections 2902 and 2905 of this bill as a "defined violation" in Insurance Law.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it protects consumers and ensures that PBMs are not contributing to the rising costs of prescription drugs through unfair business practices.

The costs associated with implementing these regulations would be supported by fees imposed on PBMs.

Effective Date:

This bill would take effect 180 days after enactment, provided, however, that upon enactment, the Superintendent of Financial Services may repeal, amend, or promulgate any rules and regulations necessary for the implementation of the provisions of this act.

Part K - Authorize additional capital support for essential health care providers

Purpose:

This bill would provide additional health care capital support for essential health care providers by establishing a new statewide Health Care Facility Transformation Program.

Summary of Provisions and Statement in Support:

The Executive Budget continues past efforts providing capital support to health care institutions through the creation of a second Health Care Facility Transformation Program. Funding of $500 million, which would be made available to eligible health care systems statewide, would be financed through a combination of bonds issued by the Dormitory Authority of the State of New York (DASNY) and hard dollar capital funding.

The bill would create a new section §2825-e of the Public Health Law in order to establish a statewide Health Care Facility Transformation Program. This Program would provide funding to support capital projects, debt retirement, working capital, and other non-capital projects that facilitate health care transformation and expand access to health care services. Projects that received awards through the Brooklyn Health Care Facility Transformation Program (PHL §2825-a) or the Oneida Health Care Facility Transformation Program (PHL §2825-b) would not be eligible for funding. Of this amount, $50 million would be specifically awarded to Montefiore Medical Center, and a minimum of $30 million would be made available to community based health care providers who demonstrate that they would fulfill a health care need for acute inpatient, outpatient, primary, home care, or residential health care services in a community. These providers include diagnostic and treatment centers, mental health clinics, alcohol

and substance abuse treatment clinics, primary care providers, and home care providers.

Budget Implications:

Up to $500 million in funding would be made available for this Program. $300 million would be bonded through DASNY while the remaining $200 million would be hard dollar capital. Of the hard dollar capital funding, a minimum of $30 million would be made available to community based health care providers.

Effective Date:

This bill would take on effect April 1, 2017.

Part L - Establish the Health Care Regulation Modernization Team

Purpose:

This bill would promote a more efficient health care system by assembling a multi-stakeholder work group and stakeholder engagement process to modernize the State's health regulatory framework.

Summary of Provisions and Statement in Support:

Through Governor Cuomo's Medicaid Redesign Team (MRT) and New York State Health Innovation Plan (SHIP) initiatives, New York State has lead the nation in transforming its health care delivery system. However, as these initiatives are being implemented across the State, it has become clear that New York State's complex and outdated health care regulations can be barriers to innovation and are in need of fundamental reform.

This bill would create a new Article in Public Health Law (29-H) to establish the Health Care Regulation Modernization Team within the Department of Health to create a more efficient health care system by modernizing the State's health regulatory framework. This team would begin its work no later than July 1, 2017, and report its findings and recommendations to the Governor by December 31, 2017. A copy of the report would also be provided to the Senate and Assembly health committees.

The team would consist of twenty-five voting members consisting of state employees or officers with relevant expertise, the chair and co-chair of the Public Health and Health Planning Council, representation from the Assembly and Senate, and stakeholders with expertise in areas related to in and outpatient health care delivery, home health care, community based organizations, health care insurance, health care workforce, health care facility design and construction, consumer rights, and other relevant areas.

The work group's specific areas of focus would include, but not be limited to:

- Streamlining Certificate of Need and other licensure or construction approval processes;
- Identifying, streamlining, and aligning statutes, regulations and polices where there is duplication and inconsistency in federal and State standards;
- Creating more flexible rules related to: licensing and scope of practice for clinicians and caregivers; telehealth; and alternative models of delivering health care services;
- Streamlining and simplifying the provision of primary care, mental health and substance use disorder services in an integrated clinic setting;
- Aligning care models around home and community based services consistent with New York State's Olmstead Report;
- Exploring circumstances where statewide regulatory requirements may not be appropriate for regions or communities characterized by isolation, poverty, or other factors impacting access;
- Evaluating where changes in statute, regulation and policy can support timely and effective emergency medical services and pre-hospital care; and
- Where permanent changes in statute or regulation may not yet be appropriate, authorizing the implementation of pilot programs to test and evaluate new and innovative models of health care.

By January 31, 2018, the Commissioner of Health would recommend to the Governor whether the health care regulation modernization team should continue.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because administrative savings for the State would be generated once new methodologies for efficient healthcare are tested and put in place.

Effective Date:

This bill would take effect April 1, 2017.

Part M - Require public water systems to test drinking water for the presence of emerging contaminants

Purpose:

This bill would establish the "Emerging Contaminant Monitoring Act," which requires covered public water systems to test for the presence of emerging contaminants in drinking water once every three years in accordance with a schedule to be determined by the Department of Health (DOH).

The EPA currently has an Unregulated Contaminant Monitoring Rule that mandates testing for unregulated contaminants only in water systems serving more than 10,000 people. This means that only about 5 percent of the community water systems in New York are required to test.

Despite formal requests from New York State, the EPA has failed to overhaul this inadequate monitoring program. As such, this bill would advance legislation to mandate the testing of certain public water supplies for unregulated contaminants, regardless of size.

Summary of Provisions and Statement in Support:

The Emerging Contaminant Monitoring Act builds upon the progress of the "Water Quality Rapid Response Team" to enhance DOH's ability to identify contaminants that pose previously unknown hazards to human health and to inform New Yorkers when potentially hazardous substances contaminate their drinking water.

Section 1 would establish the short title. This act would be known and may be cited as the "Emerging Contaminant Monitoring Act."

Section 2 would add a new § 1112 to the Public Health Law, establishing parameters of the emerging contaminant monitoring by:

- Establishing relevant definitions of "emerging contaminants," "notification level," and "covered public water system";
- Requiring DOH to disseminate regulations listing substances identified as emerging contaminants that meet specific criteria;
- Requiring covered public water systems to test drinking water for the presence of emerging contaminants, and unregulated contaminants monitored under the federal Safe Drinking Water Act, consistent with regulations developed by DOH;
- Requiring every covered public water system test to be conducted by a laboratory certified by DOH. Results of these tests would be transmitted back to DOH electronically;
- Mandating covered public water systems to notify the State and all owners of real property served by the covered water system within ten days; and
- Allowing DOH to provide financial assistance when compliance imposes an unreasonable financial hardship.

Section 3 would amend Public Health Law § 502 to add a new subdivision permitting DOH to require environmental laboratories to report test results in a manner to be determined by the Department.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget to achieve the Governor's commitment to ensuring safe drinking water to New Yorkers.

This bill has an estimated fiscal impact of $500,000 in FY 2018 and $2.9 million once annualized to support hardship funding.

Effective Date:

This bill would be effective immediately.

Part N - Require the testing of private water wells

Purpose:

This bill would establish the "Residential Well Testing Act," which requires the testing of individual onsite water supply systems (wells) prior to and as a condition of sale of any residential real property, upon completion of the drilling of any water well, and at least once every five years for rental properties.

Summary of Provisions and Statement in Support:

The "Residential Well Testing Act" builds upon the success of the "Water Quality Rapid Response Team" and allows the Department of Health (DOH) to ensure all New Yorkers have access to safe water.

Currently, the Environmental Protection Agency (EPA) has no requirements for the testing of private drinking wells and many of these wells go untested every year. This bill would establish standards for testing new or existing wells for characteristics and contaminants known to have a negative impact on public health.

Section 1 would establish the short title. This act shall be known and may be cited as the "Residential Well Testing Act."

Section 2 would amend the Public Health Law to add a new section § 1111 to establish testing of individual wells by:

- Requiring DOH to issue regulations listing characteristics or contaminants that private wells must be tested for;
- Allowing DOH to add characteristics or contaminants by declaration and regulations;
- Requiring lessors of residential real property to test for contaminants at least once every five years, as well as providing rental tenants a written copy of validated test results;
- Requiring the testing for contaminants to be performed as a condition of sale of any residential property;
- Requiring tests to be performed by laboratories certified by DOH's Environmental Laboratory Approval Program;
- Mandating certified laboratories to send data to DOH electronically; and

- Allowing DOH to provide financial assistance when compliance imposes an unreasonable financial hardship.

Section 3 would amend Public Health Law § 502 to add a new subdivision permitting DOH to require environmental laboratories to report test results in a manner to be determined by DOH.

Section 4 would add a new section § 468 to the Real Property Law requiring the testing of private water supplies as a condition of the sale of a residential real property.

Section 5 would amend the Environmental Conservation Law to require testing for the drilling of new wells in accordance with DOH standards.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget to achieve the Governor's commitment to ensuring safe drinking water for New Yorkers. This bill is expected to have a fiscal impact, but is yet to be determined.

Effective Date:

This bill would take effect 180 days after enactment.

Part O - Authorizes the establishment of voluntary jail-based restoration to competency programs within locally-operated jails and State prisons operated by the Department of Corrections and Community Supervision

Purpose:

This bill would authorize the Office of Mental Health (OMH) to permit restoration to competency within local and State operated jail-based residential settings provided such entities agree to participate in such a program.

Summary of Provisions and Statement in Support:

This proposal would amend Section 730.10 of the Criminal Procedure Law (CPL) to authorize the establishment of jail-based restoration to competency programs, for felony defendants pending judicial hearings, within locally-operated jails and State prisons operated by the Department of Corrections and Community Supervision (DOCCS), subject to the facility's consent. Specifically, NYS counties would be voluntarily authorized to develop residential mental health pod unit(s) within local jails for the purposes of housing, treating, and restoring felony-level defendants to competency as they await trial. Similarly, this proposal would voluntarily authorize DOCCS, by agreement with OMH, to develop similar restoration unit(s) within the NYS correctional system.

Currently, New York State CPL Section 730.10 provides that felony-level defendants may be restored to competency in an: a) OMH psychiatric center; b) psychiatric unit within an Art. 28 hospital; or c) outpatient basis in the community. This proposal would expand CPL to provide that restoration to competency may also take place in a mental health unit(s) operated within a state or local correctional facility, subject to the facility's consent.

OMH currently supports approximately 300 inpatient forensic beds that are used to serve an estimated 625 annual admissions of felony defendants deemed incompetent to stand trial. The cost per restoration is approximately $128,000 and the State and counties each pay 50 percent. By contrast, it is estimated that the per bed costs to restore these defendants in a jail-based setting is roughly one-third of the cost at a state facility (approximately $42,500 per restoration annually). Since counties reimburse OMH for the costs of any restorations that occur at state hospitals, this proposal would save participating counties 33 percent of what they spend for such services or approximately $21,500 per restoration. Additionally, any county that consents to operate a jail-based restoration program would be eligible for additional State grant funding for the design, planning, construction and/or the operation of such program. OMH plans to reinvest up to $850,000 in savings for such purposes. This proposal also authorizes OMH to provide eight full time clinical staff to augment a restoration unit at DOCCS, should the facility consent to doing so.

Restorations to competency in jail-based residential settings have been implemented or have legislative authority in nine other states (including California, Virginia and Wisconsin).

Budget Implications:

Enactment of this bill would generate OMH operational savings of $3.5 million when fully annualized and result in lower costs for participating local governments. A portion of this savings would be reinvested to support local governments and DOCCS operation costs.

Effective Date:

This bill would take effect immediately.

Part P - Amend Public Health Law to continue government rates and clarify all Behavioral Health services, except inpatient, are included; to extend those rates through March 31, 2020; and to add a value based payment requirement

Purpose:

This bill would amend Public Health Law and other laws relating to general hospital reimbursements for annual rates relating to the cap on local Medicaid expenditures, extending rates through March 31, 2020, and clarifying requirements that expenditures

to eligible providers meet certain value based payment metrics. This is intended to provide enhanced clarity and stability for behavioral health services.

Summary of Provisions and Statement in Support:

Under existing law and practice, Medicaid payments are made to Managed Care Organizations, who use the funds to reimburse providers for behavioral health services provided to Medicaid eligible outpatients using the Ambulatory Patient Group (APG) methodology, while non-clinic outpatient behavioral health services are being reimbursed at these rates administratively. This bill would clarify the statutory requirement for clinic services to be paid at APG rates to include non-clinic behavioral health services for enrolled Medicaid patients, except inpatient services. This bill also would extend the end date of these rates from June 30, 2018 to March 31, 2020.

This bill also would require that managed care expenditures paid to providers satisfy certain value based payment metrics, as defined in the Department of Health's value based payment roadmap.

Budget Implications:

This bill would continue government rates through 2020, which is consistent with Medicaid appropriations which are prepared on a two year cycle and the State's long term financial plan.

Effective Date:

This bill would take effect immediately.

Part Q – One-year deferral of the human services "Cost-of-Living Adjustment"

Purpose:

This bill would eliminate the statutory human services Cost of Living Adjustment (COLA) for the period of April 1, 2017 to March 31, 2018.

Summary of Provisions and Statement in Support:

This bill would establish a one-year deferral for a Cost of Living Adjustment (COLA) for the period beginning April 1, 2017 and ending March 31, 2018. It would also provide that when a COLA is provided beginning April 1, 2018, that those provisions would be in place for three years.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget because it would result in savings to the Financial Plan of $40 Million.

Effective Date:

This bill would take effect on and after April 1, 2017.

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.