

**FY 2019 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 public health law, in relation to establishing a temporary workgroup on capital rate methodology for capital expenditures to hospitals and residential nursing facilities; and to amend the social services law, in relation to standard coverage for physical therapy services under medical assistance for needy persons programs (Part A); to amend the public health law, in relation to payments to residential health care facilities; to amend the social services law and the public health law, in relation to assisted living program providers licensed in the state; to amend the social services law, in relation to payments for certain medical assistance provided to eligible persons participating in the New York traumatic brain injury waiver program; and to repeal certain provisions of section 366 of the social services law relating to furnishing medical assistance (Part B); to amend the social services law and the public health law, in relation to health homes and penalties for managed care providers (Part C); to amend the social services law and the public health law, in relation to drug coverage, updating the professional dispensing fee, copayments, pharmacist physician collaboration and comprehensive medication management; and to repeal certain provisions of the social services law relating thereto (Part D); to amend the social services law, in relation to reimbursement of transportation costs, reimbursement of emergency transportation services and supplemental transportation payments; and repealing certain provisions of such law relating thereto (Part E); providing for not-for-profit and tax exempt corporations' Medicaid capitation rates (Part F); to amend the public health law, in relation to authorizing

certain retail practices to offer health services (Part G); to amend the education law, in relation to the practice of nursing by certified registered nurse anesthetists (Part H); to amend the social services law and the public health law, in relation to managed care organizations (Part I); to amend the state finance law, in relation to the false claims act (Part J); authorizing the department of health to require certain health care providers to report on costs incurred; and to amend 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 (Part K); to amend the social services law and the public health law, in relation to the child health insurance program (Part L); to amend chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, in relation to apportioning premium for certain policies; to amend part J of chapter 63 of the laws of 2001 amending chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, relating to the effectiveness of certain provisions of such chapter, in relation to extending certain provisions concerning the hospital excess liability pool; and to amend part H of chapter 57 of the laws of 2017, amending the New York Health Care Reform Act of 1996 and other laws relating to extending certain provisions relating thereto, in relation to extending provisions relating to excess coverage (Part M); to amend part C of chapter 57 of the laws of 2006, establishing a cost of living adjustment for designated human services, in relation to the determination thereof; and to repeal certain provisions thereof relating to eligible programs (Part N); to amend the public health law and the insurance law, in relation to the early intervention program for

infants and toddlers with disabilities and their families (Part O); to amend the public health law, in relation to the empire clinical research investigator program and hospital resident hour audits; and to repeal certain provisions of the public health law relating thereto (Part P); to amend the public health law, in relation to the health care facility transformation program (Part Q); to amend the public health law, the executive law, and the real property law, in relation to lead abatement and enforcement (Part R); to amend the public health law and the social services law, in relation to the establishment of community paramedicine collaboratives (Subpart A); to amend the public health law and the mental hygiene law, in relation to integrated services (Subpart B); and to amend the public health law, in relation to the definitions of telehealth provider, originating site and remote patient monitoring (Subpart C)(Part S); to amend chapter 59 of the laws of 2016, amending the social services law and other laws relating to authorizing the commissioner of health to apply federally established consumer price index penalties for generic drugs, and authorizing the commissioner of health to impose penalties on managed care plans for reporting late or incorrect encounter data, in relation to the effectiveness of certain provisions of such chapter; to amend chapter 58 of the laws of 2007, amending the social services law and other laws relating to adjustments of rates, in relation to the effectiveness of certain provisions of such chapter; to amend chapter 54 of the laws of 2016, amending 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 administration thereof, in relation to the effectiveness thereof; to amend chapter 906 of the laws of 1984, amending the social services law relating to expanding medical assistance eligibility and the scope of services available to certain

persons with disabilities, in relation to the effectiveness thereof; and 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 rates of payments (Part T); to amend part NN of chapter 58 of the laws of 2015 amending the mental hygiene law relating to clarifying the authority of the commissioners in the department of mental hygiene to design and implement time-limited demonstration programs, in relation to the effectiveness thereof (Part U); to amend chapter 62 of the laws of 2003, amending the mental hygiene law and the state finance law relating to the community mental health support and workforce reinvestment program, the membership of subcommittees for mental health of community services boards and the duties of such subcommittees and creating the community mental health and workforce reinvestment account, in relation to extending such provisions relating thereto (Part V); to amend the criminal procedure law, in relation to amending the definition of appropriate institution; and providing for the repeal of such provisions upon expiration thereof (Part W); to amend chapter 111 of the laws of 2010 amending the mental hygiene law relating to the receipt of federal and state benefits received by individuals receiving care in facilities operated by an office of the department of mental hygiene, in relation to the effectiveness thereof (Part X); to amend the education law, in relation to persons practicing in certain licensed programs or services who are exempt from practice requirements of professionals licensed by the department of education; to amend chapter 420 of the laws of 2002, amending the education law relating to the profession of social work, in relation to extending the expiration of certain provisions thereof; to

amend chapter 676 of the laws of 2002, amending the education law relating to the practice of psychology, in relation to extending the expiration of certain provisions; and to amend chapter 130 of the laws of 2010, amending the education law and other laws relating to the registration of entities providing certain professional services and licensure of certain professions, in relation to extending certain provisions thereof (Part Y); to amend the social services law, in relation to adding demonstration waivers to waivers allowable for home and community-based services; to amend the social services law, in relation to adding successor federal waivers to waivers granted under subsection (c) of section 1915 of the federal social security law, in relation to nursing facility services; to amend the social services law, in relation to waivers for high quality and integrated care; to amend part C of 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 fiscal year, in relation to the effectiveness thereof; to amend the mental hygiene law, in relation to adding new and successor federal waivers to waivers in relation to home and community-based services; to amend part A of chapter 56 of the laws of 2013, 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 2013-2014 state fiscal year, in relation to the effectiveness of certain provisions thereof; to amend the public health law, in relation to expansion of comprehensive health services plans; to amend chapter 659 of the laws of 1997, amending the public health law and other laws relating to creation of continuing care retirement communities, in relation to extending provisions thereof; to amend the public health law, in relation to managed long

term care plans, health and long term care services and developmental disability individual support and care coordination organizations; to amend chapter 165 of the laws of 1991, amending the public health law and other laws relating to establishing payments for medical assistance, in relation to extending the provisions thereof; to amend the mental hygiene law, in relation to reimbursement rates; and to amend chapter 710 of the laws of 1988, amending the social services law and the education law relating to medical assistance eligibility of certain persons and providing for managed medical care demonstration programs, in relation to extending the provisions thereof (Part Z); and to amend part C of chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to the inclusion and development of certain cost of living adjustments (Part AA)

### **PURPOSE:**

This bill contains provisions needed to implement the Health and Mental Hygiene portions of the FY 2019 Executive Budget.

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

### **Part A – Hospital related Medicaid Redesign Team recommendations.**

#### **Purpose:**

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

#### **Summary of Provisions and Statement in Support:**

Section one of this bill would amend Public Health Law by adding a new §2827 to establish a temporary workgroup to make recommendations on streamlining the Medicaid capital rate methodology for hospitals and nursing homes that achieves a one percent reduction to Medicaid capital expenditures.

Section two of this bill would amend subdivision 5-d of §2807-k of the Public Health Law to extend the Indigent Care Pool provisions through December 31, 2019.

Section three of this bill would amend subdivision 14-a of §2807 of the Public Health Law to create a penalty pool by creating performance targets for hospitals to reduce potentially preventable emergency department visits, reduce or eliminate the payment of rates based on the quality and safety scores of a hospital, and facilitate necessary quality improvements in hospitals. Ten million dollars annually from the penalty pool will be reinvested into preventive services including increasing access to physical therapy, expanding coverage for social workers in hospitals, and implementing a diabetes prevention program.

Section four of this bill would amend subdivision 2-a of §2807 of the Public Health Law to increase the cap on Physical Therapy (PT) visits from twenty visits per year to forty visits per year, associated with the investment cited in section three of this bill.

Section five of this bill would amend subdivision 2 of §365-a of the Social Services Law to expand social worker coverage in Article 28 settings, associated with the investment cited in section three of this bill.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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 hospital related proposals in this section account for \$11.7 million State share in savings in FY 2019 and \$13.0 million State share in savings in FY 2020.

#### Effective Date:

This bill would take effect April 1, 2018.

### **Part B – 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 §2808 to impose an annual two percent poor performance penalty on nursing homes with a one-star health facility

quality rating, as reported by an independent assessor, to link payments for Medicaid nursing home services to quality outcomes.

Section two of this bill would amend Social Services Law §461-1 to allow current Assisted Living Program (ALP) providers to add up to nine additional slots by redistributing unused ALP slots, permitting up to 500 new ALP slots in counties with no or limited ALP capacity and up to 500 new slots in counties where current occupancy exceeds 85 percent. Additionally a voucher demonstration project for up to 200 persons with dementia in non-Medicaid assisted living facilities will be created.

Section three of this bill would amend Public Health Law §4403-f to reserve enrollment in Managed Long Term Care (MLTC) plans for individuals demonstrating a long-term need for home and community based services, specifically those who score a 9 or above on the Universal Assessment System (UAS) for New York and require at least 120 consecutive days of community-based long term care.

Section four of this bill would amend Public Health Law §4403-f to improve care coordination by requiring continuous MLTC plan enrollment for 12 months.

Section five of this bill would amend Public Health Law §4403-f to eliminate duplication of care management services provided to MLTC members residing in nursing homes for longer than six months by providing their care through fee-for-service.

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

Section seven of this bill would amend Social Services Law §366-c to align the minimum level of resources retained by the spouse of a Medicaid recipient in order to qualify for Medicaid long term care eligibility with the Federal minimum (\$24,180).

Section eight of this bill would amend Social Services Law §367-a to adjust the free-standing clinic rate for Medicare Part B beneficiaries participating in the traumatic brain injury waiver program to be at or above the approved medical assistance payment level less the amount payable under Medicare Part B.

Section nine of this bill would add a new section of unconsolidated law to authorize the Department of Health (DOH) to conduct a study of home and community based services in rural areas of the State. Depending on the results of the analysis, DOH could provide a targeted Medicaid rate enhancement for fee-for-service personal care and waiver programs.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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 \$106.5 million State share in savings in FY 2019 and \$157.4 million State share in savings in FY 2020.

Effective Date:

All sections of this bill would take effect immediately, except for section four, which would take effect on October 1, 2018.

**Part C – Medicaid Managed Care related recommendations.**

Purpose:

This bill would make statutory changes necessary to achieve efficiencies in the Medicaid managed care and Health Homes programs.

Summary of Provisions and Statement in Support:

Section 1 of this bill would amend Social Services Law §365-l(2) to add Medicaid managed care enrollees to those eligible to receive incentive payments for participating in wellness activities and for avoiding unnecessary hospitalizations and unnecessary utilization of hospital emergency department services.

Section 2 of this bill would amend Social Services Law §365-l by adding a new subdivision 2-d to establish enrollment targets for special needs managed care plans and compels plans to work collaboratively with health home providers to achieve these targets. Penalties may be assessed to plans that fail to meet established participation targets, except for failure of a health home to work collaboratively.

Section 3 of this bill would amend Public Health Law §2899 paragraph 6 to require criminal history record checks for employees of health homes, subcontractors of health homes, or of any entity that provides home and community based services to enrollees who are diagnosed with developmental disability or under 21 years of age.

Section 4 of this bill would amend Public Health Law §2899-a subdivision 9 paragraph (b) by establishing reimbursement subject to the availability of Federal funding, for expanded criminal history record checks.

Section 5 of this bill would amend Public Health Law §2899-a subdivision 10 by requiring health homes, subcontractors of health homes, or any entity that provides home and community based services to enrollees who are diagnosed with developmental disability or under 21 years of age to conduct appropriate direct observation and evaluation of employees whose criminal history information check and determination are pending.

Section 6 of this bill would amend Social Services Law §424-a subdivision 3 by providing access to information contained in the statewide central register of child abuse and maltreatment for health homes, subcontractors of health homes, or any entity that provides home and community based services to enrollees who are diagnosed with developmental disability or under 21 years of age.

Section 7 of this bill would amend Social Services Law §413 subdivision 1 paragraph a to require employees of health homes, subcontractors of health homes, or any entity that provides home and community based services to enrollees who are diagnosed with developmental disability or are under 21 years of age to report child abuse or maltreatment.

Section 8 of this bill would amend Social Services Law §364-j to penalize managed care plans for failure to submit a performing provider system (PPS) partnership plan by July 1, 2018. Penalties would be effectuated via a 0.85 percent reduction in a plans' monthly capitated reimbursement rate.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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 proposals in this section account for \$25.9 million in savings in FY 2019 and \$23.9 million in FY 2020.

Effective Date:

This bill would take effect April 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:

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

Sections two and three of this bill would amend Social Services Law §365-a and §367-a to align coverage for non-prescription drugs and over-the-counter products 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.

Sections four and five 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 when the justification for use is not clinically supported.

Section six of this bill would amend Public Health Law by adding a new §280-c to allow physicians, nurse practitioners and pharmacists 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.

Section seven of this bill would amend Social Services Law §365-a to build on the State's effort to combat the opioid crisis by requiring a treatment plan and attestation of prescriber monitoring, including a patient-prescriber agreement when opioids are being prescribed for pain lasting more than three months or past the time of normal tissue healing. Additionally the drug formulary is modified to encourage access to non-opioid alternatives. Patients being treated for cancer that is not in remission, in hospice or other end-of-life care, or whose pain is being managed as palliative care are exempted from these requirements.

Section eight of the bill would amend Public Health Law §280 by extending the pharmacy drug cap through State fiscal year 2020.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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 \$29.8 million in net State savings in FY 2019 and \$38.4 million in net State savings in FY 2020

#### Effective Date:

This bill would take effect April 1, 2018 except that sections two and three take effect July 1, 2018.

### **Part E – Transportation-related Medicaid Redesign Team recommendations.**

#### Purpose:

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

Summary of Provisions and Statement in Support:

Section one of this bill would amend Social Services Law §365-h subdivision 4 to carve-out the transportation benefit from the Managed Long Term Care (not including PACE plans) 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 §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 ambulance reimbursement rates based on recommendations contained within the statutorily required Medicaid Transportation Rate Adequacy Report.

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

Budget Implications:

Enactment of this bill is necessary to implement the 2019 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 Transportation proposals in this section account for \$13.0 million in savings in FY 2019 and \$19.0 million in FY 2020.

Effective Date:

This bill will take effect April 1, 2018 except that section one takes effect October 1, 2018.

**Part F – Reprogram Excess Medicaid Managed Care Reserves.**

Purpose:

This bill will ensure appropriate Medicaid financing of managed care plans while preserving necessary contingent reserves.

Summary of Provisions and Statement in Support:

This bill would allow the Commissioner of Health to make Medicaid rate adjustments in the case of Medicaid managed care plans with reserves in excess of the minimum contingent reserve requirement.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date:

This bill would take effect April 1, 2018.

**Part G – Authorizing Health Services Offered by Retail Practices.**

Purpose:

This bill would authorize the provision of certain health services in retail settings by “retail practices”. These retail practices would offer certain basic health services in a retail setting such as a pharmacy, grocery store, or shopping mall that would provide basic treatment and referral for common healthcare complaints.

Studies have shown that retail clinics are 40-80% less expensive than alternate sites of care while providing commensurate quality. Retail practices offer extended hours with no appointment needed, increasing access to primary care services and providing an alternative to emergency room care.

Summary of Provisions and Statement in Support:

Section one of this bill would amend the Public Health Law by enacting a new Article 29-J to authorize the provision of certain health services in retail settings.

Public Health Law §2999-hh would set forth applicable definitions and define a “retail practice” as an entity located within a retail business that is open to the public with access to the retail practice from within the main premises of the retail operation. Retail practices would be staffed at all times by a physician, physician assistant, or nurse practitioner and are authorized to offer 'retail health services'.

Retail health services include treatment for minor acute episodic illnesses or conditions, periodic wellness treatment including immunizations, treatment of minor traumas, administration of opioid antagonists in case of an emergency, and limited behavioral health screening and referral, and may include certain laboratory tests.

Retail health services do not include procedures utilizing sedation or anesthesia, care for patients under 24 months of age, vaccinations for individuals between 24 months and 18 years of age other than flu shots, employer provided on-site health services, educational courses on health topics, or services provided on a time-limited basis such as flu clinics or health fairs.

Public Health Law §2999-ii would define “retail practice sponsors” as business entities organized under the laws of New York, which could include professional corporations, business corporations, and entities licensed under PHL Article 28. This would permit, for example, general hospitals and diagnostic and treatment centers including federally qualified health centers, to serve as retail practice sponsors.

Public Health Law § 2999-jj would provide that retail practices would have to: provide treatment without discrimination as to source of payment, which requires a retail practice to accept Medicaid; offer a sliding payment scale to patients without health care coverage and provide such patients with information on enrolling in the New York State of Health, the State’s health plan marketplace; accept walk-in patients and offer extended business hours; post online a list of services they offer together with the prices of such services; and post signs to advise that prescriptions and over-the-counter supplies can be purchased elsewhere.

Further, retail practices must enter into and maintain at least one collaborative relationship with a hospital, physician’s practice, accountable care organization, or Performing Provider System under the Delivery System Reform Incentive Payment (DSRIP) Program; ask patients whether they have primary care providers and provide a list of local providers to those patients indicating that they do not; refer patients to other providers as appropriate; participate in electronic health records and the Statewide Health Information Network for New York (SHIN-NY); and attain and maintain accreditation.

Public Health Law §2999-kk would require that retail practices obtain and maintain accreditation and provide for the Department to approve accrediting agencies.

Public Health Law §2999-ll would set forth additional provisions such as clarifying that this new section of law does not change the scope of practice of any licensed or certified practitioner.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget and the State’s multi-year Financial Plan by increasing access to cost-effective primary care services for Medicaid recipients and will reduce unnecessary emergency room visits by providing care in the most appropriate setting.

This bill would generate \$5 million in annual State savings in FY 2019 and FY 2020.

#### Effective Date:

This bill would take effect immediately.

### **Part H – Expand scope of practice for certified nurse anesthetists (CRNAs).**

### Purpose:

This bill would codify the practice of nurse anesthesia and authorize Certified Registered Nurse Anesthetists (CRNAs) to practice to the full extent of their education and training, consistent with other States, to increase access to cost-effective anesthesia services while maintaining high quality of care.

### Summary of Provisions and Statement in Support:

Section one of the bill would add a new Education Law § 6902(4) to permit registered professional nurses who are certified as CRNAs pursuant to a new Education Law § 6912 to practice “nurse anesthesia.” Currently, the scope of this practice is defined in Department of Health regulations.

Nurse anesthesia must be provided in collaboration with a qualified, licensed physician and includes: the administration of anesthesia and anesthesia related care to patients; preanesthesia evaluation and preparation; anesthetic induction, maintenance and emergence; post anesthesia care; perianesthesia nursing and clinical support functions; and pain management.

The new section specifies that CRNAs may work in: general hospitals, hospital outpatient surgical departments, and diagnostic and treatment centers licensed by the Department of Health and authorized to provide sedation, anesthesia services, and/or pain management in connection with such licensure; practices where office-based surgery is performed or pain management services are provided; and dentists’ and periodontists’ offices where sedation and/or anesthesia services are provided.

The new section also provides that anesthesia services offered by the provider, including services provided by CRNAs, shall be directed by a physician who is responsible for the clinical aspects of all anesthesia services offered by the provider and is qualified to determine the need for and administer anesthesia.

Section 2 of the bill would add a new Education Law § 6912 regarding the education, training and licensure requirements for CRNAs. In order to be certified, CRNAs must be licensed registered nurses who have completed an accredited program who are certified by a State Education Department (SED) recognized national certifying body. Applicants must apply to SED and pay a \$50 application fee, with registration required triennially. Currently practicing CRNAs would have two years to obtain certification within two years of the effective date of this bill and may practice while his or her application is pending.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget as it achieves \$5.0 million annually in savings within the Global Cap.

Effective Date:

This bill would take effect immediately.

**Part I – Medicaid Integrity.**

Purpose:

This bill would make statutory changes necessary to clarify OMIG's authority to recover overpayments and to ensure program integrity within the Medicaid Managed Care and Managed Long Term Care programs.

Summary of Provisions and Statement in Support:

Section one and two of this bill would amend Social Services Law §364-j to add two new subdivisions clarifying that payments made by the Medicaid program to a managed care organization (MCO), and from an MCO to any subcontractor or provider, are public funds, and requiring that MCOs recover overpayments from subcontractors or providers when such overpayments have been identified by a State audit or investigation.

Section three of this bill would amend Social Services Law §364-j to add a new subdivision requiring MCOs to refer all cases of potential fraud, waste or abuse to OMIG, in conformance with federal law. In instances where an MCO has actual knowledge of an act of fraud being committed and willfully fails to refer to OMIG, OMIG may impose a fine of up to \$100,000 for each determination.

Section four of this bill would amend Public Health Law to add a new section §37 to permit OMIG to impose fines (up to \$5,000 for a provider or \$100,000 for a MCO) for failure to comply with the rules, regulations, or directives of the Medicaid program, including instances when an MCO submits a cost report containing errors, or intentionally or systematically submits inaccurate encounter data to the state.

Section five of this bill would amend Social Services Law §364-j to create an express exception to the prohibition on assessing penalties for late, incomplete or inaccurate encounter data, in cases of fraud or abuse.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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 Medicaid Integrity proposals in this section account for \$5 million in savings in FY 2019 and \$10 million in savings in FY 2020.

Effective Date:

This bill would take effect 90 days after enactment.

**Part J – Amend New York State’s False Claims Act penalties to align with the Federal False Claims Act.**

Purpose:

This bill would amend New York State’s False Claims Act penalties to align with the Federal False Claims Act penalties in order to preserve enhanced recovery benefits.

Summary of Provisions and Statement in Support:

This bill would amend subdivision 1 of section 189 of the State Finance Law to automatically adjust the minimum and maximum penalty amounts to equal the civil penalty allowed under the Federal False Claims Act, if and as the penalties are adjusted for inflation.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because states that enact compliant False Claims Acts are permitted to reduce the FMAP paid to the Federal Government by 10%, allowing the State to keep a greater share of fraud recoveries. In FY 2016, NYS received \$13.5 million attributable to the 10% enhancement for compliance with the Federal False Claims Act.

Effective Date:

This bill would take effect immediately.

**Part K – 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 authorizes the Department of Health to require any Medicaid provider within fee-for-service or managed care to submit cost reporting.

Section two would amend the Laws of 2017 to extend the Medicaid Global Cap budgeting construct through FY 2020.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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.

Effective Date:

This bill would take effect immediately.

**Part L – Child Health Plus related recommendations.**

Purpose:

This bill would provide the Executive with the authority to make changes to the Child Health Plus program in the event that Congress does not reauthorize Federal funding and to achieve efficiencies within the program.

Summary of Provisions and Statement in Support:

Section 1 of this bill would amend §2511 of the Public Health Law to allow the State to make necessary programmatic changes in the event that Congress reduces or eliminates Federal funding for the Child Health Plus program on and after October 1, 2017. The Director and Commissioner will notify the Legislature of the amount of funding that has been reduced and the actions being taken to align program spending with current State funding levels.

Section 2 of this bill would amend Social Services Law §369 subdivision seven by adding the Child Health Plus program the list of programs which are eligible to contract with outside entities for the purpose of conducting third party liability recoveries to ensure an efficient use of public resources.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget and the State's multi-year Financial Plan. This bill will also allow the State to make necessary programmatic changes in the event that Federal funding for the Child Health Plus program is reduced or eliminated.

Effective Date:

This bill would take effect April 1, 2018.

**Part M – Extend the Physicians Excess Medical Malpractice Program for one year.**

Purpose:

This bill would extend the provisions of the Excess Medical Malpractice program through June 30, 2019.

Summary of Provisions and Statement in Support:

Sections one through six amend chapter 266 of the laws of 1986 to extend the hospital excess liability pool by one year through June 30, 2019.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget in order to continue the Excess Medical Malpractice program.

Effective Date:

This bill would take effect immediately.

**Part N – Discontinue COLA payments to certain Department of Health providers.**

Purpose:

This bill would discontinue Cost of Living Adjustment (COLA) payments to certain DOH providers.

Summary of Provisions and Statement in Support:

In 2006, DOH and other human service agencies authorized COLA payments within certain programs. The COLA payments were indexed to the Consumer Price Index, and currently set at 0.2%. However, COLA payments were not made regularly. These payments were last paid in FY 2017.

This proposal would discontinue COLA payments within certain DOH programs.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget to achieve savings of \$19.9 million in FY 2019.

Effective Date:

This bill would take effect April 1, 2018.

**Part O – Reform the Early Intervention program.**

### Purpose:

This bill would reform the Early Intervention (EI) program by streamlining the eligibility process and ensuring appropriate health insurance reimbursement for covered EI services.

### Summary of Provisions and Statement in Support:

EI 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. 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.

Currently, a child may be referred to EI when the child's parent or a "primary referral source" – such as a health care provider – believes that the child is suspected of having a developmental delay or certain diagnosed conditions. A multidisciplinary evaluation and assessment is conducted to determine the child's eligibility for EI. If the evaluator determines that the child is eligible, an Individualized Family Services Plan (IFSP) is developed, setting forth the services plan for the child and identifying the providers who would provide those services.

Sections 1 through 4 would decrease the time from referral to the provision of services and reduce unnecessary testing by streamlining the evaluation process and tailoring the process to the child. Reducing unnecessary evaluations will also increase provider capacity to deliver services.

Sections 1 and 2 would amend Public Health Law § 2541 to revise the definitions of "evaluation" and "evaluator" and to define the terms, "partial evaluation," "multidisciplinary" and "screening."

Section 3 would amend Public Health Law § 2542(3) to require persons who refer children to EI to inform parents that, for children with a diagnosed physical or mental condition, eligibility would be established through a records review.

Section 4 would amend PHL § 2544 to:

- Require service coordinators to inform parents of the screening, evaluation, and review procedures;
- Require screenings for children referred to EI to determine if they are suspected of having a disability; if, based on the screening, a child is suspected of having a disability, then an evaluation will be conducted;
- Establish that for children with a diagnosed physical or mental condition eligibility would be established using the child's medical or other records;

- Establish that if a child is found eligible, he or she will receive: an assessment to identify the services appropriate to meet his or her needs, a voluntary family-directed assessment, and an assessment of any transportation needs; and
- Require that, following a request by a parent, a full evaluation be conducted for a child who has a diagnosed physical or mental condition who was found ineligible following a records review.

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 SFY 2013 established a direct relationship between third party payers and a State Fiscal Agent (SFA) to manage EI claims. However, in SFY 2017 alone, 82 percent of claims submitted to private insurers were denied --insurers received \$67 million in claim submissions, of which they only paid \$12 million in reimbursement. This is only 2 percent of total EI expenditures (\$660 million), compared with 43 percent (\$282 million) paid by Medicaid, 26 percent (\$172 million) paid by the State, and 29 percent (\$193 million) paid by counties.

Sections 5 through 16 would better define health insurer requirements and increase the enforcement capacity of the Department of Financial Services (DFS).

Section 5 would amend Insurance Law § 3235-a to require insurers to:

- Pay for EI services that are covered under the child's insurance policy; and
- Consider an IFSP signed by the child's health care provider, as part of a medical necessity review for EI services.

Sections 6 and 7 would amend Public Health Law § 2559 to require the parent to provide, or allow others (the county, service coordinator, or provider) to obtain, the health care provider's signature on the IFSP, as required by section 5.

Additionally, section 6 would require providers, with assistance from the SFA, to appeal insurer payment denials prior to submitting such claims to the county for payment. Pursuing at least one level of appeal would allow DFS to identify and address patterns of denials for EI services that are inconsistent with the Insurance Law.

Sections 8 through 15 would amend Articles 49 of the Public Health Law and Insurance Law to clarify that EI providers and services are subject to the utilization review and external appeal requirements in New York State Law.

Section 16 would amend Insurance Law § 109 to increase the maximum fine for entities regulated under the Insurance Law that are found to have improperly paid a claim or made a false statement to DFS.

Section 17 would establish that providers will receive a two percent rate increase upon enactment of the requirement that they appeal insurer payment denials.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget to achieve a total net savings of \$3.2 million in FY 2019 and \$9.5 million once annualized. Additionally, this bill would drive local savings of \$9.8 million annually.

Effective Date:

This bill would take effect April 1, 2018.

**Part P – Eliminate certain Health Care Reform Act (HCRA) programs.**

Purpose:

This bill would eliminate certain programs funded by the Health Care Reform Act (HCRA) to achieve administrative and financial efficiencies.

Summary of Provisions and Statement in Support:

Sections one and two of this bill would amend sections 2807-m and 2807-s to eliminate the ECRIP program. ECRIP provides funding to eligible institutions to train physicians in clinical research and support projects but provides no direct care services. Funding for this program is duplicative of coordinated biomedical research funding made available through the State's life science initiatives.

Section three of this program eliminates the requirement for hospital resident hour working audits to be performed annually. The Department of Health will substitute an attestation requirement going forward wherein hospitals certify that they are in compliance with applicable working hour and working condition requirements; however, the elimination of this program does not prohibit the State from performing targeted investigations into hospital compliance if necessary.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it achieves \$7.74 million annually in Financial Plan savings.

Effective Date:

This bill would take effect immediately.

## **Part Q – Authorize additional capital support for the health care providers.**

### Purpose:

This bill would provide additional health care capital support to 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 providers through the creation of a third Health Care Facility Transformation Program. Funding of \$425 million, which will 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.

Section 1 would create a new section §2825-f 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 transformative activities including merger and consolidation, acquisition and other activities intended to create financially sustainable systems of care, preserve or expand essential health care services, modernize facilities and infrastructure, foster participation in value based payments arrangements including but not limited to contracts with managed care plans and accountable care organizations, increase the quality of resident care in residential health care facilities, or improve health information technology infrastructure, including telehealth. Of this amount, \$60 million will be made available specifically for community-based health care providers. These providers include diagnostic and treatment centers, mental health clinics, alcohol and substance abuse treatment clinics, primary care providers, home care providers, and assisted living programs. Within the \$60 million, up to \$20 million will be made available specifically for assisted living facilities. Additionally, \$45 million will be made available to residential health care facilities.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because continued support to the Health care Facility Transformation Program is essential to support the needs of health care facilities throughout the State. Funding of \$425 million would be financed through bonds issued by the Dormitory Authority of the State of New York (DASNY).

### Effective Date:

This bill would take effect April 1, 2018

## **Part R – Reduce the Risk of Exposure to Lead Paint in Residential and Non-Residential Settings.**

### Purpose:

This bill would take measures to reduce the risk of exposure to lead paint.

### Summary of Provisions and Statement in Support:

This bill would strengthen lead paint regulations by requiring municipalities that administer the Uniform Fire Prevention and Building Code (“Uniform Code”) to report inspection and remediation outcome summaries to the Department of Health. It would require local code enforcement officers to conduct periodic inspections, and would establish protections for tenants from reporting suspected violations. It would also enable the Commissioner of Health to work with the Department of Housing and Community Renewal and other relevant agencies to inspect residential and non-residential properties and to ensure implementation of lead remediation measures.

Section 1 would amend Public Health Law §1373 to require municipalities that administer the Uniform Code, and contain areas identified as “high risk” by the Commissioner of Health, to submit reports to DOH summarizing the outcome of inspections and remediation conducted.

Section 2 would amend Executive Law §378 to include a presumption that all paint in and on residential and non-residential buildings and structures built before January 1, 1978 is lead-based, and would require that these buildings be maintained so that the paint does not deteriorate more than minimally.

Section 3 would amend Executive Law §381 to require the Department of State (DOS) to issue regulations requiring local code enforcement officers to conduct periodic inspections of local residential property to ensure compliance with Uniform Code requirements for lead paint. Additionally, DOS would be required to issue regulations concerning remedies to abate such violations, including certification by a lead-based paint inspector that a building does not contain lead paint and that deteriorated paint violations have been abated.

Section 4 would amend Real Property Law §233-b to create anti-retaliation protections for tenants.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

### Effective Date:

This bill would take effect 180 days after it becomes a law.

## **Part S – Regulatory Modernization Initiative related Medicaid Redesign Team recommendations.**

### Purpose:

This bill would make statutory changes that would implement program and policy changes to effectuate the recommendations of the Regulatory Modernization Initiative (RMI) for the purpose of aligning health care best practices with transformative changes to the laws that govern the health care system. These changes will facilitate an environment where providers, payers, and patients are best positioned to ensure access, promote patient safety, and lower costs.

### Summary of Provisions and Statement in Support:

Subpart A of this bill would amend Public Health Law §3001 and create a new Public Health Law §§2805-z and 3001-a to permit health care providers to collaborate on community paramedicine programs that allow emergency medical personnel to provide care within their certification, training, and experience in residential settings. Community paramedicine collaboratives would include, at a minimum: (1) a general hospital, nursing home, or diagnostic and treatment center; (2) a physician; (3) an emergency medical services provider; and (4) where the services are provided in a private residence, a home care services program. Collaboratives would be required to provide notification to the Department of Health (DOH) of the commencement of a community paramedicine program and would be required to report to DOH on their activities and outcomes.

Under the direction of a physician, community paramedicine programs would support objectives identified by the collaboratives and could include models that focus on providing post-discharge care following hospital admissions for the purpose of avoiding readmissions; evaluating, stabilizing, or treating nursing home residents to avoid preventable emergency transport to a hospital emergency room; and assisting individuals in self-managing their health or behavioral health conditions and minimizing environmental hazards in the home. These programs are anticipated to support the efforts of providers moving to value-based payment models. The bill also would amend Social Services Law §365-a to authorize Medicaid reimbursement for community paramedicine services, subject to federal financial participation.

Subpart B of this bill would amend Public Health Law §2801 and Mental Hygiene Law §§31.02 and 32.05 to clarify that providers licensed or certified under Public Health Law Article 28 or Mental Hygiene Law Articles 31 or 32 may provide integrated primary care, mental health and/or substance use disorder services when authorized to do so by DOH, the Office of Mental Health (OMH), or the Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to regulation without needing a second or third license or certification from one of the other agencies. These changes would facilitate

the ability of providers to address the co-occurring needs of their patients, promoting better overall coordination and accessibility of care and improved patient outcomes.

Subpart C of this bill would amend Public Health Law §2999-cc to expand the definition of “originating site” for purposes of Medicaid reimbursement for telehealth services to include a patient’s residence as well as any other location where the patient may be temporarily located. This bill would also add credentialed alcoholism and substance abuse counselors, authorized early intervention providers, and any other providers (as determined in regulation by OMH, OASAS, and the Office for People With Developmental Disabilities in consultation with DOH) to the list of medical professionals eligible to provide telehealth services. Finally, the bill would clarify that “remote patient monitoring,” which is the transmission of data to a distant telehealth provider for use in monitoring and managing medical conditions, could encompass follow-up telephone calls or additional interactive requests for the transmission of data in response to previous transmissions.

#### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 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.

These RMI proposals account for \$3.9 million in State share savings in FY 2019 and \$6.8 million in State share savings in FY 2020.

#### Effective Date:

Subpart A of this bill would take effect immediately. Subpart B of this bill would take effect 180 days after enactment. Subpart C of this bill would take effect 90 days after enactment.

### **Part T – 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 59 of the laws of 2016, extending the Department's ability to require drug manufacturers to provide rebates for any drug that has increased more than 300 hundred percent of its state maximum acquisition cost (SMAC) through April 1, 2023.

Section two of this bill would amend Chapter 58 of the laws of 2007, extending authorization for spousal budgeting in long-term care waiver programs, including Managed Long Term Care, through April 1, 2023.

Section three of this bill would amend Chapter 54 of the laws of 2016, extending a Statewide Medicaid integrity and efficiency initiative for the purpose of achieving new audit recoveries through April 1, 2023.

Section four of this bill would amend Chapter 906 of the laws of 1984, extending the authority of the State to continue the Care at Home (CAH) I and II waivers which provide community-based services to physically disabled children who require hospital or skilled nursing home level of care, allowing the child to reside at home instead of in an institution, through April 1, 2023.

Section five of this bill would amend Chapter 56 of the laws of 2013, maintaining the elimination of a trend factor for general hospital reimbursement through December 31, 2019.

Section six of this bill would provide for an immediate effective date.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because it ensures the continuation of \$516.4 million in previously enacted State Financial Plan savings.

Effective Date:

This bill would take effect immediately.

**Part U – Extending existing processes for certain time-limited demonstration programs for specialized inpatient psychiatry units for children and adults.**

Purpose:

This bill would extend existing processes for certain time-limited demonstration programs for specialized inpatient psychiatric units for children and adults.

Summary of Provisions and Statement in Support:

This bill would amend chapter 58 of the laws of 2015 by extending the relevant fiscal period to March 31, 2021, for certain time-limited demonstration programs for evaluating new methods of services for individuals with intellectual and/or developmental disabilities (I/DD).

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget as it would test and evaluate the delivery of essential services for at-risk individuals.

Effective Date:

This bill would take effect immediately and expire on March 31, 2021.

**Part V – Extend community reinvestment for State psychiatric center inpatient bed closures.**

Purpose:

This bill would extend community reinvestment for State psychiatric center inpatient bed closures for three years.

Summary of Provisions and Statement in Support:

This bill would extend for three years current law requiring the Office of Mental Health (OMH) to reinvest \$110,000 per inpatient bed closure for community mental healthservices.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget and would allow OMH to continue its practice of community mental health support reinvestment due to inpatient bed closures at a rate of \$110,000 per bed.

Effective Date:

This bill would take effect immediately.

**Part W – Authorizes the establishment of voluntary restoration to competency programs within locally-operated jails and State prisons.**

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. Such voluntary programs would be available in separate residential mental health units.

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 authorized to voluntarily 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 authorize DOCCS to voluntarily develop similar restoration unit(s) within the NYS correctional system by agreement with OMH.

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 allow restoration to competency to take place in mental health unit(s) operated within a State or local correctional facility, subject to the facility's consent. Up to \$850K of State Aid grants may be made available to aid in the development of local mental health unit(s) and any unit created in New York City will be limited to 25 beds.

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 psychiatric center (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 \$850K 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 is necessary to implement the FY 2019 Executive Budget and generate OMH operational savings of \$4.2 million and DOCCS operational savings of \$1.1 million when fully annualized (including fringe). This proposal will also result in lower costs for participating local governments and a portion of these savings would be reinvested to support local governments and DOCCS operational costs.

#### Effective Date:

This bill would take effect immediately.

**Part X– Extend authority for Office of Mental Health (OMH) and Office for People with Developmental Disabilities (OPWDD) facility directors to act as representative payees consistent with federal law and regulations.**

Purpose:

This bill would extend for three years the authority of OMH and OPWDD facility directors to act as representative payees to use funds for the cost of a resident's care and treatment.

Summary of Provisions and Statement in Support:

This bill would amend Chapter 58 of the Laws of 2015 to extend the authority of state facility directors who act as federally-appointed representative payees to use funds for the cost of a resident's care and treatment, consistent with federal law and regulations. This bill would continue current statute and existing practice that the application of funds for a person's care and treatment does not violate a facility director's fiduciary obligations. Facility directors who act as representative payees must still comply with applicable federal laws and regulations. The amendments enacted under Chapter 58 of the Laws of 2015, and continued here, provide enhanced transparency and maintain additional parameters for the use of funds.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget and will avoid a potential loss of \$7 million from OMH and \$69 million from OPWDD in revenue on an annual basis.

Effective Date:

This bill would take effect immediately.

**Part Y – This bill clarifies the responsibilities and tasks that require psychology, social work, or mental health licensure for individuals working in certain programs and services that are regulated, operated, funded or approved by the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), the Office for Alcoholism and Substance Abuse Services (OASAS), the Department of Health (DOH), the State Office for the Aging (SOFA), the Office of Children and Family Services (OCFS), the Department of Corrections and Community Services (DOCCS), the Office for Temporary and Disability Assistance (OTDA), and/or local governmental units or social service districts.**

### Purpose:

This bill clarifies which tasks and assignments performed by persons employed by a program or service operated, regulated, funded or approved by OMH, OPWDD, OASAS, DOH, SOFA, OCFS, DOCCS, OTDA, and/or a local governmental unit or a social services district require psychology, social work, or mental health practitioner licensure.

### Summary of Provisions and Statement in Support:

Education Law Articles 153, 154 and 163 define the scope of practice for psychologists, social workers, and mental health practitioners. Since 2002, persons employed in programs regulated, operated, funded or approved by OMH, OPWDD, OASAS, DOH, SOFA, OCFS, DOCCS, OTDA, and/or local governmental units or social services districts have been exempt from these licensure requirements. This exemption was most recently extended for a two-year period in the FY 2015-16 enacted budget.

This bill would amend Education Law to delineate those services which do and do not require licensure. For example, it would clarify that peer services, coordination of benefit counseling, and domestic violence assistance, among others, do not require licensure.

Although the bill would not extend the existing exemption, it would permit those who have been employed or obtain employment on or before July 1, 2020 to continue to benefit from the existing exemption. This will preserve continuity of employment and assure an effective transition to the new standards without a disruption in services. Any person employed after July 1, 2020 would need to meet the requirements of the newly-defined scope of practice.

### Budget Implications:

Applying current licensure requirements to staff in regulated programs would result in annual costs of \$324 million, including costs for the state-provided services and services provided by entities licensed and regulated by the State. Clarifying which tasks and assignments require psychology, social work, or mental health practitioner licensure would avoid these additional costs.

### Effective Date:

This bill would take effect immediately.

**Part Z – This bill would correct statutory references with respect to OPWDD waiver services, extend OPWDD’s managed care authority, and make technical amendments to that authority.**

### Purpose:

The Office for People With Developmental Disabilities (OPWDD) is transitioning its waiver services from section 1915(c) of the Social Security Act to section 1115. The bill would update statutory references in light of this transition. Further, the bill would extend OPWDD's managed care authority, currently due to expire in 2019, and make technical amendments to that authority.

### Summary of Provisions and Statement in Support:

Sections 1, 2, 3, 5, 6, 7, 8, and 9 would amend statutory references to reference to section 1115 of the Social Security Act, consistent with the transition of OPWDD services to this waiver authority.

Sections 4, 10, 12, and 17 would extend certain provisions of various state laws.

Sections 11 and 13 would amend affiliation requirements to allow a managed care organization to affiliate with an entity or entities that are controlled by non-profit organizations to provide care coordination services. This amendment would allow care coordination organizations, which are entities controlled by non-profit organizations, to provide care coordination services to managed care organizations.

Sections 14 and 15 would clarify that health and long term care services to be provided by managed care plans authorized under Public Health Law 4403-g would include comprehensive health services and other services to be determined by the commissioners of OPWDD and the Department of Health.

Section 16 would clarify that the readiness and capability of managed care plans would include the ability to organize, market, manage, promote, and operate a health and long term care services plans.

Section 18 would assure that managed care networks provide comprehensive coverage.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because failing to transfer the 1115 waiver amendment into the appropriate provision of law would potentially deprive OPWDD of the ability to properly license and certify providers of services to persons with developmental disabilities. Amendments are also necessary to permit the flow of Medicaid funding to those services. Finally, without an extension of managed care authority, the OPWDD system will not be able to move beyond the system of fee-for-service reimbursement and will not experience the improvements and efficiencies of managed care service environments.

### Effective Date:

This bill would take effect immediately.

## **Part AA – Human Services COLA.**

### Purpose:

This bill would eliminate the statutory Human Services Cost of Living Adjustment for the period of April 1, 2018 to March 31, 2019.

### Summary of Provisions and Statement in Support:

Section 1 establishes that there shall not be a new Cost of Living Adjustment (COLA) for the period beginning April 1, 2018 and ending March 31, 2019. It also provides that when a COLA is provided beginning April 1, 2018, those provisions will be in place for three years.

Section 2 provides for an effective date of April 1, 2018.

### Budget Implications:

Enactment of this bill is necessary to implement the FY 2019 Executive Budget because this legislation will result in savings to the Financial Plan of \$19.12 Million for FY 2019.

### Effective Date:

This bill would take effect on and after April 1, 2018.

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.