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MEMORANDUM

TO: **Memo Distribution List**

LeadingAge New York

FROM: Hinman Straub P.C.

RE: 2020-21 Executive Health & Medicaid Budget Overview

DATE: January 22, 2020

NATURE OF THIS INFORMATION: This is general information you might find helpful or informative.

DATE FOR RESPONSE OR IMPLEMENTATION: None – this is for your information.

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THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
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On Tuesday, January 21, 2020, Governor Andrew Cuomo released his proposed budget for State Fiscal Year (FY) 2021, covering 2020-21. The 2020 FY ends on March 31, 2020 and the FY 2021 begins on April 1, 2020. The following is a summary of the Executive Budget presentation and a high-level review of the pertinent health care related items. Additional analysis and memoranda will be forthcoming as briefings take place and additional information becomes available.

Budget Overview

The Governor has proposed a $178 billion budget for Fiscal Year 2021, an increase of 1.2% over FY 2020 projected spending. The budget plan proposes to keep most state agency spending within 2% growth, and includes a $826 million increase in state education aid, $1.25 billion in new Medicaid spending, and advances a $33 billion, five-year investment to restore the environment and reduce our carbon output – including the $3 billion Restore Mother Nature Bond Act.

To address the projected $6.1 billion Budget deficit, the Governor has reconvened the Medicaid Redesign Team (MRT II) to identify cost-containment measures that will provide approximately $2.5 billion in gap-closing.[1] The remaining portion of the projected deficit is balanced by limiting growth to under 2%, the 2020 savings plan actions[2], and an increased tax receipts forecast.

Below is an outline of the Governor's proposed FY 2021 Executive Budget impacting the health care sector:

General Health Highlights

- **MRT II**. Instead of proposing specific cuts to the Medicaid program within the Executive Budget, the Governor has reconvened the MRT to identify cost-containment measures that will provide approximately $2.5 billion in gap-closing savings in FY 2021 and ensure Medicaid spending in future years adheres to the Global Cap indexed rate. The MRT II is required to report back by early March with a plan to deliver $2.5 billion in recurring savings. The MRT II proposals will be incorporated into the Executive Budget for consideration by the Legislature.

  The exact language of the Executive Budget does not contain any limitations on how the MRT II is to achieve these savings; the Budget Briefing Book, however, does direct that the MRT II cannot rely on local governments, have no impact on beneficiaries, and find solutions through industry efficiencies and/or rely on new resources provided by the industry itself. The MRT II members will be appointed over the coming days, with the chairs being the same as original MRT, Michael Dowling and Dennis Rivera.

  In the event the Legislature fails to enact $2.5 billion in savings proposed by MRT II, the Executive Budget authorizes uniform across the board reductions applied to Medicaid

[1] Difference between the estimated Medicaid spending and the spending limit established by the Medicaid Global Cap index.

[2] The 2020 Savings Plan included the permanent adjustment (i.e. "lag") to the timing of certain health care payments delaying approximately $2.2 billion in Medicaid payments and the reduction in State-share Medicaid payments across the board by 1%.

appropriations necessary to achieve $2.5 billion in savings, provided that such uniform reductions may be increased or decreased at the discretion of the Budget Director.

- **Medicaid Program Funding.** The Executive Budget proposes to increase the State share of Medicaid funding by $573 million, growing from $19.4 billion to $20 billion (state share). Total Medicaid spending, including spending outside the Global Cap, is expected to increase $1.3 billion, to $23.3 billion (state share). Federal ($39.9 billion), State ($23.3) and local Medicaid spending is expected to be $73.4 billion in SFY 2021, a decrease of $1.4 billion (1.9%) from SFY 2020.

  For FY 2020, State-share Medicaid spending subject to the Global Cap exceeded the indexed growth amount by $4.0 billion (including the FY 2019 lag payment of $1.7 billion) and will exceed the Global Cap by $3.1 billion in FY 2021. The Governor noted the following factors which contributed to the excessive spending:

  - Consumer Directed Personal Assistance Program (CDPAP) enrollment growing by 88% between 2014 and 2019 and spending growing by 85% from $1.3 billion to $2.4 billion between 2017 and 2018;
  - Managed Long Term Care (MLTC) growth by 301% between 2013 and 2019;
  - Minimum wage for workers in the health care sector growing from $44 million to a projected $1.8 billion in SFY 2021; and
  - Support for distressed hospitals growing by 160% since 2016.

- **Medicaid Local District Spending Reforms**. The Executive Budget limits growth of Medicaid takeover savings that counties receive to 2% percent annually if the county fails to adhere to the 2% property tax levy cap. New York City, which is not subject to the 2% property tax cap, is required to adhere as if they were subject to the tax cap in order to qualify for the Medicaid takeover savings. Additionally, the Executive establishes a penalty if the expenditures exceed 3% percent annually by requiring localities to be liable for one hundred percent of the excess amount of the non-federal share of those expenditures.

- **Health Benefit Exchange Funding.** The Executive proposes to allocate approximately $90 million in new funds in SFY 2021 to fund the New York Health Benefit Exchange (New York State of Health). The Executive Budget includes $519 million in total funding for the operation of the NY State of Health.

- **Healthcare Capital Funding.** The Executive includes a reappropriation of the remaining funds available for Statewide Transformation III. The RFA for this funding opportunity has not been released.

- **Require Prevailing Wage to be Paid on Certain Private Construction Projects.** The Executive includes a prevailing wage requirement to be paid on construction projects that are paid for with at least 30 percent public funds. A public subsidy board would be empowered to examine and make any necessary adjustments to thresholds included in the bill, as well as determinations related to applicability of this section to projects undertaken with benefits stemming from certain programs. The effective date of this proposal is July

1, 2021 and applies to contracts for construction or applications for building permits applied for on or after that date. It expressly excludes appropriations of public funds made prior to July 1, 2021.

- **SHIN-NY.** The Executive includes an appropriation of $30 million for the continued funding of the Statewide Health Information Network of New York (SHIN-NY). The funding is directed to the New York eHealth Collaborative, which will administer the funding for the SHIN-NY and Qualified Entities – formerly known as Regional Health Information Organizations (RHIOs).

- **All Payers Database.** The Executive includes an appropriation of $10 million in funding to support the establishment and operation of the All Payers Database (APD).

- **Physicians Excess Medical Malpractice Program**. The Executive proposes to extend the Excess Medical Malpractice Program as currently designed for one year through June 30, 2021. These provisions are scheduled to expire on June 30, 2020.

- **Medical Indemnity Fund.** The Executive proposes to extend this Program through December 31, 2021, although it has been reported that the Budget suspends the State's contribution to the MIF saving approximately $50 million.

- **Certificate of Need (CON) Fees**. The Executive proposes to impose a surcharge equal to 3% of the total capital value of hospital (includes hospitals, nursing homes, D&TCs) construction application. The proposal does not repeal the existing application fee for construction applications, thus resulting in the surcharge being in addition to the current fee. The proposal repeals language allowing the fees and charges for a CON application to be included in the allowable capital costs, and expressly provides that they are not eligible for reimbursement. The proposal does not apply to applications that are being solely funded by state grants and the Commissioner is granted authority to exempt certain applications pursuant to criteria established by the Commissioner. The revenue projected from this action is $70 million annually.

- **State Workforce Investment**. The Executive proposes to add 22 positions to the Department of Health to enable the State to assume a greater role in local government Medicaid administration, as well as for administration of ongoing Medicaid operations, regulation of health care providers and support for public health priorities, including preserving access to appropriate family planning services.

- **Market-Rate Interest on Court Judgments**. The Executive proposes to amend the statutory interest rate on judgment (currently 9%) to the weekly average one year constant maturity treasury yield, which is the same rate utilized by the Federal court system. The Executive projects that this amendment will provide relief to local government and State taxpayers by $6 million.

- **Disclosure Requirements for Charitable Nonprofit Entities**. The Executive proposes to require any registered charitable organization that is required to file a funding disclosure

report or financial disclosure report to file such annual report with the Department of Tax and Finance. The proposal would also require covered entities to file a completed IRS Form 990, Schedule B with Tax and Finance, regardless of whether such form is required to be submitted to the IRS.

- **Extension of SPARCS**. The Executive proposes to extend the authorization to operate the statewide planning and research cooperative system (SPARCS) for three (3) years through 2023.

Employer-Related Obligations

- **Guaranteed Sick Leave**. The Executive proposes to require that all employers provide their employees with sick leave. Under the proposal, the amount of days of paid sick leave is determined by the employer size:
    - 7 days of paid leave for large employers (100 or more employees);
    - 6 days of paid leave for medium-sized employers (5-99 employees); and
    - 5 days per year of unpaid leave for small employers (fewer than 4 employees).

  Employees would accrue sick leave at a rate of one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment. The proposal would take effect one year after enactment.

Nursing Homes

- **Antimicrobial Resistance Prevention**. The Executive Budget would establish a new requirement for all hospitals and nursing homes to establish antimicrobial stewardship programs. The programs would need to meet or exceed federal standards and include annual evaluation of the program an associated data. In cases where utilization is high or increasing, the facility would be required to establish a response plan. In addition, facilities would be required to provide training on antimicrobial resistance and infection prevention and control for all licensed direct care providers. This training could be incorporated into existing infection control programs. The new requirement would take effect 180 days after enactment.

- **Nursing Home Upper Payment Limit**. The Executive Budget proposes to extend the nursing home upper payment limit and intergovernmental transfers for public residential health care facilities through March 31, 2023.

- **Medicare Maximization Program**. The Executive Budget proposes to extend the Nursing Home Medicare Maximization program through February 1, 2023.

- **Health Care Facility Refinancing Shared Savings Program.** The Executive Budget proposes to extend the authority of the Commissioner to modify health care facility real property costs to effectuate a shared savings program where facilities would share a

minimum of fifty percent of the savings from electing to refinance their mortgage loans, through March 31, 2025.

- **Vital Access Provider (VAP) Funding**. The Executive Budget provides $66 million in continuing funding to support critical health care providers through the State's Vital Access Provider (VAP) program.

- **Miscellaneous Appropriations**. The Executive proposes the following appropriations impacting the Nursing Home sector:
    - Continuing Care Retirement Community Account = $121,000 (increase in $21,000)
    - Nursing Home Receivership Account = $2,000,000 (re.)
    - Quality of Care Improvement Account = $1,000,000
    - Program for background checks on patient contact personnel in Long-term care facilities = $3,000,000.

- **Health Occupation Development and Workplace Demonstration Program**. The Executive proposes to repeal this program with the elimination of the Health Workforce Retraining Initiative (HWRI) under HCRA.

Adult Home/Assisted Living

- **EQUAL**. While the Executive Budget proposes to reduce the operating funds for EQUAL funding to $3.266 million (half of prior appropriation), an additional $3.266 million will be available through capital expenditures. The Executive proposes to eliminate the current statutory purposes for EQUAL funding and changes eligibility for EQUAL funding to the following:
    - Adult care facilities with at least 25% of residents with serious mental illness (SMI) or 25 total residents with SMI, whichever is less, are eligible for EQUAL funding for staff training or resident skills training.
    - Adult care facilities with the highest populations of residents who receive supplemental security income (SSI) are eligible for EQUAL funding for capital improvements that enhance the physical environment of the facility
    - If an adult care facility is eligible under either proposal, it will be limited to funding for staff or resident skills training.

  The proposal also maintains resident councils (current law) and requires such councils to approve the purpose of the expenditures.

- **Transition of Mentally Ill Adult Home Residents.** The Executive proposes to increase funding to $60.5 million ($12.5 million increase) for the provision of education, assessments, training, care coordination, supported housing and the services needed by mentally ill residents of adult homes and persons with mental illness who are discharged from adult homes.

- **ACF Criminal History Record Check.** The Executive proposes to maintain funding at $1.3 million for the administration of the criminal history record check system for staff at ACFs.

- **Supplemental Social Security (SSI).** The Executive proposal contains the traditional statutory authority to pass-through any Federal COLA that becomes effective on or after January 1, 2021.

- **Miscellaneous Appropriations.**
  - Adult Homes Advocacy Program: $170,000
  - Adult Home Resident Council Support Project: $60,000
  - Assisted Living Residence Quality Oversight Account $2,110,000
  - Adult Home Quality Enhancement Account = $500,000
  - Enhancing abilities and life experience (EnAbLE) appears to have been discontinued.

Home Health Care

- **Home Care Workforce and Recruitment:** This program is extended through March 31, 2023.

- **Personal Care Workforce Recruitment and Retention:** This Program is extended through March 31, 2023.

- **Medicare Maximization Program.** The Executive proposes to extend the Home Care Medicare Maximization program through February 1, 2023.

- **Appropriations.**
  - Home Health Aide Registry: $1,800,000

- **Health Occupation Development and Workplace Demonstration Program**. The Executive proposes to repeal this program with the elimination of the Health Workforce Retraining Initiative (HWRI) under HCRA.

Primary Care, Clinics, and other Providers

- **Clinic Safety Net Funding:** The Executive Budget includes level funding of $54.4 million for the Diagnostic and Treatment Centers (D&TC) Safety Net Program. This funding helps cover the cost of bad debt and charity care provided by federally qualified health centers (FQHCs) and other D&TCs.

- **Clinic Bad Debt and Charity Care Payments.** The Executive Budget proposes to extend the authorization for clinic bad debt and charity care payments through March 31, 2023 at $7.5 million annually.

- **Electronic Prescriptions**. The Executive Budget proposes to extend the "small provider" exception from the requirement for electronic prescriptions for an additional three (3) years through June 1, 2023. The exemption applies to prescribers that certify to DOH that they prescribe 25 or less prescriptions annually.

- **Physician Profile Enhancements**. The Executive Budget amends the Public Health Law to require hours of operation, availability of assistance technology, and availability to take new patients as mandatory elements of a physician's profile. Additional information regarding the physician's website, social media accounts, names of physicians sharing a group practice, workforce research, and planning information are obtained from existing registration and plan data. The proposal also allows physicians to use a designee to maintain and update a physician profile.

- **Physician Integrity and Accountability.** The Executive amends the Education Law to eliminate indefinite licensure of physicians and requires fingerprint-based criminal history background checks prior to licensure. The definition of "professional medical misconduct" is also amended to include complaints resolved by stipulation or agreements and to clarify harassment of a patient's caregiver or surrogate. It also requires a licensee charged with a crime or misconduct in any jurisdiction to notify the Office of Professional Medical Conduct within 24 hours. The proposal amends the Public Health Law to allow for immediate publication of charges, the immediate convening of an investigative committee, and Commissioner discretion to disclose information regarding OPMC investigations. The Public Health Law is also amended to allow publication of Administrative Warnings and Consultations, timely submission of records, requires a licensee to notify the Department of Health within 24 hours of being charged with a crime, and requires hospitals to report when a hospital or facility notifies a third-party contractor that an individual should not be assigned due to quality of care concerns.

- **Physician Profile Website**. The Executive Budget extends the provision allowing the use of funds of the Office of Professional Medical Conduct for use for the Physician Profile Website through 2023.

Health Planning, Medical Education and Public Health

- **Public Health Programs**. The Executive proposes to <u>discontinue</u> funding for the Empire Clinical Research Program (ECRIP), Area Health Education Center, Ambulatory Care Training, and the Diversity in Medicine/Post-Baccalaureate Programs.

- **Doctors Across New York:** The Executive Budget includes level funding of $9.065 million for the Doctors Across New York physician loan repayment and Physician Practice Support programs.

- **Health Occupation Development and Workplace Demonstration Program**. The Executive proposes to <u>repeal</u> this program with the elimination of the Health Workforce

Retraining Initiative (HWRI) under HCRA. The Program currently applies to nursing homes, hospice, CHHAs, and D&T centers.

- **Banning Fentanyl Analogs**. The Executive Budget amends the Public Health Law to conform to Federal law by adding 24 additional Synthetic Fentanyl Analogs and other related substances to the State Schedule I list of Controlled Substances. The Commissioner of Health is further authorized to classify any substance as a State Schedule I Controlled Substance when already listed on the Federal Schedules of Controlled Substances.

- **Adult Cystic Fibrosis Assistance Program**. The Executive Budget proposes to repeal this program. The Memorandum of Support indicates that the elimination of these programs will provide DOH with flexibility to address new or emerging service needs.

- **Autism Awareness and Research Fund**. The Executive Budget proposes to transfer responsibility for this fund from DOH to OPWDD.

- **Comprehensive Care Centers for Eating Disorders**. The Executive Budget proposes to transfer responsibility for this fund from DOH to OMH, and transfers the provisions governing this program to the Mental Hygiene Law.

- **Accountable Care Organizations**. The Executive Budget proposes to extend the certificates of authority to Accountable Care Organizations (ACOs) through December 31, 2024.

- **Roswell Park Cancer Institute Funding**. The Executive Budget allocates $37.9 million to Roswell Park in support of operational costs for cancer research, a reduction of $13.34. Capital funding remains unchanged at $51.3 million.

- **Indian Health Care Services**. The Executive Budget allocates $25 million in program spending to support Indian health care services.

- **Maternal and Infant Community Health Collaboratives (MICHC)**. The Executive Budget includes level funding of $1,835,000 for the MICHC program (prenatal care assistance).

- **Family Planning Services**. The Executive includes total funding of $40.6 million for Family Planning services. Funding is provided through a sub-allocation from the Department of Financial Services to DOH ($19.9 million), and two appropriations in DOH totaling $20.7 million. This is an increase intended to support the loss of $14.2 million federal Title X funding due to changes in the federal rules governing the program that forced New York to stop participating in the program.

- **Nurse-Family Partnership**. The Executive Budget includes $3 million for the Nurse Family Partnership Program.

- **Maternal Mortality.** The Executive Budget includes level funding of $4 million in funding for reducing maternal mortality. This includes funding for expanding community health workers through the MICHC program, developing a training curriculum on implicit racial bias, and creating a data warehouse to help analyze maternal outcomes. It also includes funding for a Maternal Mortality and Morbidity Review Board and the Advisory Committee on Maternal Mortality.

- **Migrant Health:** The Executive Budget includes $406,000 in level funding for health centers that provide primary care to migrant and seasonal farm workers.

- **Patient Centered Medical Homes:** The Executive Budget reflects level funding of $110 million for Patient Centered medical Homes. However, it should be noted that this is Medicaid funding that will be subject to review by the Medicaid redesign Team (MRT).

- **Population Health Improvement:** The Executive Budget reflects level funding of $7.5 million for the Population Health Improvement Program, which supports regional coordination and collaboration between local health providers to implement the State's public health Prevention Agenda. However, it should be noted that this is Medicaid funding that will be subject to review by the Medicaid redesign Team (MRT).

- **Health Homes:** The Executive Budget includes $337.9 million for the Health Home program. However, it should be noted that this is Medicaid funding that will be subject to review by the Medicaid redesign Team (MRT).

- **Tobacco and E-Cigarette Products.** The Executive Budget proposes a series of measures designed to reduce tobacco use and the use of vapor products, including electronic cigarettes (e-cigarettes). *All measures take effect on July 1, 2020, except the ban on flavored vapor products, which takes effect 30 days after enactment:*

    - **Flavored Vapor Products:** Bans the sale of all flavored nicotine vapor products, other than tobacco-flavored.
    - **Tobacco and Vapor Coupons and Discounts:** Adds vapor products to the current prohibition of coupons for tobacco products. Also expands the definition to include vouchers, rebates, cards, etc. whether paper or digital. Prohibits the use of multi-pack discounts, discounts of multi-product purchases, and sales below the list price.
    - **Tobacco Displays:** Prohibits the display of tobacco and vapor products and associated paraphernalia in stores where people under the age of 21 are permitted entrance. Product menus cannot be visible and must have a cover page that prevents inadvertent viewing of promotional materials.
    - **Vapor Advertising:** Restricts advertising for vapor products to adult publications. Limits video and audio advertisements exclusively to words (no music, sound effects or images would be permitted. Only static black text on white background would be permitted. Prohibits ads claiming to assist with smoking cessation unless approved for such purpose by the federal Food and Drug Administration. Initial violations would be subject to a $5000 penalty, and $10,000 for subsequent violations.

- **Carrier Oil Restrictions:** Allows the Department of Health (DOH) to regulate or prohibit the sale of carrier oils, which are used to control the consistency and characteristics of vapor products.
- **Ingredient Disclosure:** Requires manufactures of vapor products to disclose to DOH and post on its website ingredients in its products, including any "chemicals of concern" designated by DOH. Also requires disclosure of any manufacturer research on health effects of its products and ingredients.
- **Clarification of Clean indoor Air Ban:** Clarifies that the workplace tobacco and vapor restrictions apply to outdoor covered areas.
- **Shipping Ban on Vapor Products to New York Consumers:** Prohibits the shipment of any vapor products in New York, except to registered vapor dealers.
- **Penalty Increases:** Increases initial penalties from $300-$1000 to $1000-$2000 and subsequent penalties from $500-$1000 to $1500 to $3000. Also doubles length of suspension of retailers ability to sell tobacco and vapor products from six months to one year.
- **Sale in Pharmacy:** Prohibits the sale of tobacco products, herbal cigarette, electronic cigarette or other vapor product within a pharmacy or retail establishment that operates a pharmacy

Hospitals

- **Hospital Resident Compliance Audits**. The Executive proposes to repeal existing law requiring DOH to audit hospital resident hours annually and require that hospitals certify that they are in compliance with applicable working hour and working condition requirements annually.

- **Extend DSRIP Regulatory Waiver Authority.** The Executive proposes to extend the authority of the commissioners of DOH, OMH, OPWDD, and OASAS to waive regulations as necessary to allow the efficient scaling and replication of promising DSRIP practices, as determined by the authorizing commissioner, through April 1, 2024. Similar to the commissioners' prior authority, the waiver may not be used for regulations pertaining to patient safety or if such waiver would risk patient safety.

- **Sexual Assault Forensic Examiner (SAFE) Program Expansion**. The Executive Budget would require all hospitals with Emergency Departments to establish SAFE programs. Hospitals without Emergency Departments would be required to transport victims of sexual assault to hospital with SAFE programs. Hospitals would be required to comply with the SAFE program standards, including: 1) all protocols around documentation of injuries and collection of evidence; 2) ensuring victims of sexual assault are met within one hour of arriving at the hospital by a specially trained nurse, nurse practitioner, physician assistant or physician; 3) limiting examinations of victims to those specially trained practitioners conduct victim examinations and only in a specially designated room; 4) allowing victims to shower and providing clothing and follow-up care/information immediately following the examination. In addition, hospitals would be required to train all Emergency Department personnel on the standards of care for sexual each year. These new requirements would take effect on October 1, 2020.

- **Antimicrobial Resistance Prevention**. The Executive Budget would establish a new requirement for all hospitals and nursing homes to establish antimicrobial stewardship programs. The programs would need to meet or exceed federal standards and include annual evaluation of the program an associated data. In cases where utilization is high or increasing, the facility would be required to establish a response plan. In addition, facilities would be required to provide training on antimicrobial resistance and infection prevention and control for all licensed direct care providers. This training could be incorporated into existing infection control programs. The new requirement would take effect 180 days after enactment.

Housing

- **Affordable Housing and Homelessness Initiative**. The Governor's Budget presentation outlined the continuation of the $20 billion five-year investment in affordable and supportive housing with $3.5 billion in capital resources, $8.6 billion in State and Federal tax credits and other allocations, and $8 billion to support the operation of shelters, supportive housing units, and rental subsidies. Specific allocations include $950 million for the construction or operation of 6,000 supportive housing units throughout the State and $125 million for developing or rehabilitating affordable housing targeted to low-income seniors, aged 60 and above.

Mental Health & Human Services

- **Workforce Investment**. The Executive Budget proposes to invest $170 million annually to provide targeted compensation increases to direct care and clinical staff of OPWDD, OMH and OASAS not-for-profit, as well as $265 million (an annual increase of $51 million) to support provider costs for minimum wage and related fringe benefit cost increases associated with the movement to a $15 per hour living wage.

- **Independent Living Opportunities**. The Executive Budget proposes $15 million to expand independent living opportunities for individuals with intellectual and developmental disabilities.

- **OPWDD Operating Certificates**. The Executive Budget proposes to authorize OPWDD to issue operating certificates to providers of certain State Plan Medicaid services that are targeted to providing supports to individuals with intellectual and developmental disabilities.

- **Community-Based Residential Programs**. The Executive Budget proposes to include $20 million for existing community-based residential programs.

- **Establishment of Jail-based Restoration to Competence Programs**. When a defendant in a criminal trial is, after evaluation, determined to be incompetent to participate in his or her defense, the Court may order a period of treatment intended to restore competence. In

New York State this treatment is provided in forensic beds operated by the Office of Mental Health (OMH) and/or the Office for People with Developmental Disabilities (OPWDD). The Governor's proposal would authorize OMH and OPWDD to work with Counties to establish jail-based restoration to competence programs. The proposal would authorize the Department of Corrections and Community Supervision (DOCCS) to, again with the supervision of OMH and/or OPWDD, to establish a Restoration to Competence program in a mental health unit contained within a correctional facility.

- **Pre-Admission Process for Residential Treatment Facilities**. The Executive budget proposes to restructure the admission process to enable more prompt reviews and shorter stays.
    - Remove the use of the Pre-Admission Certification Committee (PACC)
    - Develop admission standards in partnership with NYSED, OCFS and OMH, and
    - Allow involuntary admission to be completed by OMH or a designee (Part V)

- **Justice Center Child Abuse Central Registry Check:** The Executive Budget proposes to allow the Justice Center the discretion of checking the Statewide central register of Child Abuse and maltreatment only when it considers it relevant during an during an investigation. Currently, the Justice Center must check it during every investigation.

- **Comprehensive Psychiatric Emergency Programs (CPEP)**. The Executive Budget proposes to extend the authority for the Commissioner of the Office of Mental Health to designate facilities to operate CPEP for three years to July 2024, extends the time that someone can be detained in a CPEP from 72 hours to 96 hours for observation and treatment when the person is determined to be a danger to themselves or others, provides for triage and referral to be provided by psychiatric nurse practitioners or physicians, and if the person is not discharged within 6 hours, to be examined by a staff physician. Hospitals that operate CPEPs would be permitted, upon approval of the commissioner, to operate CPEPs at a satellite facilities.

- **Sex Offenders Requiring Confinement**. The Executive Budget proposes to establish a separate appointing authority of secure treatment and rehabilitation center within the office of mental health for the care and treatment of dangerous sex offenders requiring confinement. Transfers employees substantially engaged in the care and treatment of such offenders to the secure treatment and rehabilitation center. Retains employee geographic location and civil service title and status.

- **VAP Funding for Behavioral Health**. The Executive Budget proposes $25 million in vital access provider (VAP) funding to preserve behavioral health services. This VAP funding amount is separate from the general VAP funding pool and is available solely for behavioral health providers.

Pharmacy

- **Pharmacy Benefit Manager Regulation.** The Executive proposes to establish a new Article 29 of the Insurance law to license and regulate pharmacy benefit managers (PBMs) by the Department of Financial Services (DFS). The proposal is largely the same as the one the Governor first advanced in his 2017-18 Executive Budget, and again in 2019-20.

  Two notable new inclusions in the 2020-21 proposal relate to the establishment of new duties, and minimum standards for the issuance of a license to a PBM.

  - **New Duties:** Section 2912 establishes several "duties", requiring a PBM to adhere to a code of conduct that DFS "may" establish as a requirement of licensure. These duties would include:
    - An affirmative obligation not to limit in contracts with health plans access to financial and utilization information of the PBM in relation to pharmacy benefit management services provided to the health plan;
    - Disclosing in writing to a health plan with whom a contract for pharmacy benefit management services has been executed any activity, policy, practice, contract, or arrangement that presents a direct or indirect conflict of interest with the PBM's relationship with or duties and obligations to the health plan;
    - Assisting a health plan in answering any inquiry made by the Superintendent of; and
    - Prohibiting a PBM from violating any provision of the Public Health Law applicable to PBMs.

    Disclosures to health plans under this section would not receive the same confidentiality protection as other disclosures provided to the Superintendent elsewhere in the proposal. Disclosures to health plans would be required to be kept confidential only if designated proprietary or trade secret by the PBM, and could be disclosed if required by law or court order, or as necessary to prosecute or defend any legitimate legal claim or cause of action.

  - **Minimum Standards for Licensure: Code of Conduct:** The proposal provides once again that DFS may, in consultation with DOH, establish minimum standards for licensure of the PBMs in the form of regulations. However, in the 2020-21 proposal, the minimum standards would now take the form of a "code of conduct", that "may address, without limitation" the following:

    - Prohibition on conflicts of interests between PBMs and health plans;
    - Prohibition on deceptive practices, anti-competitive practices, and unfair claims practices;
    - **Prohibition on pricing models including spread pricing (new)**;
    - **Codification of standards and practices in the creation of pharmacy networks and contracting with network pharmacies and other providers (new)**; and,
    - Best practices for protection of consumers.

A summary of the other pertinent parts of the Governor's proposal to license and regulate PBMs is below.

- **Applicability**:

  Section 2901 of the Governor's proposal defines "Pharmacy benefit management services" to mean "the management or administration of prescription drug benefits pursuant to a contract with a 'health plan,' directly or through another entity…"

  The Governor's proposal therefore limits licensure and regulation of PBMs to those PBMs providing "pharmacy benefit management services" on behalf of a "health plan". Health plan is defined in the proposal to include Article 43 insurers, Article 47 cooperative health plans, Article 44 HMOs, Medicaid Managed Care plans, the NYSHIP Plan, the state insurance fund (Worker's Compensation), and certain university sponsored health insurance plans certified under Section 1124 of the Insurance law. Thus, only pharmacy benefit management services provided by a PBM on behalf of these entities would be captured by the legislation. PBM services provided on behalf of ERISA regulated employers and other self-funded entities would be exempt from the proposal.

- **Registration**

  The initial phase of regulation would require immediate registration by PBMs with the DFS. Currently operating PBMs would be required to register with DFS and pay a $1,000 registration fee by June 1, 2020. PBMs would then be required to re-register for the following year before all registrations expire December 31, 2021. Once registration requirements take effect, health plans would be prohibited from paying an unregistered PBM any fee or other compensation. They would however, along with any pharmacy or consumer, be entitled to restitution from the PBM to the extent they are harmed by an unregistered PBM.

  The proposal provides that every PBM registrant would be subject to examination by DFS as often as they deem necessary.

- **Reporting Requirements**

  On or before July 1, 2021 (and each year thereafter), PBMs are required to report very broad information to the Department, including two additions from the Legislature's PBM regulation bill (S.6531/A.2836-A) (**bolded below)**.
  - any financial incentive or benefit for promoting the use of certain drugs and other financial arrangements affecting health insurers and their policyholders/insureds
  - any information relating to the business, financial condition, or market conduct of the PBM
  - **any pricing discounts, rebates of any kind, inflationary payments, credits, clawbacks, fees, grants, chargebacks, reimbursements, other financial or**

other reimbursements, incentives, inducements, refunds, or other benefits received by the PBM (**new)**; and

- **the terms and conditions of any contract or arrangement, including other financial or other reimbursement incentives, inducements, refunds between the PBM and any other party relating to PBM services provided to a health plan including but not limited to, dispensing fees paid to pharmacies** (**new)**.

Reporting must be subscribed and affirmed as true under penalty of perjury. Additionally, the Superintendent may inquire as to the provision of pharmacy benefit management services or any matter connected to such services. Again, a response must be affirmed as true by officers of the company under penalty of perjury. The Superintendent may also require quarterly or other reports that "shall contain such matters as the superintendent shall prescribe." Failure to timely submit any of the above reports or responses could result in a civil penalty of up to $500/day.

The 2020-21 proposal does include new confidentiality protections for disclosed information to DFS. The proposal provides that all documents, materials, or other information disclosed by a PBM which is in the control of DFS would be deemed confidential, and would not be disclosed either pursuant to FOIL or subpoena, and would not be discoverable or admissible as evidence in a private civil action.

- **Licensure** – Beginning on January 1, 2022, PBMs must be licensed by the Department of Financial Services. The Superintendent is empowered to promulgate regulations, in consultation with DOH, establishing minimum standards for PBM licensure, which would now take the form of a code of conduct, as described above.

  Officers and directors of business entities that are seeking licensure may be required to be included in the application and designated responsible for the entity's compliance with applicable laws and regulations.

  Licensure would be valid for three years and would be renewable for an additional three years. Licenses could be refused if DFS determines the applicant, or any member or principal or officer of the applicant, is not trustworthy and competent to act as or in connection with a PBM. Notably, the Governor's proposal now authorizes DFS to fingerprint applicants or any member, principal, officer or director of the applicant and submit fingerprints to the Division of Criminal Justice services for a state criminal history record check. Fingerprints may also be submitted to the FBI for a national criminal history record check.

  Licensed PBMs and applicants for licensure would be subject to examination by DFS as often as deemed expedient by DFS. Licensed PBMs are also expressly prohibited from engaging in any practice or action that a health plan is prohibiting from engaging in under the Insurance Law.

- **Revocation or Suspension of Registration or License**: The Superintendent may revoke or suspend a license if the PBM has:

  - Violated any insurance law, regulation, subpoena or order of the superintendent or other state's insurance commissioner, or has violated any law in the course of his or her dealings as a PBM;
  - Provided materially incorrect, materially misleading, materially incomplete or materially untrue information in an application;
  - Obtained or attempted to obtain a registration or license through misrepresentation or fraud;
  - Used fraudulent, coercive or dishonest practices; demonstrated incompetence; demonstrated untrustworthiness; or demonstrated financial irresponsibility in the conduct of business in this state or elsewhere;
  - Improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;
  - Intentionally misrepresented the terms of an actual or proposed insurance contract;
  - Has been convicted of a felony;
  - Admitted or been found to have committed any insurance unfair trade practice or fraud;
  - Had a PBM registration or license, or its equivalent, denied, suspended, or revoked in any other state, province, district or territory;
  - Failed to pay state income tax or comply with any administrative or court order directing payment of state income tax; or
  - Ceased to meet the requirements for registration or licensure.

  Revocation of a registration or license results in a one-year bar from registration or licensure for the entity, its officers, and any controlling party. The proposal would also place limitations on the employment, appointment, or participation (including as a shareholder) of any individual whose licensed or registration has been revoked by any other state or territory of the United States. A license or registration revocation or suspension could be delayed for good cause shown. In lieu of revocation or suspension, DFS may also require a PBM to pay $1,000/per violation and $2,500 for each subsequent violation, or, the aggregate gross receipts attributable to all offenses.

  Additionally, the proposal requires any administrative action taken against a registrant or licensee in another jurisdiction to be reported to the Department within thirty days of final disposition of the matter, while any criminal action would need to be reported within thirty days of the pretrial hearing date.
- **Assessments:** The Governor's proposal would allow the Superintendent to assess PBMs for the operating expenses of DFS that are solely attributable to regulating PBMs in amounts deemed "just and reasonable." This language is separate from Financial Services Law §206 which assesses regulated entities to defray the Department's operating expenses.

If enacted, the law would go into effect immediately.

- **Prescription Drug Pricing and Accountability Board**. The Governor proposes to give DFS broad authority to investigate the circumstances involving drug price increases and also proposes to establish a Drug Accountability Board (DAB):
    - Prescription Drug Price Review: Under the Governor's proposal, the Superintendent would be permitted to investigate any prescription drug that is sold or offered for sale that is set to increase, or has increased by more than 100 percent within a one-year time period, if the Superintendent believes it is in the public interest that an investigation be made.

      Under the proposal, DFS would also be authorized to investigate any instance where a prescription drug has increased in price by more than 100 percent within a one-year time period, that is or is expected to be, included in any insurance policy approved in this State, and that was procured in any way that was fraudulent or involved false pretenses or any scheme, or otherwise violated any State law, or whose sale would operate as a fraud upon the purchaser. DFS may also require other data and information, such as independent investigations and would be empowered to subpoena witnesses and compel attendance under oath, and require the production of any books or materials deemed relevant to the inquiry. Any individual that fails to perform any action required by DFS under such an investigation would be guilty of a misdemeanor and would be subject to civil penalties of the greater of: five thousand dollars for each offense; two-times the aggregate damages attributable to the offense; or two-times the aggregate economic gain attributable to the offense.

    - Drug Accountability Board: The Governor proposes to create a nine-member drug accountability board with members to be selected by DFS. The Board membership would consist of: (i) individuals licensed and actively engaged in the practice of medicine and pharmacy; (ii) individuals with expertise in DUR who are health care professionals licensed under the Education Law and are Pharmacologists; (iii) consumer representatives; (iv) health care economists; (v) actuaries; and, (vi) experts from the Department of Health. The purpose of the DAB would be to aid in investigations related to drug price increases, and allow DFS to refer drugs to the DAB for a report to be prepared. If a drug is referred to the DAB, the Board, would be required to determine:

        - The drug's impact on the premium costs for commercial insurance in the state, and the drug's affordability and value to the public;
        - Whether increases in the price of the drug over time were significant and unjustified;
        - Whether the drug may be priced disproportionately to its therapeutic benefits; and, any other question DFS may certify to the Board to aid an investigation.

  Papers and information considered by the Board as part of their review, and any Board report prepared, would be considered confidential and exempt from disclosure; however,

the Superintendent would be permitted to determine that the release of the information would not harm an ongoing investigation and would be in the public interest, and would therefore be permitted to release the report or any portion thereof to the public. Additionally, DFS may call a public hearing on the determinations of the board.

Under the proposal, DFS is also authorized to promulgate regulations relating to the operations of the accountability board.

If the proposal were enacted into law, it would take effect immediately.

- **Expansion of Assistance for Licensed Pharmacists**. The Executive proposes to amend the Education Law to add to the definition of practice for a "registered pharmacy technician" by clarifying that those employed by a facility licensed in accordance with article 28 of the Public Health law, or a pharmacy owned and operated by such facility may assist a licensed pharmacist. Further, the Executive proposes to increase from two to four the number of licensed pharmacy technicians who can assist a licensed pharmacist and increase from four to six the number of unlicensed persons who can assist a licensed pharmacist in their performance of duties. The language includes a cap of six individuals at any one time.

- **Pharmacy Adult Immunization Expansion**. The Executive proposes to expand the list of immunizations that may be provided by a licensed pharmacist, upon the order of a physician or nurse practitioner, to include any immunizations recommended by the advisory committee on immunization practices (ACIP) for patients eighteen and older. Additionally, the Governor proposes to make the Collaborative Drug Therapy Management Demonstration Program permanent and expand the program to include collaborations with nurse practitioners and physician assistants in addition to just physicians. The proposal would also expand the existing Collaborative Drug Therapy Management program, currently limited to Article 28 facilities and pharmacists with specific qualifications, to a considerably broader setting by expanding it to include a residential health care facility, any facility defined in section 2801 of the Public Health Law, as well as any "entity that provides direct patient care under the auspices of a medical director".

  Participating pharmacists would be required to be certified by DOH to engage in collaborative drug therapy management and either be employed or otherwise affiliated with a facility or participating with a practicing physician, physician assistant, or nurse practitioner. They would additionally need to satisfy two criteria related to certification in a relevant area of practice, have completed a postgraduate residency requiring experience in direct patient care services; have provided clinical services to patients for at least one year under a collaborative practice agreement; or have experience providing clinical services to patients for at least one year or one thousand hours, and deemed acceptable to the Department upon recommendation of the Board of Pharmacy.

If adopted into law, the proposals affecting immunization would take effect immediately. Those proposals implementing changes to the Collaborative Drug Therapy Management Program would take effect 180 days after it becomes law.

- **Supplemental Rebates.** The Executive Budget proposes to extend the authorization for the State to negotiate, in lieu of a managed care provider, with a pharmaceutical manufacturer for the provision of supplemental rebates through March 31, 2023. Provides that supplemental rebate agreements with manufacturers do not extend beyond March 31, 2026.

- **Pharmacy Reimbursement.** The Governor proposes to extend provisions of law related to methodologies for reimbursement of pharmacy under Medicaid.

- **CPI Penalties for Generic Drugs.** The Governor proposes to extend CPI penalties for generic drugs through March 31, 2022. An additional rebate is triggered under existing law when a generic price increases more than 75% of SMAC. Prior to April 1, 2017, the rebate was not triggered unless the price increase was more than 300% of SMAC in 12 months.

OMIG

- **Increase OMIG Oversight.** The Governor's Briefing Book includes a proposal to increase OMIG staffing (69 new employees) and establish a dedicated unit responsible for monitoring and investigating Medicaid Managed Care payments.

Commercial Health Insurance

- **Independent Dispute Resolution for Emergency Services**. A number of changes are proposed to the recently enacted hospital IDR law. Specifically:
    - Similar to the newly enacted law regarding emergency hospital claims, the Budget would permit members to assign claims for emergency services, including inpatient services following an emergency room visit, to a physician and the Plan would be required to pay the physician for the services directly.
    - The Budget would also prohibit physicians and hospitals from balance billing patients who assigned their benefits, other than collecting appropriate cost sharing.
    - The Budget also repeals the provision enacted last year that exempts safety net hospitals from the IDR process for emergency services.

- **Early Intervention**. The Executive proposes to require Plans to pay Early Intervention ("EI") claims to participating providers within prompt pay timeframes where the Plan's obligation to pay is reasonably clear, even though the Plan may not have determined that the services are medically necessary. Following payment of a claim, a Plan could seek external review under Article 49 or seek a medical necessity determination from an independent third party reviewer that is mutually-agreed upon by the Plan and the provider. The Plan would be required to notify the state fiscal agent ("SFA") of the reviewer's determination. If the reviewer determines that the services were not medically necessary, the Plan may recoup, offset, or otherwise require a refund of any overpayment, which

amount will be a charge to the state or appropriate municipality. The SFA must process the overpayment within 90 days of receipt of the reviewer's determination. If a reviewer determines that EI services rendered by the provider were not medically necessary more than 60% of the time in any 12-month period, the Plan may review the provider's EI claims for medical necessity prior to payment for the subsequent 12-month period. Significantly, the proposal expressly permits Plans to require preauthorization for EI services, and a claim for services for which a Plan denied preauthorization will not be subject to the pay and pursue requirements. This provision would apply to services provided on and after January 1, 2021.

- **Hospital Administrative Denials**. The Executive proposes to amend an existing statute which currently prohibits denials of medically necessary inpatient services following an emergency admission based solely on a hospital's failure to notify a Plan of the services. The Budget provision extends this prohibition to all types of administrative denials and to emergency services, observation stays, and all inpatient admissions. Exceptions are included for: (i) denials based on a "reasonable belief" of fraud, intentional misconduct, or abusive billing; (ii) when required by a state or federal program (e.g. Medicaid); (iii) coverage that is provided by the state or a municipality to employees, retirees or members; (iv) is for a duplicate claim or for non-covered benefits or a non-covered person; or (v) for services for which preauthorization was denied prior to the delivery of services. The Budget maintains the provision that permits Plans and hospitals to contractually agree to a penalty, not to exceed the lesser of $2,000 or 12% of the amount otherwise due, for failing to comply with a Plan's administrative requirements.

- **Prompt Pay**. The Executive proposes to revise the prompt pay law by requiring Plans to notify members or providers in writing, and through the internet or other electronic means for claims submitted electronically, that a claim is denied or that additional information is necessary, and to include the specific type of plan or product in which the member is enrolled.

  Further, if after requesting additional information, a Plan determines that payment is due on the claim, payment must be made within 15 days, and prompt pay interest will automatically apply, calculated based on the date of the initial claim (i.e., from the date 30 days after receipt of an electronic claim, and from the date 45 days after receipt of a paper claim).

- **Coding Disputes.** The Executive proposes to amend the provisions of the Insurance Law regarding coding disputes with hospitals are amended to require Plans to review billed codes based on national coding guidelines accepted by CMS or the AMA, including ICD-10 guidelines.

  Moreover, if a Plan increases payment on a claim based on information submitted by a hospital to substantiate a code, prompt pay interest would automatically apply and would be computed based on the date of the initial claim (i.e., from the date 30 days after receipt of an electronic claim and from the date 45 days after receipt of a paper claim).

- **Health Care Claims Reports**. The Executive proposes to require Plans to submit quarterly and annual health care claims reports with respect to comprehensive products to DFS, within 45 days of the end of a quarter or year. The reports would include the number and dollar value of all claims, broken down by those received, paid, pended, and denied. They would be reported in the aggregate, as well as broken down by type of provider. The reports would be posted on the DFS website. The Budget would further allow DFS and DOH to promulgate regulations requiring the submission of additional reports to assess the effectiveness of new payment policies.

- **Health Care Administrative Simplification Workgroup**. The Executive Budget would require DFS, in conjunction with DOH, to convene a health care administrative simplification workgroup comprised of insurers, hospitals, physicians, and consumers. The workgroup would study and evaluate mechanisms to reduce administrative costs and complexities through standardization, simplification, and technology. The workgroup would examine claims submission and payment, claims attachments, preauthorization practices, provider credentialing and insurance eligibility verification.

- **Utilization Review for Inpatient Rehabilitation Services.** The Executive Budget would require preauthorization determinations for inpatient rehabilitation services provided by a skilled nursing facility or hospital to be conducted within one business day. As written, it is not limited to admissions following an inpatient stay.

  The proposal also requires Plans to comply with the prompt pay law when a utilization review agent overturns an adverse determination on appeal. It is not clear whether this provision is intended to clarify that the payment must be made within 30 or 45 days, depending on the type of claim, or whether it is intended to impose prompt pay interest on the claim.

- **Provisional Credentialing.** The Executive adds a new provisional credentialing provision to the law that was added just two years ago. The proposal would require Plans to treat as "provisionally credentialed" physicians who are newly-licensed, physicians who newly relocate to New York, and physicians who receive a new tax ID number based on a corporate change who are employed by a general hospital, diagnostic and treatment center, or OMH-licensed facility whose other employed physicians participate in the Plan's network. Such physicians would be considered participating in a Plan's network upon submission of a completed credentialing application and the Plan being notified in writing that the physician has been granted hospital privileges. A provisionally credentialed physician would not be permitted to act as a member's primary care physician. Plans would not be required to pay a hospital, diagnostic and treatment facility, or OMH facility for services provided by a provisionally credentialed physician until the physician is fully credentialed, but would be required to pay for all services provided from the time the physician became provisionally credentialed.

- **Mental Health and Substance Use Disorder Parity Compliance Programs.** The Executive proposes to require DFS and DOH, in conjunction with the Commissioner of Addiction Services and Supports and the Commissioner of Mental Health, to promulgate

regulations by October 1, 2020, establishing mental health and substance use disorder parity compliance program requirements. The regulations must set forth requirements for policies and procedures for compliance, impermissible practices, requirements for training and education programs, public notification and remediation requirements, and the designation of a Plan employee responsible for ensuring compliance.

Penalties imposed on Plans for violation of state mental health parity requirements after October 1, 2020, would be deposited into a newly established "behavioral health parity compliance fund" in the custody of the State Comptroller and the Department of Taxation and Finance. The fund would only be expended for initiatives supporting parity enforcement and implementation.

- **Cap on Long-Term Care Insurance Credit**. The Executive Budget proposes to limit the credit to up to $1,500 (current is 20% with no maximum credit amount) and to taxpayers with incomes under $250,000.

- **HCRA Extension**. The Executive proposes to extend the Health Care Reform Act (HCRA) and all surcharges and assessments until March 31, 2023.

- **Covered Lives Assessment**. The Executive proposes to extend the current authorization for the collection of the Covered Lives Assessment through December, 31, 2023.

- **Health Workforce Retraining Program:** This Program, established under HCRA, is repealed. This Program was established to make grants to eligible organizations to support the training and retraining of health care employees to address changes in the health workforce.

- **Essential Plan.** New York will continue to support the Essential Plan. The Executive Budget provides $5.2 billion for the Essential Plan Program.

Department of Financial Services ("DFS") Funding

The DFS is funded entirely by assessments on insurers and banks. Proposed funding for SFY 2021 increased by $1.325 million from 2019-20 funding to $439,155,963 with $83,715,000 earmarked for the Administration Program; $88,183,000 earmarked for the Banking Program, and $267,257,963 earmarked for the Insurance Program. While sub-appropriations from DFS remained mostly consistent as prior years, the sub-appropriation to the Department of State for expenses incurred in the enforcement, development and maintenance of the state building code increased continues to be increased by $2 million, and the sub-appropriation for services and expenses related to the Healthy New York Program decreased by $2 million from prior years. The Healthy NY decreased funding may result in a lesser plan subsidy for the Healthy NY stop loss program.

State Employee Health Insurance

- **Medicare Part B Reimbursement Cap.** Under current law, the state provides full reimbursement of the Medicare Part B standard premium ($144.60 per month) to all eligible retirees. The Governor's proposal seeks to standardize Medicare Part B reimbursement for all retirees at $144.60 and cap state reimbursement at that level to eligible retirees and their dependents effective January 1, 2020. Any future increases in the Medicare Part B premium retirees would not be automatically reimbursed to retirees and instead would need to be approved as part of the budget process.

- **Income Related Medicare Adjustment Amounts (IRMAA) Reimbursement.** The Governor's proposal would amend the Civil Service Law to cease reimbursement of additional Income Related Medicare Adjustment Amount premiums paid by higher-income state retirees retroactive to January 1, 2020. To minimize employee health benefit costs, the state requires all retirees participating in the NYSHIP to enroll in Medicare Part B upon turning age 65. After enrolling in Medicare Part B, the federal government requires enrollees to pay a monthly premium; State retirees pay this monthly premium to the federal government (typically taken as a Social Security check deduction), but are later reimbursed the full amount by the state as a credit in their monthly pension allowance. Under the Governor's proposal, state reimbursement of IRMMA would be eliminated effective January 1, 2020 and retirees paying the IRMAA would no longer be reimbursed.

- **Sliding Scale Reimbursement for Health Care Costs.** New civilian, non-disability State employees who begin their employment on or after October 1, 2020 and subsequently retire with less than 30 years of service would receive health insurance coverage benefits calculated on a graduated scale based on years of service.

EMEDNY

- **Electronic Medicaid Systems Account**. The Executive Budget would provide $202 million for contractual services to operate an electronic Medicaid eligibility verification system, Medicaid override application system, and Medicaid management information system. It is our understanding that this amount represents a one-year appropriation for this service.

Cannabis Regulation

The Executive's proposal would create and amend existing laws to legalize adult-use cannabis, consolidate governance of all forms of cannabis and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale and taxation of cannabis within New York

This bill would create the cannabis law, which would merge existing law for medical cannabis and cannabinoid hemp and create a new article for adult-use. Regulation of cannabis benefits public health by enabling government oversight of the production, testing, labeling, distribution, and sale of cannabis.

This bill would establish the Office of Cannabis Management (OCM) within the Division of Alcohol Beverage Control, governed by a five-member Cannabis Control Board overseeing the adult-use, medical and cannabinoid hemp industries. The powers of this new office include but are not limited to:

- the establishment of cultivation and processing standards;
- the licensure of all business entities in the production and distribution chain;
- the inspection and enforcement of program standards and the development and issuance of program regulations.

The Office of Cannabis Management will supervise the continued expansion of the medical cannabis program and promote reforms that expand patient access, product affordability and encourage further medical cannabis research opportunities.

The proposal would utilize a three-tier market structure (similar to the alcohol model) for the adult-use (21 years of age) cannabis industry. This prohibits vertical integration and would be coupled with licensing limits and supply management to control market concentration and encourage social equity applicant participation.

This bill includes an equity program to encourage members of communities who have been disproportionally impacted by the policies of cannabis prohibition to participate in the new industry through the implementation of a social and economic equity plan – providing technical assistance, training, loans and mentoring to qualified social and economic equity applicants.

The proposal includes a regulatory framework to regulate cannabinoid hemp (CBD products) including the licensing of processors and retailers of cannabinoid hemp. The bill provides production standards, testing requirements and product labeling provisions related to the quality of cannabinoid hemp products available on the market. The growth and cultivation of all hemp will continue to be regulated by the Department of Agriculture and Markets.

The proposal would amend Tax Law to add a new Article 20-C, Tax on Adult-Use Cannabis Products, to impose three taxes:

- The first tax is imposed on the cultivation of cannabis at the rate of $1 per dry weight gram of cannabis flower, $0.25 per dry weight gram of cannabis trim, and $0.14 per gram of wet cannabis.
- The second tax is imposed on the sale by any person to a retail dispensary at the rate of 20 percent of the invoice price.
- The third tax is imposed on the same sale by any person to a retail dispensary at the rate of 2 percent of the invoice price but collected in trust for and on account of the county in which the retail dispensary is located.

Every person to whom a cannabis flower, cannabis trim, or wet cannabis is sold or transferred to, as well as any person registered as a microbusiness, cooperative, or registered organization under cannabis law would be required to apply to the Commissioner of Taxation and Finance for a

Certificate of Registration prior to commencing business and renew such registration every two years.

Revenues from the State cannabis taxes will be deposited in the New York State Cannabis Revenue Fund and expended for the following purposes:

- administration of the regulated cannabis program
- data gathering
- monitoring and reporting
- the governor's traffic safety committee
- social and economic equity plan of the office of cannabis management
- substance abuse harm reduction and mental health treatment and prevention
- public health education and intervention
- research on cannabis uses and applications
- program evaluation and improvements
- any other identified purpose recommended by the director of the Office of Cannabis Management and approved by the Director of the Budget.

Counties and cities with a population of 100,000 or more would have the opportunity to opt-out of the distribution and sale of cannabis products through the passage of a local law, ordinance or resolution by a majority vote of their governing body. Counties, cities, towns, and villages will be able to dictate the hours of operation and location of licensed adult-use cannabis retail dispensaries within their jurisdiction, through local zoning powers.

The bill also would create conforming changes to a number of different laws including:

- amending the public health law, in relation to the description of cannabis;
- the vehicle and traffic law, in relation to making technical changes regarding the definition of cannabis and the enforcement of driving violations;
- the penal law, in relation to the qualification of certain offenses involving cannabis and to exempt certain persons from prosecution for the use, consumption, display, production or distribution of cannabis;
- the tax law, in relation to providing for the levying of taxes on cannabis.

The Governor's proposal would increase revenue by $20 million in FY 2021, $63 million in FY 2022, $85 million in FY 2023, $141 million in FY 2024, and $188 million in FY 2025. The Governor's proposal also includes $13 million in new funding to support the operations of the new Office of Cannabis Management.

Bioscience Funding

- **Stem Cell Funding**. The Governor proposes to maintain funding at $44,800,000 for the Empire State Stem Cell Research Account, consistent with SFY 2018-19 levels.

- **Spinal Cord Injury Research Fund Account**. The Governor proposes to continue to allocate $8.5 million for the Spinal Cord Injury Research Program (SCIRP).

- **Life Sciences Laboratory**. The Governor proposes to continue to provide $750 million in support for a life sciences laboratory public health initiative in the Capital Region, which will develop life science research, innovation and infrastructure through a joint effort between Empire State Development and the DOH.