TO: MEMBERS OF THE NYS CONFERENCE OF LOCAL MENTAL HYGIENE DIRECTORS, INC.
FROM: JEREMY DARMAN
DATE: JANUARY 28, 2013
SUBJECT: EXECUTIVE BUDGET FOR STATE FISCAL YEAR 2013-2014

General Overview of Executive Budget Proposal

On January 22, 2013, Governor Andrew M. Cuomo proposed an all-funds budget of $142.6 billion for the 2013-2014 State fiscal year beginning on April 1, 2013; or $136.4 billion without counting several billions in federal aid for Hurricane Sandy Recovery and additional Affordable Care Act incentive payments. Overall year-to-year grown in the Executive proposal, excluding these additional federal funds is 1.6%.

Growth in mental hygiene agency funding is generally flat. What appears to be a reduction in OMH local assistance is only due to the Legislature having added $2 million dollars to last year's OMH budget for a few "legislative additions" that would naturally not be included in an Executive budget. The mental hygiene budget also begins the winding-down of CQC; shifting and providing additional appropriations to the newly created Justice Center for the Protection of People with Special Needs, which must begin operating in July of this year. Also, consistent with budget and policy trends over the last two years, there is additional funding available for behavioral health in the DOH budget, for care coordination, health home infrastructure, and "affordable housing."

Some high profile budget items this year include a minimum wage increase from $7.25 to $8.75, a proposal to allow localities to "smooth" their pension contribution costs by locking into a fixed contribution rate against expectedly lower future payment obligations (like a fixed rate mortgage), and a mandate relief proposal to eliminate many local reporting requirements in the absence of State justification that such reports continue.

This briefing focuses mainly on the Health and Mental Hygiene agency budget bills, with several items crossing over numerous agencies – consistent with themes of integrated treatment and systems, driven by State Medicaid Redesign and federal healthcare reform. The first section of this briefing reviews those items that cross over many agencies, or do not clearly with a single agency's budget or policy initiatives. The subsequent sections review appropriations for OASAS, OMH, and OPWDD, and several key Article VII proposals fitting under those agencies. This is not an exhaustive report on the Budget, nor is any particular item itself necessarily exhaustive; if you would like more details on any item or have any questions, then please contact me.

The Budget Process from Here

With the release of his Executive Budget, Governor Cuomo may amend the bills within thirty days of their submission to the Legislature (from January 22nd). Over the past two budget cycles, the Governor has amended his budget twice: once under "21-day amendments," and a second time in "30-day amendments."

Having received the Governor's budget, now the Senate and Assembly will review the bills and begin holding public hearings in which state agency commissioners and dozens of statewide associations, unions, and members of the public will testify to joint legislative committees focusing on different areas of the budget. The mental hygiene hearing will be held on February 27th. After these hearings, the Senate and Assembly will then introduce their own versions of the budget (based on the Executive

Budget framework) and, after reaching agreement on the amounts of revenue available, will negotiate the final budget. While the State budget deadline (all final budget bills passed by both houses) is typically April 1st, the Legislature is not scheduled to be in Albany the final week of March due to Passover, so we could see a final budget agreement by the end of the week of March 18th if all goes smoothly; but that is not to say that all, in fact, necessarily will. As negotiations begin, and continue throughout the winter, I will update members on areas of interest.

I must note that as of today, there are some outstanding issues that New York State is trying to resolve with the Centers for Medicare & Medicaid Services around developmental disability service overpayments that could *potentially* lead to an additional $800 million to $1.1 billion liability against the 2013-14 State budget if the matter cannot be settled. If this does in fact become an issue, it is still not clear how reductions to the current budget proposal would be distributed, and NYSDOH is working to offset any potential federal reductions with other federal revenues or healthcare cost savings measures. Any necessary remedial measures may be addressed during the 30-day amendment period.

Cross-Agency Items, Healthcare Reform, and Medicaid Redesign

Human Services COLA Deferral

The human services agency Cost of Living Allowance is deferred for an additional year, until April 1, 2014.

Social Work and Mental Health Practitioner Licensure and Corporate Practice Exemption

The Governor proposed a **permanent exemption** for those entities currently covered by the social work and mental health practitioner licensure exemption that was due to expire on July 1, 2013. This exemption applies to "the activities or services of any person in the employ of a program or service operated, certified, regulated, funded or approved" by OASAS, OMH, OPWDD, DOH, DOCCS, SOFA, OCFS, a local governmental unit, or a local services district.

Appropriations bill language also exempts any of the above exempt entities from the corporate practice waiver requirement permanently. While current law already exempts such entities from the corporate practice waiver requirements, since they are "otherwise authorized" to provide professional services, there had been some confusion around the intent and potential expiration this corporate practice exemption under to Chapters 130 and 132 of 2010 (the laws that created Education Law 6503-a for the registry, and created exemptions from this waiver in both consolidated and unconsolidated law).

Medicaid Managed Care Carve-ins and Conforming Language

The Health and Mental Hygiene Article VII bill makes numerous conforming and technical amendments to Public Health and Social Services Law around additional carve-ins to (and conversely, elimination of exemptions from) Medicaid managed care. *Please note that most of these amendments appear to be largely technical in nature, and reflect policy trends you should already be aware of, rather than anything completely new around managed behavioral healthcare.*

- The term "mental health special needs plan" is replaced with "special needs managed care plans" to provide for broader or more diverse SNP possibilities in the future. The Article VII also removes references to "specialty behavioral health plans" in sections of law that first created the "BHO" concept. References to "integrated provider systems" are also removed as an option for specialty managed care designations; this would not otherwise preclude the formation of ACOs authorized under separate sections of law.

- Integrated mental health, substance abuse, developmental disability, and health care treatment are added as Medicaid covered services, when such services are provided at a "single location or service site." Please note the DOH has also submitted a State Plan Amendment seeking permission for the billing of such integrated treatment services.
- New provisions clarifying that OASAS services that are otherwise Medicaid reimbursable and are provided by a CASAC, must be covered by Medicaid Managed Care; and that MCOs must provide enrollees access to OASAS certified facilities even if such services would not be covered outside of the clinic (e.g., CASAC services, which are limited to OASAS settings).
- The deadline for the initial designation by DOH/OMH/OASAS of special needs managed care plans on a regional basis ("Phase 2" managed care) is extended from April 1, 2013 to April 1, 2014.

Medicaid Managed Care APG-equivalent Payments for OMH and OASAS Clinics

The OMH APG-equivalency payment (for Medicaid Managed Care) requirement is given a March 31, 2015 sunset date, while another provision requires Medicaid MCOs to pay APG-equivalent rates to OASAS licensed clinics whenever such time that OASAS clinic services are carved into Medicaid Managed Care.

Health Home Infrastructure

The DOH budget appropriates $15 million for health home infrastructure development over the next year. DOH will distribute funds based on a formula that will consider factors including "prior access to similar funding, geographic and demographic factors…and prevalence of qualifying conditions, connectivity to providers," and other criteria within their discretion.

Health Home Plus

Additional health home funds ($5 million this year, annualizing to $10 million) appropriated in the Health budget will be committed to specially designated("Health Home Plus") health homes serving high need health home enrollees including those under Assisted Outpatient Treatment, enhanced voluntary agreements, or being discharged from State psychiatric hospitals. Health home plus designations would be given to health homes with high intensity care management and treatment capacity, and with the ability to managed networks appropriately for such high need persons. Specific funding mechanisms will be determined at a later date, and may be in the form of rate enhancements.

Long Term Care Ombudsman

$3 million is appropriated to establish and provide for the operation of an ombudsman program for persons enrolled in Managed Long Term Care Programs, including people with developmental disabilities (see OPWDD section for description of DD Managed Care products).

Prescriber Prevails for Atypical Antipsychotics under Managed Care

The Executive once again proposes to eliminate "prescriber prevails" for atypical antipsychotics under Medicaid Managed Care. This elimination of prescriber prevails was actually passed last year, but then atypical antipsychotics were carved out to allow for prescriber prevails beginning only on January 1, 2013. The Budget proposal would reverse this, beginning on July 1, 2013.

The Justice Center for the Protection of People with Special Needs

Appropriations for the establishment and operation of the Justice Center and the transfer of funds from other state agencies to support the Justice Center will total approximately $50 million under the current proposal. The Justice Center was signed into law at the end of 2012, and must begin operating in July of this year. While hiring has already begun for this agency (under other agency lines at this point), the Governor must still appoint an Executive Director and Special Prosecutor; The Executive Director must also be confirmed by the Senate. Appropriations for the current oversight agency, the Commission on Quality Care and Advocacy for Persons with Disabilities (CQC) were reduced, as CQC funding and operations will ultimately subsumed by the Justice Center.

Licensed Social Work Psychotherapy Services

Individual psychotherapy services provided by "licensed social workers" to persons under the age of twenty one and those requiring those services "as a result of pregnancy or giving birth" are added to the list of covered Medicaid services, pending federal approval.

Other Items of Interest

Long-term Stable Pension Contributions

The Governor's Economic Development Budget bill would provide the State Comptroller and NYS Retirement System Board the authority to allow local governments and school districts, respectively, to lower their immediate pension contributions by locking in to "long-term stable pension contribution" options. If such local governments opted for and received authority from the Comptroller, they could begin this fixed-rate contribution program in State Fiscal Year 2014, for contributions in the following fiscal years. This would be, in part, a "bridge" to future savings anticipated under the Tier VI pension plan, and to healthier economic times (which typically buoy the State investment fund and lower employer contributions). Local governments could opt-out of this program after invoking it, but would be required to pay a reconciliation. Please note that even if this proposal were enacted, the Comptroller would still have the ultimate authority over whether this option could be used by any local government.

Elimination of Local Reporting

The Governor also proposes the elimination of all local reporting to the State as a mandate relief measure, with the exception of those proactively continued by the State Mandate Relief Council. The bill would require all State agencies to send the Mandate Relief Council, by September 1, 2013, all local reporting requirements issued by that agency, and to indicate which they think should not be eliminated. The Council would then review the recommendations and preserve those reporting requirements it deems necessary, while all others would be eliminated upon April 1, 2014. The main criteria for judging the need for continuation of such reports would be:

1. They are required under federal laws, regulations, rules, or eligibility standards.
2. They are necessary for the protection of health, safety, or welfare of the public.
3. They are "otherwise necessary for critical state purposes."

OCFS Closures and Close to Home Initiative

The "close to home initiative" which was in the current year budget and allows New York City youths in the juvenile justice system who would otherwise be directed to non-secure OCFS facilities, would be expanded to the rest of New York State. The proposal would also prohibit family courts outside of New York City from placing youths in OCFS custody for non-secure levels of care; if enacted they would be directed to the youth's local social services district so they could be cared for in their own community.

The bill also authorizes closure of all OCFS non-secure facilities with a 60-day notice, and would eliminate all OCFS operated non-secure facilities by March 31, 2014.

Ethics Ban Exemption for Some Direct Care Professionals Leaving State Service

An amendment to Public Officers Law is proposed to provide an exemption from the two-year and lifetime bans by former State employee direct care professionals who move from public to private sector direct care jobs, serving the **same individuals**. Such practitioners would include people who performed "direct care, clinical care, case management, service coordination or other related support duties to individuals," and only to the extent that they are serving the "individuals receiving those services from such employee prior to leaving state service."

Agency-Specific Budgets

Below are brief summaries of the appropriations and any agency-specific Article VII proposals for OASAS, OMH, and OPWDD.

Office of Alcoholism and Substance Abuse Services (OASAS)

OASAS ALL FUNDS APPROPRIATIONS:

	2013-14 proposed	2012-13 Available	Difference	
State Ops	$117,866,000	$116,951,000	915,000	0.78%
Local aid	$457,496,000	$457,496,000	0	0.00%
Capital	$97,606,000	$97,606,000	0	0.00%
TOTAL	**$672,968,000**	**$672,053,000**	**915,000**	**0.14%**

OASAS appropriations were essentially flat, with a slight increase in State Operations. An appropriation for housing of homeless families impacted by an addiction or those at risk of chronic homelessness increased from $3.375 million in the current year, to $5.125 million in the 2013-14 SFY Executive proposal.

Other OASAS-related Executive Budget items in the Article VII bill include:

State Aid Funding Authorization (SAFA)

Mental Hygiene Law Section 26 would be repealed, and Section 25 renamed and amended to include most provisions previously included in Section 26. Additionally, proposed amendments would allow for the continuation of the State Aid Funding Authorization (SAFA) process through local governmental units or direct contracts. This amendment would address the ongoing issues raised by the State Comptroller's Office, which nearly led to OASAS converting SAFAs to 5-year local contracts in 2012; something many localities identified as nearly impracticable. The proposal also includes clarifying language around maintenance of effort.

Inpatient Rate-setting

DRGs (diagnostic related groups) for hospital-based inpatient detoxification and withdrawal services which are currently identified in Public Health Law, would be removed from the statute, so that rates could be set by DOH and published on their website.

State Methadone Registry
The methadone registry maintained by OASAS would begin to record dosage information, so that other providers could access it in the event that a natural disaster or other emergency limits a patient's access to their main methadone program. During Hurricane Sandy, some methadone programs took on many patients from clinics that were forced to close. These "host" clinics were able to verify a person's enrollment in a methadone program through the patient registry but were not able to know or verify the proper dosage.

Temporary Operators
A new section 32.20 of Mental Hygiene Law would establish criteria and protocol for temporary operators of OASAS certified programs, when there are serious programmatic deficiencies or financial instabilities that could threaten access to necessary OASAS services in a community. The budget also includes a similar section for adult care facilities in similar circumstances (amending Public Health Law).

Office of Mental Health

OMH ALL FUNDS APPROPRIATIONS:

	2013-14 proposed	2012-13 Available	Difference	
State Ops	$2,077,130,000	$2,077,530,000	(400,000)	-0.02%
Local aid	$1,298,434,000	$1,300,634,000	(2,200,000)	-0.17%
Capital	$196,955,000	$189,665,000	7,290,000	3.84%
TOTAL	**$3,572,519,000**	**$3,567,829,000**	**4,690,000**	**0.13%**

With the exception of capital, the OMH appropriations budget is generally flat compared to last year. As indicated in the introduction, local assistance is actually flat-funded, with a reduction only apparent because of $2 million of legislative additions in the current year budget that would not be reflected in an Executive proposal.

Housing
$27 million is again appropriated for housing those persons impacted by the DAI v. Paterson and Joseph v. Hogan lawsuits, addressing adult home and nursing home resident with serious mental illness, respectively. In addition, the DOH budget includes over $178 million for "affordable" housing (some of which would be directed to OMH), a large portion of which is already federal match. Development and funding of supportive housing continues across the State, with budget documents outlining OMH housing development as follows:

- 1,000 supported housing units (400 by end of 2014) for current nursing home residents
- 4,000 supported housing units (1,400 by end of 2014) for current adult home residents
- 3,400 beds (634 by end of 2014) for the homeless housing program in NYC

OMH Facility and Ward Closures/Consolidations
The Office of Mental Health would be permitted to "close, consolidate, reduce, transfer or otherwise redesign" OMH-operated services, and to implement any other measures necessary for more cost-effective and efficient state-operated care of people with psychiatric disabilities. The community reinvestment statute (Mental Hygiene Law 41.55) is once again "notwithstood" in the appropriations bill; however OMH intends to direct additional funds to support community-based services in light of continued deinstitutionalization.

OMH has indicated that facility downsizing and psychiatric center regionalization will be reinvested in part to fund "the same or greater level of community-based services," and they have committed approximately $5 million in additional funds for community mental health services this year, annualizing to $10 million.

For the closure of wards and/or conversion of beds to the Transitional Placement Program, the Executive Budget proposes 45 day notice to the Legislature and a posting of closures on the OMH website. In assessing such reductions or conversions, the Office of Mental Health must also first consider a) inpatient census data indicating under, or non-utilization of services and b) efficiency of operations of such facilities or wards.

For the full closure, merger, or consolidation of an OMH operated hospital, the bill would require a 75 day notice to the Legislature and the chief executive officer of the county in which the facility is located, and simultaneous posting of the announcement on the OMH website. Several criteria would also be required to be taken under consideration when assessing which facilities should be closed:

1. The size, scope, and services of the facility;
2. The "relative quality of the care and treatment provided by the hospital;"
3. Current and anticipated need of such services in the facility's catchment area, including consideration of adult and children's services, and specialty services such as forensic;
4. Availability of staff to address current and anticipated long-term service needs;
5. Capital investments that are required to maintain a facility and its accreditation;
6. Proximity of other facilities with similar services;
7. Anticipated savings from efficiencies and economies of scale or "other factors;"
8. Community mental health services available in the facility's catchment areas and the ability of such community-based systems to meet consumers' needs;
9. The obligation of the state to facilitate community-based living as appropriate.
10. Anticipated impact of a closure on access to mental health services.

Regional Centers of Excellence

In addition to the downsizing of state hospitals, OMH will be pursuing the development of "Regional Centers of Excellence" in which state operated programs would develop specialty treatment and supports, and engage more closely with local communities. The Commissioner of OMH plans to begin a listening tour this spring to receive community feedback on this initiative.

Mental Health Incident Review Panels

A new Section 31.37 Mental Hygiene Law is proposed to create "Mental Health Incident Review Panels," which would convene after a serious incident involving a person with mental illness takes place in the community. Such incidents would involve a person with a serious mental illness being either the alleged perpetrator **or** the victim of an incident leading to physical injury, a serious and preventable medical complication, or a criminal incident involving violence. The panels would include local governmental units, OMH staff, and other potential representatives from the community (at the discretion of OMH; however LGUs have a guaranteed seat). These panels would review incidents and their potential causes, and work on quality improvement measures to prevent such incidents from occurring in the future. Findings could lead to further investigations and sanctions by OMH in certain instances. A similar proposal was introduced several years ago as a stand-alone bill by the Office of Mental Health, but it did not ultimately pass.

Exempt Income Recovery from Family Based Treatment Programs
OMH proposes to continue, and make permanent, the authority to recover exempt Medicaid income from community residence providers. This provision is included in most budget years, but this year it would be a permanent authorization for such recoveries.

OMH Central Office Appointment Authority
Under this proposal, OMH Central Office (the Commissioner) would be given the full appointment authority over the agency's workforce. Currently, the director of each state-operated psychiatric facility has his or her own authority to appoint and transfer staff. A similar measure was approved in the budget for OPWDD last year.

SOMTA Examination Technical Amendments
The timeframe for performing examinations of inmates committed under the Sex Offender Management and Treatment Act is clarified. This is a technical amendment to changes in last year's budget which had apparently caused some court interpretation issues.

Community Reinvestment and Community Services Board Extensions
The budget extends to March 31, 2014 (through a chapter extension) several provisions of Mental Hygiene Law that were due to expire. This includes the Community Reinvestment Law and provisions of Article 41 relating to the composition of Community Services Boards and their subcommittees.

Office for People With Developmental Disabilities

OPWDD ALL FUNDS APPROPRIATIONS

	2013-14 proposed	2012-13 Available	Difference	
State Ops	$2,083,756,000	$2,144,907,000	($61,151,000)	-2.85%
Local aid	$2,480,091,000	$2,479,141,000	$950,000	0.04%
Capital	$168,950,000	$163,540,000	$5,410,000	3.31%
TOTAL	**$4,732,797,000**	**$4,787,588,000**	**($54,791,000)**	**-1.14%**

OPWDD's large drop in State Operations is largely due to the projected closure of Finger Lakes and Taconic Developmental Centers this fiscal year (December 2013). Overall, approximately 300 residents of developmental centers across the State will move into community-based living settings between January 2013 and April 2014; about 100 each from the two closing developmental centers, and the remainder from various other facilities.

OPWDD plans to redirect State positions and funds to support several reform initiatives, including:

- $5 million to enhance family care program rates
- 150 State staff positions over three years (50 per year) will be redirected to increase crisis service capacity. The agency plans to establish two crisis teams per OPWDD region, and they will also begin to adopt the "START" crisis prevention model in conjunction with the Office of Mental Health, focusing on the dually diagnosed, in OPWDD regions 1 & 3. START crisis prevention models have been implemented in other states.
- OPWDD will reduce State FTEs by 2,000 over the next two State Fiscal Years.

FIDA, DISCOs, and Managed Care of Developmental Disabilities

The Article VII bill includes language authorizing the Fully Integrated Duals Advantage, or "FIDA" program for Medicare/Medicaid dual-eligibles with developmental disabilities who will be enrolled into up to three existing Managed Long Term Care Programs that would be permitted to exclusively enroll people with developmental disabilities. The pending federal waiver for FIDA would permit New York to share in some of the federal Medicare savings for duals, which it has not been able to do up to this point.

The Article VII bill also contains enabling statute for DISCOS, which stands for "developmental disability individual support and care coordination organization," which for those unfamiliar with the concept are essentially risk-bearing provider networks. The DISCO language is extensive and detailed, including specific criteria for provider eligibility, operating standards, and financial reserves; OPWDD expects these entities to begin enrollment as early as the end of the 2013 calendar year.

A final managed care provision would amend the Public Health Law to permit HMOs to expand their "comprehensive health services plan[s]" to include developmental disability services and supports. Such HMOs would be required to demonstrate their ability to provide and/or coordinate care for individuals with developmental disabilities in accordance with criteria to be established by DOH and OPWDD.