

NYS Budget Update: One-House Bills

OVERVIEW

On March 14th, the New York State Assembly and Senate released one-house versions of the state's budget legislation for State fiscal year (FY) 2023-24. Each chamber's proposal is based on the Governor's Executive Budget, but may include modified appropriations and may include and exclude accompanying Article VII legislative proposals. The three parties will now begin negotiations on reconciling these proposals, with a target date of April 1st to finalize the Enacted Budget for 2024.

Some key changes proposed by the Assembly and/or Senate include:

- Capital allocations specifically for community-based providers;
- Repeal of the Medicaid pharmacy carve-out;
- Higher increases to Medicaid rates, including 10% for hospitals and nursing homes and 8.5% for most human services agencies;
- Removal of the proposal for oversight of “material transactions” among non-licensed health care entities;
- Removal of most of the proposed scope of practice/workforce reforms.

The below document is a (non-comprehensive) summary of notable changes, additions, and removals to proposals from the Executive Budget. SPG's Executive Budget summary is available [here](#). As a reminder, these bills are far from final, and many omitted provisions may return or be modified.

CAPITAL FUNDING

The Executive Budget proposed a new, fifth phase of the Statewide Health Care Facility Transformation Program (SHCFTP V), with \$500 million “to build innovative, patient-centered models of care, increase access to care, to improve the quality of care and to ensure financial sustainability of health care providers” and \$500 million “for technological and telehealth transformation projects.” Both houses accepted this proposal, but would establish oversight by the Comptroller. Additionally:

- The Senate would:
 - Add an additional \$200 million of funding to the first pool;
 - Allocate \$150 million of the first pool specifically for community-based providers (which include licensed clinics, home care providers, primary care providers, Health Homes, hospices, and other community-based programs). Of this amount, \$50 million would be dedicated for “new construction and renovation projects in underserved areas”; and
 - Allocate at least \$100 million of the second pool specifically for community-based providers.
- The Assembly would allocate at least \$50 million of the overall funds specifically for community-based providers.

MEDICAID

Pharmacy Carve-Out

Both chambers would repeal the Medicaid pharmacy carve-out to fee-for-service, which would otherwise be scheduled to take place on April 1st. The Senate adds new language which would set a single statewide formulary and create a mandatory pharmacy fee schedule for managed care plans, based on the National Average Drug Acquisition Cost (NADAC).

Coverage for Older Immigrants

The FY 2023 Enacted Budget provided that individuals 65 or older who “are otherwise eligible for medical assistance [...] but for their immigration status” are eligible to receive benefits through an Article 44 Medicaid managed care provider. Both houses rejected the Executive’s proposal to delay the effective date to January 1, 2024.

Health Home Cuts

Both chambers included new language that would prohibit the Executive from enacting its plan to “graduate out” low and medium-acuity Health Home members enrolled for more than nine months.

Managed Care Quality Pools

The Senate would reject the Executive’s proposal to eliminate the Medicaid managed care quality pool by codifying the program in statute and providing for ongoing funding of:

- Mainstream plans: \$70 million, or at least 1% of total premiums for such plans
- Managed long-term care (MLTC) plans: At least 1% of total premiums for such plans

Telehealth in FQHCs

The Assembly included new language that would expand the mandate for telehealth payment parity with in-person rates to include federally qualified health centers (FQHCs).

Community Health Worker Services

Both houses included the proposal to include community health worker (CHW) services as a Medicaid benefit, and the Assembly further elaborated on the definition of CHW services.

Pediatric Article 28 Clinics and Residential Health Care Facilities

The Senate would create a new designation for “pediatric” Article 28 clinics and residential health care facilities, and provide for a special reimbursement rate for such facilities.

HOSPITALS

Inpatient Rate Increase

Effective April 1st, the Executive Budget proposed to provide a uniform rate increase of 5% to Medicaid inpatient hospital rates. Both houses proposed to raise this increase to 10%.

LONG TERM CARE

MLTC Performance Standards and DOH Authority for Procurement

The Senate accepted the Executive proposal to establish new MLTC “performance standards,” but rejected the authority for procurement. The Assembly removed both parts of this language. However, both houses would continue the moratorium on new MLTC plans.

Nursing Home and ALP Rate Increase

Effective April 1st, the Budget would provide a uniform rate increase of 5% to Medicaid nursing home and assisted living program rates, on top of the 1% across-the-board increase from last year. Both chambers propose to raise this increase to 10%.

MANAGED CARE

Elimination of Prospective Denials for Emergency or Inpatient Services

Both houses removed the Executive’s proposals to impose new limits on managed care plan payment and utilization review processes.

Regulation of “Site of Service” Reviews

The Senate accepted but the Assembly rejected the Executive proposal to establish new regulations on “site of service” utilization review.

BEHAVIORAL HEALTH

Both houses accepted the investment of \$1 billion into capital funding for new behavioral health programs.

The Senate accepted but the Assembly rejected the following Executive proposals on managed care reforms regarding behavioral health:

- Mandatory coverage of subacute and mobile BH crisis services;
- Expansion of telehealth parity to other insurers;
- Right of action for parity violations;

- No prior authorization for SUD detox or maintenance prescriptions; and
- BH network adequacy standards.

The Senate also accepted the proposal to apply fines of up to \$2,000 per day for hospitals that do not meet their certified inpatient psychiatric bed capacity. The Assembly omitted this proposal.

PHARMACY

Prescription Drug Transparency and Registration of Pharmacy-Related Companies

The Senate accepted and expanded the Executive Budget's proposed regulations for pharmacy services administration organizations (PSAOs), switch companies or pharmacy clearinghouses, and rebate aggregators. The Assembly omitted these proposals.

OVERSIGHT OF HEALTH CARE TRANSACTIONS

CON Reform

Both chambers would remove most of the Executive Budget's proposals for Certificate of Need (CON) reform. However, the Senate accepted the proposal to increase CON fees.

Oversight of Investor-Backed Physician Networks and Other Non-CON Entities

Both houses would remove this proposal.

WORKFORCE

Licensure and Scope of Practice

Both houses would remove almost all of the Executive's proposals to expand scope of practice for various health care practitioners and to join the Interstate Licensure Compact for physicians and the Nurse Licensure Compact for nurses.

Home Care

Both houses removed the Executive's proposal to remove consumer-directed personal assistance services (CDPAS) providers from wage parity. The Senate includes new language to increase home care minimum wages by an additional \$2 per hour over the next two years (i.e., adding \$1/hr in October 2024 and \$1/hr in October 2025).

Human Services COLA

Both houses would increase the Executive Budget's 2.5% Cost of Living Adjustment (COLA) for human services agencies to 8.5%.

Registration of Staffing Agencies

Both chambers accepted the Executive's proposal to regulate temporary staffing agencies, and the Assembly added a maximum allowable charge for such agencies.

Regulation of Health Professions

Both chambers omitted the Executive's proposal to transfer oversight of licensed health professions from the State Education Department (SED) to DOH.

EMERGENCY MEDICAL SERVICES

The Assembly accepts only the following parts of the Executive proposals on EMS reforms:

- Codifying of the Regional EMS Councils (REMSCO) and the State EMS Council (SEMSCO), and providing for feedback from REMSCO and SEMSCO to DOH; and
- Establishing public service campaign to promote recruitment and retention of EMS workers.

The Senate accepts, with modifications, more of the Executive proposals on EMS reform:

- Expanding the definition of emergency medical services;
- Directing SEMSCO to create performance standards for EMS agencies;
- Developing a comprehensive statewide EMS plan and system;
- Establishing EMS training programs;
- Establishing a "mobile integrated healthcare" service model, incorporating EMS providers and allowing them to provide integrated patient care.

OTHER

- The Executive Budget would renew the Medicaid Global Cap through FY 2025. The Assembly would include this renewal, but the Senate bill would repeal the Medicaid Global Cap.
- The Assembly removed the Executive's proposal to cover short-term stays in Institutions for Mental Disease (IMDs).
- The Assembly added licensed creative art therapists (LCATs) to the range of providers for which Article 28 clinics may bill, in addition to the Executive and Senate's addition of licensed mental health counselors (LMHCs) and licensed marriage and family therapists (LMFTs).
- Both chambers would make permanent the carve-out of school-based health centers (SBHCs) from managed care.
- The Senate would create a new "reproductive freedom and equity grant" program to provide additional support to abortion providers.