

Final Budget Summary April 4, 2016

The 2016-17 New York State Final Budget was approved by the Legislature and signed by the Governor on April 1, 2016. This ACL summary includes more than just the Mental Hygiene portion of the budget because there are items that will impact your business interests above and beyond mental health housing. Below is a breakdown of specific areas of the budget. There are two Appendices – one on minimum wage and one on Family Leave at the end of this document. As we learn more we will send it out.

NYS OFFICE OF MENTAL HEALTH:

- **Minimum Wage Increase:** Although the entire health and behavioral health sectors advocated strongly for adjustments in state contracts and Medicaid program rates to offset the costs of a new minimum, the final budget fell short of addressing the total need created by increasing the minimum. There will be three geographic schedules for the increase (See Appendix I at the end of this document). The OMH budget sets aside \$900,000 for non-profits that contract with the Office of Mental Health to deal with the increases that will start on December 31, 2016. This amount includes \$600,000 of state money and \$300,000 additional Federal money to help offset costs in the Medicaid program. The \$900,000 will only target 1,700 FTEs state-wide in the community mental health system that need to be increased to the new minimum wage. It does nothing to address the compression issue created for other positions when minimum wage is increased. There is a provision to suspend the increases in upstate starting in 2019 if economic conditions worsen. We don't yet know how they will allocate that money across the system of OMH providers but they did use information taken from CFRs to identify the 1,700 FTEs. There also is a promise of \$5 million in 2017/2018 and \$14.4 million in 2018/2019 to offset future increases, not cumulative.
- **COLA:** There is a 0.2% COLA in the budget that will be applied as an across the board increase. The good news is that this is not targeted to certain workers, so they are finally listening to our pleas for an across the board increase. The statutory COLA that was passed years ago is tied to inflation, but (as you all are painfully aware) they have deferred that COLA year after year. This year they honored the statute in a year when inflation is virtually non-existent, hence the 0.2% COLA. The total for the entire OMH community-based system is only \$2.4 million.
- **No Rate Increases:** There is no money to address the continuing erosion of rates in OMH residential programs, which are now in some cases more than 40% behind inflation. This continues to be a top priority for ACL moving forward.
- **Reinvestment from State Inpatient Bed Closures:** The Budget Invests \$22.5 Million in Additional Community Services. Building upon the community reinvestments funded in the FY 2016 Enacted Budget, this additional annual investment will be used to expand a variety of community services based on regional needs reflecting stakeholder input, and is expected to reduce the need for costlier inpatient beds. This money is typically invested in the communities where the state hospital beds have been reduced. There is a process that includes each regions stakeholders to decide on how to invest the money allocated – it can include: state and nonprofit crisis and respite beds, supported housing, mental health urgent care walk-in centers,

mobile engagement teams, first episode psychosis teams, family resource centers, evidence-based family support services, peer-operated recovery centers, suicide prevention services, community forensic and diversion services, tele-psychiatry, transportation services, family concierge services, etc. See lists of past investments here:

<https://www.omh.ny.gov/omhweb/transformation/all-programs-list.html>

- **Health care Facility Transformation Program:** This is a \$200 million Statewide program established to replace inefficient or outdated facilities as part of a merger, consolidation, acquisition or other significant corporate restructuring activity that is part of an overall transformation plan intended to create a financially sustainable system of care. A minimum of \$30 million will be awarded to community based providers identified as:
 - diagnostic and treatment centers licensed or granted an operating certificate;
 - Article 31 licensed or certified mental health clinic;
 - Article 32 licensed or certified alcohol and SA treatment clinic;
 - Primary care providers;
 - Article 36 home care providers.

All \$200 million will be awarded without a competitive bid or request for proposal process for capital grants to health care providers deemed to be a provider “that fulfills or will fulfill a health care need for acute inpatient, outpatient, primary, home care or residential health care services in a community” according to a list of criteria, including that it has to align with DSRIP goals.

- **Housing Pipeline:**

There are 1200 New York/New York III units scheduled to open along with 800 other residential pipeline beds from a variety of initiatives, e.g., Adult Home Scattered Site, Nursing Home Scattered Site, Forensic Scattered Site, etc.

- **Temporary Operator:**

OMH is now authorized to quickly establish a “Temporary Operator” to oversee any mental health program facing serious financial instability (there is similar language regarding OPWDD, which we have not looked at closely, but seems to be identical.) The temporary operator will be another provider of mental health services, and will be tasked with creating and implementing a new strategic plan for the original operating provider (“established operator.”) There is a timeframe of 90 days for this temporary operator appointment, and another term of 90 days, if needed, for a total of 180 days with Commissioner approval. The temporary operator will have total access to any and all accounts related to the mental health program in financial duress and will approve all expenditures. At the end of each approved period either the temporary operator will be extended, the established operator will resume operations, or the patients will be transferred to other providers licensed or operated by OMH. The established operator will still be responsible for the continued operation of the mental health programs, maintenance and repair of facilities, provision of utilities, payment of operating and maintenance expenses or payment of mortgages or liens, of course, under the supervision of the temporary operator. The established operator will be notified of the Commissioner’s choice to set up a temporary operator through a letter sent by certified mail. In the letter, the established operator will receive a required meeting date with the Commissioner to take place within 10 days of receipt of the letter. This meeting will allow the established operator to develop a plan of correction and schedule for implementation of the plan. The Commissioner can choose to hold off on appointing a temporary operator contingent upon this new plan. If this plan is not executed in its entirety within the allotted timeframe given by the Commissioner, a hearing will take place to appoint the temporary operator. The established operator will still continue the operation of the mental health program as the temporary operator oversees the financials, so that the mental health program can function in a normal manner. Provider agencies also have the

opportunity to request a temporary operator from the Commissioner of the Office of Mental Health.

- **Confidentiality:** Section 31.13 (d) of the MH law is amended to add that nothing in the section shall prevent the exchange of information concerning patients or clients, including identification, between facilities and managed care organizations, behavioral health organizations, health homes or other entities authorized by the department or the department of health to provide, arrange for or coordinate health care services for such patients or clients who are enrolled in or receiving services from such organizations or entities. Provided however, written patient or client consent shall be obtained prior to the exchange of information where required by 42 USC 290dd-2 (i.e., federal substance abuse confidentiality laws; <https://www.law.cornell.edu/uscode/text/42/290dd-2>) and its relevant regulations.
- **Prescriber Prevails:** The final budget restored a proposed cut in the budget that would have limited prescriber prevails protections to just mental health medications. This protection allows for an individual to get all of their appropriate medications, health and mental health, based on the prescriber's recommendation and not on a plan formulary.
- **Exempt Income:** Authorization for OMH to collect community residence exempt income for a 3-year period has been approved through January 30, 2019.
- **Mental Health First Aid:** The budget agreement includes \$1 million for Mental Health First Aid training.
- **Children's Mental Health Services: (thank you to Andrea Smythe for providing the following information on the children's system)**
New Funding for 6 State Plan Services for Children – The budget agreement includes \$7.5 million to reimburse providers designated to provide the new services added to the Medicaid benefit for children with behavioral health needs. The 6 new state plan services once approved by the Centers for Medicare and Medicaid, include:
 - Crisis Intervention
 - Community psychiatric support and treatment
 - Psychosocial rehabilitation services
 - Family Peer Support Services
 - Youth Peer training and support services; and
 - Services from other licensed professionals

The budget agreement allows for OMH to spend \$10 million (state share, growing to \$20 million with federal match) for Children's Managed Care start-up funding.

The budget authorizes \$105 million for Health Homes, up from \$83.5 million. This funding can be for grants to health homes to contribute to expenses associated with health homes establishment and infrastructure costs. Children's Health Home enrollment is slated to expand in September 2016.

The Legislature adds \$175,000 for the design of a data collection plan and analysis of children's behavioral health services to support movement toward value based payments or alternative payment methodologies.

The budget agreement includes \$500,000 for the Youth Suicide Prevention program.

The budget agreement extends APGs (government rates) for licensed OMH and OASAS clinics for billed children's services and for Child Health Plus behavioral health visits through June 30,

2018. The commitment is that APGs will be paid for 24 months from the date that children's services are transferred to Medicaid Managed Care.

NEW HOMELESS HOUSING INITIATIVE:

- The final budget included \$1.97 billion in capital funding for a multi-year housing program. Although the Governor's proposed budget outlined some specific plans for the money none of that has been agreed to so they will go back to the drawing board. The Governor and Legislature will decide through a future Memorandum of Understanding (MOU) how this money will be allocated.
- We do know that a portion of this money will be used to help support the first 6,000 units that will be developed over the next five years. These 6,000 units would be the beginning of a commitment to develop a total of 20,000 units of supportive housing statewide over the next 15 years. Our understanding at this point is an RFP for the Services and Operating will be issued in the near future.
- An additional \$124 million is included to fund services and operating for the first 6,000 new units. This money includes a \$74.5 million re-appropriation from the JP Morgan Settlement Funds and an additional new \$50 million.

STATE EDUCATION DEPARTMENT:

- **Social Work and Mental Health Professional Licensing Exemption:** The legislature and the governor agreed to a 2-year extension that sunsets on July 1, 2018. The exemption for unlicensed staff to provide services that fall within the restrictive scopes of practice of Social Work, Psychologist or Mental Health Practitioner has been in place and the subject of extenders for approximately 14 years. However, it is well understood that there are not enough licensed social workers to replace all the unlicensed staff and that there are not enough licensed social workers who can supervise unlicensed social workers for the three-year clinical experience requirement. The exemption applies to employees of programs operated, regulated, funded or approved by OMH, OPWDD, OASAS, OCFS, OTDA, DOCCS, DOH, the State Office for the Aging, and local mental hygiene and local social services agencies. ACL has been very involved in pushing this back the last few times. We will keep you posted on activities over the next two years that will certainly impact what happens in July of 2018.

WORKFORCE

Paid Family Leave (PFL): This is just a first look at this new law. It will have to be analyzed further and there will surely be many webinars to fully explain it. It is not effective until January 1, 2018 so there is time.

"Family leave" will include any leave taken by an employee from work for any of the following reasons

- to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member
- to bond with the employee's child during the **first twelve months** after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee
- because of any qualifying exigency as interpreted under the family and medical leave act and other federal laws, arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States.

(see Appendix II at the end of this document for more information on Paid Family Leave)

APPENDIX I – MINIMUM WAGE

(a) New York City.

(i) Large employers. Every employer of eleven or more employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

- \$11.00 per hour on and after December 31, 2016,
- \$13.00 per hour on and after December 31, 2017,
- \$15.00 per hour on and after December 31, 2018, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

ii) Small employers. Every employer of ten or less employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

- \$10.50 per hour on and after December 31, 2016,
- \$12.00 per hour on and after December 31, 2017,
- \$13.50 per hour on and after December 31, 2018,
- \$15.00 per hour on and after December 31, 2019, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(b) Remainder of downstate. Every employer shall pay to each of its employees for each hour worked in the counties of Nassau, Suffolk and Westchester a wage not less than:

- \$10.00 per hour on and after December 31, 2016,
- \$11.00 per hour on and after December 31, 2017,
- \$12.00 per hour on and after December 31, 2018,
- \$13.00 per hour on and after December 31, 2019,
- \$14.00 per hour on and after December 31, 2020,
- \$15.00 per hour on and after December 31, 2021, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(c) Remainder of state. Every employer shall pay to each of its employees for each hour worked outside of the city of New York and the counties of Nassau, Suffolk, and Westchester, a wage of not less than:

- \$9.70 on and after December 31, 2016,
- \$10.40 on and after December 31, 2017,
- \$11.10 on and after December 31, 2018,
- \$11.80 on and after December 31, 2019,
- \$12.50 on and after December 31, 2020, and on each following December thirty-first, a wage published by the commissioner on or before October first, based on the then current minimum wage increased by a percentage determined by the director of the budget in consultation with the commissioner, with the result rounded to the nearest five cents, totaling no more than fifteen dollars, where the percentage increase shall be based on indices including, but not limited to,

(i) the rate of inflation for the most recent twelve-month period ending June of that year based on the consumer price index for all urban consumers on a national and seasonally unadjusted

basis (CPI-U), or a successor index as calculated by the United States department of labor,

(ii) the rate of state personal income growth for the prior calendar year, or a successor index, published by the bureau of economic analysis of the United States department of commerce, or (iii) wage growth; or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(d) The rates and schedules established in paragraphs (a) and (b) of this subdivision shall not be deemed to be the minimum wage under this subdivision for purposes of the calculations specified in subdivisions one and two of section five hundred twenty-seven of this chapter.

APPENDIX II – PAID FAMILY LEAVE

Employees are eligible for family leave if employed for more than 26 consecutive weeks by a covered employer. Every such employee shall continue to be eligible for family leave benefits only during employment with a covered employer.

Any employee that utilizes paid family leave is entitled to be restored in their position after the leave is finished. If the employees current position is not available at that time, the employer must make available a comparable position with comparable benefits and pay. Any employment benefit accrued prior to the leave will still be available to the employee upon their return.

Any employee under paid family leave shall keep their existing health benefits for the duration of the leave.

WEEKLY BENEFIT

Beginning January 1, 2018

- Paid family leave shall not exceed 8 weeks during any 52-week calendar period.
- Pay shall be 50% of the employee's average weekly wage, but shall not exceed 50% of the state average weekly wage.

Beginning January 1, 2019

- Paid family leave shall not exceed 10 weeks during any 52-week calendar period.
- Pay shall be 55% of the employee's average weekly wage, but shall not exceed 55% of the state average weekly wage.

Beginning January 1, 2020

- Paid family leave shall not exceed 10 weeks during any 52-week calendar period.
- Pay shall be 60% of the employee's average weekly wage, but shall not exceed 60% of the state average weekly wage.

Beginning January 1, 2021 and beyond

- Paid family leave shall not exceed 12 weeks during any 52-week calendar period.
- Pay shall be 67% of the employee's average weekly wage, but shall not exceed 67% of the New York State average weekly wage in effect at that time.

The superintendent of financial services shall have discretion to delay the increases in the family leave benefit level provided in subparagraphs (ii), (iii), and (iv) of this paragraph by one or more calendar years. In determining whether to delay the increase in the family leave benefit for any year, the superintendent of financial services shall consider:

- (1) the current cost to employees of the family leave benefit and any expected change in the cost after the benefit increase;

(2) the current number of insurers issuing insurance policies with a family leave benefit and any expected change in the number of insurers issuing such policies after the benefit increase;

(3) the impact of the benefit increase on employers' business and the overall stability of the program to the extent that information is readily available;

(4) the impact of the benefit increase on the financial stability of the disability and family leave insurance market and carriers; and

(5) any additional factors that the superintendent of financial services deems relevant. If the superintendent of financial services delays the increase in the family leave benefit level for one or more calendar years, the family leave benefit level that shall take effect immediately following the delay shall be the same benefit level that would have taken effect but for the delay.

Benefits may be payable to employees for paid family leave taken intermittently or for less than a full work week in increments of one full day or one fifth of the weekly benefit.

The weekly benefits for family leave occurring on or after January 1, 2018, shall not be less than \$100.00 per week, except if the employee's wages at the time of family leave are less than \$100.00 per week. If the employee's wages are less than \$100.00 per week, that employee shall receive his or her full wages. Employees can receive paid family leave benefits in increments of 1/5 the weekly benefit per day of family leave used.

Employees are responsible to pay the entirety of their family leave premium. The employer is not under any obligation to contribute to this fund. The employee can only contribute up to one-half of 1% of their own wages, not to exceed \$0.60 per week.