



STATE FISCAL YEAR 2006-2007 EXECUTIVE BUDGET

NYSRA Analysis
January 22, 2006

On Tuesday, January 17, Governor Pataki released his proposed \$110 billion executive budget.

As expected, the document proposes tax reductions in some areas. It also proposes \$150 million in new savings under Medicaid through new provisions that, if adopted in statute, would create a new program overseen by the Department of Health to combat Medicaid fraud, waste, and abuse.

As we reported late Tuesday, the budget has some positive elements. No significant cuts in program funding are proposed (though some flat-funded programs could use inflationary boosts). Trended OMRDD programs continue to receive their trends at an approximate 3 percent. And, in a welcome move, the Governor proposes a cost of living adjustment for several community service programs that have not recently received any regular inflationary increases – though, as described below, the proposed COLA, while appreciated, should go further to help these programs catch up to inflationary pressures of the past several years.

Also included in the budget are a new child mental health initiative, acceleration of Medicaid managed care enrollment of populations previously exempt from mandatory enrollment in managed care plans, and some expansion of the home and community-based waiver program.

Set out below is an analysis of the budget based on the release by the governor of his Executive Budget supporting materials, as well as his “Article VII bills,” which are the so-called budget “language bills” that accompany his proposal. The volume and detail of this material is such that our analysis is ongoing; the information in this memorandum is intended to convey some of the more significant elements of the proposal.

MEDICAID FRAUD, WASTE, AND ABUSE

The Executive Budget proposes new savings of \$150 million – twice the target of the past year – through the rooting out of “fraud, waste, and abuse.” Those three terms appear together frequently in the governor’s proposed legislative language, although it is not clear exactly what will be deemed “waste” or “abuse.”

The governor proposes:

- ▶ Combining all current fraud investigation personnel from DOH, OMH, OMRDD and OASAS into a proposed statutory Office of Medicaid Inspector General within the Department of Health. These would be augmented by 81 new positions to be added, with the total number working on fraud issues at approximately 700. The efforts calls for \$15 million cost of increasing this workforce.
- ▶ Empowering the MIG to work with the Attorney General’s office, through the Deputy AG for Medicaid Fraud, as well as with local and federal prosecutors.
- ▶ Creating new civil and criminal penalties for fraud, including penal law amendments to add various degrees of criminal health care fraud. Such crimes would include defrauding health plans and/or receiving money in connection with delivery of health care services if such money or benefit is received in a fraudulent or false manner, including the issuance of false information.
- ▶ Increasing fines to \$10,000 to first-time offenders to \$30,000 for repeat offenders.
- ▶ Authorizing counties to investigate and prosecute fraud through demonstration projects designed to ferret out fraud, waste and abuse, as well as creating multi-agency investigation teams.
- ▶ Providing whistleblower protection to employees who report health care fraud.
- ▶ Specifying that any litigation challenging actions of the OIG may be brought only in State Supreme Court in Albany County.

MEDICAID MANAGED CARE

The governor’s proposal would continue shifting Medicaid enrollees into managed care plans. Among the specifics he calls for:

- ▶ Accelerating enrollment of Supplemental Security Income (SSI) beneficiaries, as well as other physically disabled, blind or seriously and persistently mentally ill persons into Medicaid managed care for their health benefits only (not behavioral

health benefits). These populations have previously been exempt from mandatory managed care enrollment.

- ▶ Requiring mandatory managed care enrollment for currently “voluntary” counties with two or more health plans – Allegany, Dutchess, Orange, Putnam, Schenectady, Ulster, Washington.
- ▶ Permitting counties with just one health plan to require that beneficiaries enroll in managed care.
- ▶ Making the mandatory managed care program originally initiated through the federal waiver a permanent program.
- ▶ Establishing state-sponsored managed care programs for those with co-occurring mental health and substance abuse conditions, for behavioral health benefits only.
- ▶ Eliminating the six-month “guaranteed eligibility” feature for those enrolled in Medicaid managed care.

The Governor’s proposal does not appear to make significant changes to the Child Health Plus program. It does, however, propose changes in the Family Health Plus program, including:

- ▶ Excluding from the program all employees of companies that employ more than 100 people.
- ▶ Increasing the co-payment for “inappropriate use of an emergency room” to \$50, from the current \$3.
- ▶ Allowing providers to deny serving any Family Health Plus enrollee who is unable to pay the required co-payment.

MEDICAID PART D – DUAL ELIGIBLES

The governor’s budget formally proposes elimination of Medicaid payments for drugs for those eligible for both Medicare and Medicaid, but qualifies this in a couple of ways.

First, for the full state fiscal year the budget provides Medicaid coverage for atypical anti-psychotics, anti-depressants, and anti-retrovirals used in the treatment of HIV/AIDS, and anti-rejection drugs used for organ and tissue transplant recipients.

Second, it provides Medicaid coverage for drugs not available under Medicare Part D, but only through the end of June. This runs counter to indications from DOH late in 2005 that this “wraparound” would be available on an indefinite basis.

Currently the wraparound concept is the subject of much debate in Albany. Since there is no such benefit in the current fiscal year, the governor did issue an executive order directing DOH to pay the benefit and seek reimbursement from Washington. The Assembly last week introduced a bill to put the wraparound in place for an indefinite period of time, saying the state should step in for as long as necessary until the Part D has been through a transition period and problems are worked out.

Other pharmacy issues addressed in the budget proposal:

Reducing reimbursement for brand-name drugs to average wholesale price minus 15 percent; reducing reimbursement for generic drugs to average wholesale price minus 30 percent; eliminating reimbursement for sexual or erectile dysfunction; elimination of last year's agreement the Legislature regarding "physician over-ride" to prescribe drugs not on the Preferred Drug List or subject to the Clinical Drug Review program.

COST OF LIVING ADJUSTMENT

The governor's proposal for the first time in recent memory proposes a COLA for several programs that have either not received such adjustments in several years or have occasionally received boosts on an ad hoc basis over the years.

According to the proposal, the COLA would be established for three years and apply to designated human services programs under auspices of OMH, OMRDD, OASAS, DOH, State Office for the Aging, and OCFS. The first boost would be effective on October 1, 2006, with the following two annual increases to be effective (subject to future appropriations) on April 1, 2007 and April 1, 2008.

The Article VII bill language ties the COLA to the Congressional Budget Office estimate of the US consumer price index for all urban consumers published in the CBO budget outlook after June 1 of each year. The COLA is estimated for present purposes at 2.5 percent and, with an effective date of October 1 this year, would be worth approximately \$17 million; increasing to \$35 in 2007-08, according to the governor's materials.

The list of programs eligible for the COLA is included in the legislation.

OMRDD funded:

- Local/unified services
- Chapter 620
- Direct Sheltered Workshop
- Long-Term Sheltered Employment
- Voluntary Operated Community Residences
- Article 16 Clinics
- Day Treatment
- Family Support Services

100 Percent Day Training
Epilepsy Services
Individual Support Services

OMH funded:

On-Site Rehabilitation
Sheltered Workshop/Satellite Sheltered Workshop
Transitional Employment
Psychosocial Club
Enclave In Industry
Assisted Competitive Employment
Affirmative Business Industries
Intensive Psychiatric Rehabilitation Treatment
Personalized Recovery Oriented Service (PROS, except for clinic treatment fee component)
Client Worker
Ongoing Integrated Supported Employment Services
Supported Education
Drop In Centers
Self-Help Programs
Recreation
Respite Care
Transportation
Outreach
Advocacy/Support Services
Multicultural Initiative
MICA Network
Bridger
Assertive Community Treatment
Case Management
Blended Case Management
Intensive Case Management
Transition Management Services
Consumer Service Dollars
Emergency And Non Emergency Service Dollars
Supportive Case Management
Assertive Community Treatment Team Service Dollars
Supported Single Room Occupancy
Supported Housing
Supported Housing Community Services
Treatment Congregate Supported Congregate
Treatment/Apartment

Supported Apartment
Community Residence Single Room Occupancy
Family Care
Cops, Non-Cops Disproportionate Share
Partial Hospitalization
"State aid funding provided for inpatient psychiatric unit of a general hospital clinic and continuing day treatment"
Crisis Residence Crisis/Respite Beds
CPEP Crisis Outreach Crisis Beds And Crisis Intervention
Crisis Intervention

Numerous programs under the auspices of the Department of Health and OASAS also are eligible for the COLA.

The COLA does not apply to the BASE Medicaid fees/rates for clinic treatment, day treatment, continuing day treatment programs. More definition on this budget items is being sought.

HOME AND COMMUNITY-BASED WAIVER

The governor proposes new funds to expand the number of OMH waiver program by 300 slots and OCFS slots by 150, for 450 total new slots, bringing the grand total to 1,436.

CHILD AND FAMILY CLINIC PLUS

The budget includes \$33 million for this new program, which the governor says will fundamentally change the way mental health professionals identify children and adolescents in need of services. Clinics with the Child and Family Clinic Plus designation will actively pursue community-based assessments, evidence-based treatments, and in-home services, as well as adopt a "public health approach" for the early detection of emotional disturbances.

VESID PROGRAMS

Funding levels for VESID-funded programs are continued at their previous fiscal year levels.

Supported employment funding is maintained at \$15.4 million; Case services at \$54.6 million and Independent Living at \$10.7 million. The operational oversight of the Batavia School for the Blind ICF would be transferred to OMRDD. Also, \$7.5 million for a capital project is earmarked for the Rome School for the Deaf to renovate dormitories.

Special Education Reform – Similar reforms advanced for 2005-06 have been revisited in 2006-07. Specifically, the average State aid ratio used in calculating aid for private special education programs will be reduced from 85 percent to 49 percent — the same as that used for public schools.

BOCES Reform – Again the Governor 's budget recommends reforms to eliminate an artificial incentive to use BOCES simply as a means of generating additional state aid. It is proposed that BOCES aid will be limited to the amount received by school districts in the prior year. This reflects a reduction in 06-07 of \$10 million.

OTDA PROGRAMS

The Governor, as he did last year, proposes a “Flexible Fund” for a large portion of the money the state receives from Washington as the TANF surplus block grant. This money – the governor proposes a fund \$1.025 billion – would in turn be block granted to counties for uses consistent with TANF purposes. Last year the Legislature balked at this concept as it fails to guarantee funding for many existing programs. The adopted state budget reflected a compromise in which the governor agreed to the Legislature’s carving out of several specific programs to ensure they received funding. What occurs this year may be something similar.

The governor has also again proposed the full-family sanction for families receiving TANF benefits. If the head of a household fails to meet work requirements, the family’s entire family assistance grant is withheld, unlike previous practice in which the grant amounts withheld were partial.

NYSRA continues to examine the proposed budget and supporting documents released by the governor and will update our analysis as appropriate in the coming days.