

**2014-15 NEW YORK STATE EXECUTIVE BUDGET**

**HEALTH AND MENTAL HYGIENE  
ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

**2014-15 NEW YORK STATE EXECUTIVE BUDGET**

**HEALTH AND MENTAL HYGIENE ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

**CONTENTS**

<b>PART</b>	<b>DESCRIPTION</b>	<b>STARTING PAGE NUMBER</b>
A	Changes the General Public Health Work program, improves HIV testing, restructures certain health research and education programs, promotes capital access to strengthen health care infrastructure and promote transformative health care projects, provides relief from unnecessary State requirements to expand primary care access and health care integration, and authorizes new health care service delivery models	7
B	This bill would reauthorize provisions of the Health Care Reform Act (HCRA) for three years	12
C	Make statutory changes necessary to continue implementing Medicaid Redesign Team recommendations	14
D	Expand existing exemption in the Nurse Practice Act to direct care staff in non-certified settings funded, authorized or approved by OPWDD	20
E	Extend for three years the clarification that Office of Mental Health and the Office for People with Developmental Disabilities facility directors who act as representative payees may use a person's funds for their care and treatment consistent with federal law and regulations	21
F	Authorize the Office of Mental Health to continue to recover Medicaid exempt income from providers of community residences	22
G	One-year deferral of the human services "Cost-of-Living Adjustment"	23

## MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor in  
Accordance with Article VII of the Constitution

AN ACT to amend the public health law, in relation to state aid to counties and New York City for provision of prenatal health care services to uninsured women; to amend the public health law, in relation to simplifying consent for HIV testing; to amend the public health law, in relation to authorization for data sharing with providers for purposes of patient linkage and retention in care; to amend the public health law, in relation to the board member composition for the health research science board; to amend the public health law, in relation to the health research science board meeting requirements; to amend the state finance law, in relation to the New York state prostate cancer research, detection and education fund; to amend the public health law and the public authorities law, in relation to a capital restructuring finance program; to amend the public health law, in relation to the health care restructuring loan pool; to amend the public health law and the public authorities law, in relation to establishing a private equity pilot program; to amend the public health law, in relation to streamlining the certificate of need process for hospitals and diagnostic and treatment clinics providing primary care; to amend the public health law, in relation to the establishment and operation of limited services clinics; to amend the public health law, in relation to standardizing urgent care centers; to amend the public health law, in relation to enhanced oversight of office-based surgery; to amend the public health law, in relation to the statutory authority of updated diagnostic and treatment centers; to amend the public health law and the state finance law, in relation to the operation of the New York State donate life registry; to amend chapter 465 of the laws of 2012 amending the public health law and the vehicle and traffic law relating to establishing Lauren's law, in relation to the effectiveness thereof; to amend the social services law and the public health law, in relation to streamlining the application process for adult care

facilities and assisted living residences; to amend the public health law, in relation to the long term home health care program; to amend the public health law, in relation to resident working audits; to amend chapter 58 of the laws of 2008 amending the elder law and other laws relating to reimbursement to particular provider pharmacies and prescription drug coverage, in relation to the effectiveness thereof; to repeal certain provisions of the public health law relating thereto; and to repeal subdivision 9 of section 2803 of the public health law, relating to reports to the commissioner by general hospitals regarding working conditions and limits on working hours for certain members of the hospital's staff (Part A); to amend the New York Health Care Reform Act of 1996, in relation to extending certain provisions relating thereto; to amend the New York Health Care Reform Act of 2000, in relation to extending the effectiveness of provisions thereof; to amend the public health law, in relation to the distribution of pool allocations and graduate medical education; to amend chapter 62 of the laws of 2003 amending the general business law and other laws relating to enacting major components necessary to implement the state fiscal plan for the 2003-04 state fiscal year, in relation to the deposit of certain funds; to amend the public health law, in relation to health care initiative pool distributions; to amend the social services law, in relation to extending payment provisions for general hospitals; to amend chapter 600 of the laws of 1986 amending the public health law relating to the development of pilot reimbursement programs for ambulatory care services, in relation to the effectiveness of such chapter; to amend chapter 520 of the laws of 1978 relating to providing for a comprehensive survey of health care financing, education and illness prevention and creating councils for the conduct thereof, in relation to extending the effectiveness of portions thereof; to amend the public health law, in relation to extending access to community health care services in rural areas; to amend the public health law, in relation to rates of payment for personal care service providers; to amend the public health law, in relation to the assessment on covered

lives; to amend the public health law, in relation to the comprehensive diagnostic and treatment centers indigent care program; to amend the public health law, in relation to general hospital indigent pool and general hospital inpatient reimbursement rates; to amend chapter 266 of the laws of 1986 amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, in relation to extending the applicability of certain provisions thereof; and to amend chapter 63 of the laws of 2001 amending chapter 20 of the laws of 2001 amending the military law and other laws relating to making appropriations for the support of government, in relation to extending the applicability of certain provisions thereof (Part B); to amend the social services law, in relation to eliminating prescriber prevails for brand name drugs with generic equivalents; to amend the public health law, in relation to minimum supplemental rebates for pharmaceutical manufacturers; to amend the social services law, in relation to early refill of prescriptions; to amend the public health law, in relation to eliminating the financial incentive for e-prescribing; to amend the public health law, in relation to expanding prior authorization under the clinic drug review program; to amend the public health law, in relation to the expansion of prior authorization under the clinical drug review program; to amend the social services law, in relation to requiring prior authorization for non-medically acceptable indicators for prescription drugs; to amend the social services law, in relation to the integration of behavioral and physical health clinic services; to amend part A of chapter 56 of the laws of 2013 amending chapter 59 of the laws of 2011 amending the public health law and other laws relating to general hospital reimbursement for annual rates relating to the cap on local Medicaid expenditures, in relation to establishing rate protections for behavioral health essential providers and the effectiveness thereof; to amend section 1 of part H of chapter 111 of the laws of 2010, relating to increasing Medicaid payments to providers through managed care organizations and providing equivalent fees through an ambulatory patient group methodology, in relation to transfer of

funds and the effectiveness thereof; to amend the social services law, in relation to spousal support for the costs of community-based long term care; to amend the social services law, in relation to fair hearings within the Fully Integrated Duals Advantage program; to amend the public health law, in relation to the establishment of a default rate for nursing homes under managed care; to amend the public health law, in relation to rates of payment for certified home health agencies and long term home health care programs; to amend the public health law, in relation to rate setting methodologies for the ICD-10; to amend the public health law, in relation to inpatient psych base years; to amend the public health law, in relation to specialty inpatient base years; to amend the public health law, in relation to inpatient psych base years; to amend the public health law, in relation to hospital inpatient base years; to amend part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state fund medicaid expenditures, in relation to the determination of rates of payments by certain state governmental agencies; to amend the social services law and the public health law, in relation to requiring the use of an enrollment broker for counties that are mandated Medicaid managed care and managed long term care; to amend the public health law, in relation to establishing vital access pools for licensed home care service agencies; to amend the social services law, in relation to the expansion of the Medicaid managed care advisory review panel; to amend part H of chapter 59 of the laws of 2011 amending the public health law relating to general hospital inpatient reimbursement for annual rates, in relation to the across the board reduction of 2011; to amend the social services law, in relation to establishing a health homes criminal justice initiative; to amend the social services law, in relation to the transition of children in foster care to managed care; to amend the social services law and the state finance law, in relation to the establishment of a basic health plan; to amend the social services law, in relation to hospital presumptive eligibility under the affordable care act; to amend the social services law,

in relation to spending down procedures under the MAGI system of eligibility determination; to amend the public health law, in relation to moving rate setting for child health plus to the department of health; to amend the public health law, in relation to eliminating the existing child health plus waiting period; to amend chapter 2 of the laws of 1998, amending the public health law and other laws relating to expanding the child health insurance plan, in relation to allowing for the permanent expansion of child health plus income and benefit provisions; to amend part C of chapter 58 of the laws of 2009, amending the public health law relating to the ADIRONDACK MEDICAL HOME MULTIPAYOR DEMONSTRATION PROGRAM, in relation to extending the adirondack medical home demo through the year 2017; to amend chapter 779 of the laws of 1986, amending the social services law relating to authorizing services for non-residents in adult homes, residences for adults and enriched housing programs, in relation to extending the authorization of non-resident services within adult homes; to amend part C of chapter 58 of the laws of 2008, amending the social services law and the public health law relating to adjustments of rates, in relation to extending the utilization threshold exemption; to amend chapter 19 of the laws of 1998, amending the social services law relating to limiting the method of payment for prescription drugs under the medical assistance program, in relation to extending provisions related to dispensing fees; to amend the public health law, in relation to rates of payment to residential health care facilities; providing for the repeal of certain provisions relating to the availability of funds upon expiration thereof; and to repeal certain provisions of the social services law and the public health law relating thereto (Part C); to amend the education law, in relation to the exemption of the nurse practice act for direct care staff in non-certified settings funded, authorized or approved by the office for people with developmental disabilities (Part D); to amend part A of chapter 111 of the laws of 2010 amending the mental hygiene law relating to the receipt of federal and state benefits received by individuals receiving care in facilities

operated by an office of the department of mental hygiene, in relation to the effectiveness thereof (Part E); to amend the mental hygiene law, in relation to the recovery of exempt income by the office of mental health for community residential programs (Part F); and to amend chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to foregoing such adjustment during the 2014-2015 state fiscal year (Part G)

**PURPOSE:** This bill contains provisions needed to implement the Health and Mental Hygiene portions of the 2014-15 Executive Budget.

This memorandum describes Parts A through G of the bill which are described wholly within the parts listed below.

**Part A – Changes the General Public Health Work program, improves HIV testing, restructures certain health research and education programs, promotes capital access to strengthen health care infrastructure and promote transformative health care projects, provides relief from unnecessary State requirements to expand primary care access and health care integration, and authorizes new health care service delivery models**

Purpose:

This bill would change the General Public Health Work (GPHW), improve HIV testing, restructure certain health research and education programs, promote capital access to strengthen health care infrastructure and promote transformative health care projects, provide relief from unnecessary State requirements in order to expand primary care access and health care integration, and authorize new health care service delivery models.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

### **General Public Health Work (GPHW) Program**

Section 1 of the bill would amend Public Health Law (PHL) § 602(1) to encourage local governments to establish appropriate linkages to health insurance coverage for uninsured women receiving prenatal care services reimbursed through the GPHW program. Prenatal care services would continue to be available through the GPHW program until health insurance coverage is established.



## **Improve HIV Testing**

Section 2 of the bill would amend PHL § 2781 to simplify consent requirements for HIV related testing consistent with Centers for Disease Control (CDC) guidelines.

Section 3 of the bill would amend PHL § 2135 to allow for enhanced data sharing among health care providers and health departments to maintain patient linkages and improve continuity and retention in care.

## **Health Research Science Board and Prostate Cancer Research, Detection and Education Fund**

Section 4 of the bill would amend PHL § 2410 to revise membership on the Health Research Science Board (HRSB) to align with its purpose in approving funding for breast cancer research. The number of voting members remains the same, but the bill would remove rotating regional appointments and the requirement for one voting member to have survived prostate or testicular cancer. Board membership will be aligned as current members attrite.

Section 5 of the bill would amend PHL §2411(1) to change the frequency of HRSB meetings from at least four times per year to “as needed” and would make conforming changes to remove references to prostate or testicular cancer.

Section 6 of the bill would amend PHL §2409-a to rename the "breast, cervical and ovarian cancer detection and education program advisory council" to the "cancer detection and education program advisory council". In addition, it would expand oversight and representation on the council to now include advice on prostate and testicular cancer.

Section 7 of the bill would amend SFL § 95-e to amend requirements for the Prostate Cancer Research Detection and Education Fund to remove a reference to the New York State Coalition to Cure Prostate Cancer as the sole entity who may be supported from the Fund. This entity was never legally constituted as an active corporation, thus preventing the use of resources from the Fund.

## **Capital Access**

Section 8 of the bill would add a new PHL § 2823 to establish a new \$1.2 billion Capital Restructuring Financing Program to support bond financing of capital projects designed, over the next seven years, to strengthen the health care infrastructure, improve primary care access, and transform the financial stability and efficacy of the State’s health care delivery system.

Section 9 is intentionally omitted.

Section 10-11 of the bill would amend PHL § 2815 to expand the availability of Health Facility Restructuring Program loans to assist health care entities in restructuring operations and finances to include not-for-profit nursing homes and not-for profit diagnostic and treatment centers. The program is currently limited to providing loans to general hospitals.

Sections 12-14 of the bill would add a new PHL § 2801-a(17) and amend Public Authorities Law §§ 1676 and 1680 to authorize up to five business corporations to participate in a private equity demonstration program to encourage the investment of private capital in transformative health care projects. All participants would be subject to Public Health and Health Planning Council (PHHPC) approval. Publicly traded entities would not be permitted to participate.

### **Certificate of Need (CON) Redesign**

Sections 15-16 of the bill would amend PHL §2802 and §2807-z to streamline the CON process for hospitals and diagnostic and treatment clinics providing primary care or undertaking limited construction projects without regard to public need in certain circumstances.

Section 17 of the bill would amend PHL § 2801-a to allow PHHPC to approve the establishment of diagnostic and treatment centers and issue operating certificates for the purpose of providing primary care without requiring a full public needs assessment.

Section 18 of the bill would amend PHL § 2801-a(3) to reduce the look-back period required for PHHPC approval from 10 to 7 years for character and competence reviews for existing entities.

Sections 19-20 of the bill would amend PHL §§ 2801-a(4) and 3611-a to merge the two different standards of review of transfers of less than ten percent of voting rights or ownership interest in operator entities established under Articles 28 or 36, and ensure that PHHPC reviews and consents to all transfers that result in a previously unapproved transferee gaining an interest of ten percent or more.

### **Authorize Limited Services Clinics**

Section 21 of the bill would add a new PHL § 2801-a(17) to authorize the establishment of limited services clinics within retail operations for the purposes of providing certain health care services. Currently, retail clinics cannot employ health care practitioners and instead operate as private physician offices which are not regulated by the Department of Health (DOH). Licensing retail clinics as limited services clinics will allow DOH to define the scope of services that must be provided and those that are prohibited.

### **Standardize Urgent Care Centers**

Section 22 of the bill would add a new PHL § 230-e to limit the use of the term “urgent

care” solely to Article 28 certified entities and fully accredited health care providers that meet specified criteria including minimum scope of services requirements.

### **Enhance Oversight of Office-Based Surgery (OBS)**

Sections 23-24 of the bill would amend PHL §§ 230-d and 2998-e(1) to standardize and limit procedures permitted in an OBS setting, broaden the definition of adverse events in an OBS setting, broaden the definition of reportable adverse events and extend reporting timeframes, require the submission of data to DOH, and establish registration and accreditation requirements.

### **Upgraded Diagnostic and Treatment Centers**

Sections 25-26 would repeal PHL §§ 2951(4) and 2956 which provided for upgraded diagnostic and treatment centers for members of a rural health network to provide limited emergency services. Given new models of care including urgent care centers and freestanding emergency departments, there is no further need for this model of care.

### **Organ Donation Registry**

Section 27 of the bill would amend PHL § 4310 to allow DOH to contract out the operation and marketing of the NYS Donate Life Registry (Organ and Tissue Donor Registry) to a not-for-profit organization to more effectively promote organ and tissue donation and register potential donors. A new appropriation is also included, funded through revenues received through the Department of Motor Vehicles, to provide partial funds for this contract.

Section 28 of the bill would amend section 6 of Chapter 465 of the Laws of 2012 ("Lauren's Law") to make permanent certain provisions of the current organ donation statute which is set to expire in October 2016. Lauren's Law was enacted in 2012 and requires anyone over the age of 18 obtaining a new driver's license to check off a box declaring whether or not they would be an organ donor.

Section 29 of the bill would amend State Finance Law § 95-d(3) to authorize DOH to utilize the funds deposited into the "Life Pass It On" fund collected by the Department of Motor Vehicles (DMV). These funds would support DOH to contract out the operation of the NYS Donate Life Registry as set forth in Section 27.

### **Streamline Application Process for Adult Care Facilities & Assisted Living Residences**

Section 30 of the bill would add new parts to the Social Service Law §§ 461-b(9) and 461-b(10) to allow for an expedited approval process for transfers of ownership of less than ten percent and for conversions of business organizations and operators of facilities licensed as residential care programs under Article 7 of the Social Services

Law. Currently, such transfers of ownership interest or business conversions require operators to submit a full application for establishment.

Section 31 of the bill would amend Social Services Law § 461-k to increase the maximum respite stays for temporary residential care to non-residents within Adult Care Facilities (ACF) from six weeks to 120 days.

Section 32 of the bill would amend Social Services Law § 461-b(3) to reduce the look-back period for character and competence review from 10 to 7 years for Adult Care Facilities and Assisted Living Residences.

Section 33 of the bill would amend PHL § 4656 to create an expedited review process for the approval for up to nine additional beds, increased from the current limit of five beds, in existing enhanced assisted living residences (EALR) and special needs assisted living residences (SNALR).

### **Long Term Home Health Care Program**

Sections 34-35 of the bill would amend PHL § 3610 to eliminate language pertaining to the Commissioner of Health's authority to increase, decrease or stipulate the number of individuals served by approved long term home health care programs (LTHHCP). Services for Medicaid recipients with long term care needs will be transitioned to managed care organizations and/or Managed Long Term Care Plans (MLTCPs).

### **Resident Working Audits**

Section 36 of the bill would repeal PHL § 2803(9) related to DOH's requirement to audit the number of working hours for hospital residents. This function is currently supported with a State surveillance contract and duplicative of the Federal process used by the Accreditation Council for Graduate Medical Education (ACGME).

### **Expiring Laws**

Section 37 of the bill would amend section 32 of Part A of Chapter 58 of the laws of 2008 to provide for a three year extension of penalties for violations of PHL by particular provider pharmacies.

### **Budget Implications:**

Enactment of this bill is necessary to implement the 2014-15 Executive Budget to achieve total savings of \$3.1 million in Fiscal Year (FY) 2015 and \$5.4 million in FY 2016, as detailed below.

- \$2.0 million savings in FY 2015 (\$4.3 million in FY 2016) reforming the GPHW program;

- \$1.1 million savings FY 2015 (\$1.1 million in FY 2016) from eliminating certain hospital audits.

Effective Date:

This bill takes effect immediately; provided, however, that:

- Section One of this act would take effect July 1, 2014;
- Section Twenty-two would take effect July 1, 2014; provided however that subdivisions two and three shall take effect on January 1, 2016; and
- Sections Twenty-three and Twenty-four would take effect one year after the bill becomes a law.

**Part B - This bill would reauthorize provisions of the Health Care Reform Act (HCRA) for three years**

Purpose:

This bill would extend the provisions of the Health Care Reform Act (HCRA), which plays a significant role in governing the financing of health care services, through March 31, 2017. HCRA is currently scheduled to sunset on March 31, 2014.

Summary of Provisions, Existing Law, Prior Legislative History, and Statement in Support:

In 1996, New York enacted the Health Care Reform Act (HCRA), which replaced the hospital reimbursement system in existence since 1983 with a deregulated system. HCRA was designed to improve the fiscal health of hospitals and support critical public health programs. It was subsequently extended and modified several times, most recently by Chapter 59 of the Laws of 2011, which reauthorized HCRA through March 31, 2014.

This bill would extend HCRA through March 31, 2017 and would amend certain of its provisions to maximize the use of available revenue sources, modify certain programs and secure the fiscal viability of HCRA through its proposed extension period.

Specifically:

Sections one and two would extend several effective dates through December 31, 2017. These provisions would include the continuation of the Medicaid inpatient hospital reimbursement methodology and the collection of HCRA surcharges and assessments.

Sections three and four would amend section 2807-s of the Public Health Law to extend authorization for the collection of the Covered Lives Assessment through December 31, 2017.

Section five would amend section 2807-j of the Public Health Law to extend the authorization to allocate surcharge funds between various financing pools for hospital indigent care and other HCRA programs.

Section six would extend funding for various administrative costs of the Department of Health to assist in the implementation of HCRA programs.

Sections seven and eight would amend sections 2807-l and 2807-v of the Public Health Law to extend the Health Care Initiatives and Tobacco Control and Insurance Initiatives Pools and subject certain allocations to appropriation.

Section nine would amend section 2807-m of the Public Health Law to extend the authorization for Area Health Education Centers (AHEC), the Empire Clinical Research Investigator Program (ECRIP) and the Doctors Across New York program, which includes the Physician Loan Repayment and Practice Support Programs.

Sections ten through twelve would extend the authorization for hospital billing requirements and payment methodologies, the Ambulatory Care Pilot Program, and the Council on Health Care Financing, all of which are provisions historically extended with HCRA.

Section thirteen is intentionally omitted.

Section fourteen would extend authorization for the Upstate Personal Care Workforce Recruitment and Retention Program through March 31, 2017.

Section fifteen would amend section 2807-t of the Public Health Law to modify the reconciliation of collections for the Covered Lives Assessment in excess of one billion forty-five million dollars through December 31, 2017 for the purpose of continuing operational support for the Statewide Health Information Network of New York (SHIN-NY) and the All Payor Claims Database (APCD).

Section sixteen would amend section 2807-p of the Public Health Law to extend authorization for clinic bad debt and charity care payments through March 31, 2017.

Sections seventeen and seventeen-a would remove the requirement that hospitals receiving pool funds must comply with bad debt and charity care reporting requirements, as the need for such reporting was superseded by FY 2014's Indigent Care Reforms

Sections eighteen through twenty-two would extend the Physician's Excess Medical Malpractice Program through June 30, 2015.

Section twenty-three would extend for one year the methodology for enrolling in the Physician's Excess Medical Malpractice Program pool, continue to limit enrollment to

physicians covered in the prior year and subject openings due to attrition to a hospital-based formula.

Sections twenty-four through twenty-seven would allow for waiver authority, severability and effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2015 Executive Budget and the State's multi-year Financial Plan, which reflects the continuation of HCRA funding for a number of important health programs and revenue sources.

Effective Date:

This bill takes effect April 1, 2014.

**Part C - Make statutory changes necessary to continue implementing Medicaid Redesign Team recommendations**

Purpose:

This bill would make statutory changes necessary to continue implementing Medicaid Redesign Team (MRT) recommendations, authorizing the transfer of Children's Health Insurance Program (CHIP) rate setting methodology from the Department of Financial Services (DFS) to the Department of Health (DOH), and extending certain laws necessary to ensure high quality care for all New Yorkers.

In Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Sections 1, 2 and 3 of the bill would amend Social Services Law (SSL) § 364-j and Public Health Law (PHL) § 273 to eliminate "prescriber prevails" provisions in Medicaid fee-for-service and managed care programs for drugs that have Federal Drug Administration (FDA)-A rated generic equivalents.

Section 4 of the bill would amend PHL § 274 to add a new subdivision 15 to authorize the Commissioner of Health (Commissioner) to require prior authorization for fee-for-service drugs meeting the Clinical Drug Review Program (CDRP) criteria until such time as the Drug Utilization Review (DUR) Board can make a recommendation to the Commissioner.

Section 5 of the bill would amend SSL §365-a to limit early fill availability by necessitating prior authorization for the refill of a prescription drug when the patient has more than a six day supply of the previously dispensed medication remaining, based on prescribed dosing.

Section 6 of the bill would amend PHL §367-a to eliminate State incentive payments to eligible providers for e-prescribing. These payments are no longer necessary due to federal incentives and the State mandate for electronic prescriptions.

Section 7 of the bill would amend PHL §272 to authorize the Commissioner to require manufacturers of brand name drugs utilized in the Medicaid fee-for-service pharmacy program that are eligible for reimbursement to provide a minimum level supplemental rebate to the State. The manufacturer's drugs may be subject to prior authorization if a minimum supplemental rebate is not provided.

Section 8 of the bill would amend SSL §365-a to require verification of FDA and/or Compendia supported uses in order for reimbursement for certain drugs where there is evidence of significant prescribing for a non-medically indicated, or "off-label", use.

Section 9 of the bill would amend SSL §367-a to ensure that the co-payment charged to managed care plan enrollees for preferred brand name drugs on their Medicaid managed care plan's formulary is limited to \$1.00 without regard to whether the same preferred brand drug is listed on the preferred fee-for-service Medicaid pharmacy formulary.

Sections 10 of the bill would add Unconsolidated Law to authorize reinvestment of savings already generated by the closure of inpatient psychiatric services or other reductions in bed capacity to fund commensurate investments in community based programs.

Section 11 of the bill would amend SSL by adding a new §365-m to authorize reinvestment of savings that will be generated by the transition of behavioral health populations and benefits to managed care.

Section 12 of the bill would add Unconsolidated Law to authorize resources to support evidence-based, collaborative clinical delivery models to provide integrated mental health, substance abuse, and physical health services in a primary care setting.

Section 12-a of the bill would amend SSL §365-a to add emergency regulatory authority for the Commissioners of DOH, Office of Alcoholism and Substance Abuse Service, the Office of People With Developmental Disabilities and the Office of Mental Health to implement integrated mental health, substance abuse, and physical health services in a single location.

Sections 13-16 of the bill would modify Part A of Chapter 56 of the Laws of 2013, §48-a, §84 and §49 as well as Part H of Chapter 111 of the Laws of 2010, §1 to broaden existing authority that allows the Commissioners of OMH and Office of Alcohol and Substance Abuse Services (OASAS) to transfer funds to DOH for the purposes of increasing managed care organization fees paid to ambulatory behavioral health providers. The increased fees under these provisions would apply to adult patients in New York City through 2016 and for all other Medicaid recipients through 2017, but



would not prohibit managed care plans and providers from negotiating new rates or methods of payment during these periods, subject to DOH.

Section 17 of the bill would authorize the Commissioner, notwithstanding sections 112 and 163 of the State Finance Law, to distribute resources within amounts appropriated to health homes as necessary to prepare voluntary behavioral health providers serving adults and children for the transition to Medicaid managed care plans.

Section 18 of the bill would amend SSL §366 to require spousal support for the costs of community-based long-term care.

Sections 19 and 20 of the bill would amend SSL §2 and §363-e, respectively, to expand the definition of "participating provider" to include certified home health agencies, long term home health agencies, or personal care providers that are reimbursed through the managed care program, and would authorize the Office of Medicaid Inspector General and DOH to jointly develop pre-claim review requirements for certain home health care participating providers.

Sections 21 and 22 of the bill would amend SSL §20-c and §22, respectively, to allow the Commissioner of the Office of Temporary Disability Assistance (OTDA) to allow contracted staff, as well as State staff, to conduct fair hearing proceedings.

Section 23 of the bill would add PHL §2808 to require that the nursing home fee-for-service rate shall be the guaranteed rate of payment in the absence of a negotiated rate of payment between a residential health care facility and a managed care plan. Such default rates would not apply to rehabilitation services.

Section 24 of the bill would amend PHL §2808 to limit residential health care providers' case mix increases to a maximum of two percent biannually until such time as the Commissioner may determine.

Section 25 of the bill would amend PHL §3605 to extend temporary periodic lump-sum Medicaid payments under the Vital Access Provider (VAP) program to Licensed Home Care Services Agencies (LHCSA) providing home health services to Medicaid patients.

Section 26 of the bill would add new PHL §3614 (14) to require the Commissioner to adjust rates of payment for Certified Home Health Agencies (CHHA) and Long Term Home Health Care Program (LTHHCP) providers to address cost increases under existing home care worker wage parity laws.

Sections 26-a would amend PHL to add new §4406-c (9) to require managed care contracts with nursing homes to support standard rates of compensation to their employees.

Section 27 of the bill would repeal PHL §§3614 (9) and (10) to remove the Recruitment Training and Retention rate increases and associated attestation requirements for

various home health and community based service providers. The existing funding levels would be maintained, but shifted to the providers' base rates.

Section 28 of the bill would amend PHL §2807-c to authorize adjustments to Medicaid rates of payment for general hospital services to achieve no net aggregate growth in expenditures related to the CMS-mandated implementation of the International Classification of Diseases Version 10 (ICD-10) coding system by October 1, 2014.

Section 29 of the bill would amend PHL §2807-c to allow for periodic updating of the base year for inpatient psychiatric facilities.

Section 30 of the bill would amend PHL §2807-c to allow for periodic updating of the base year for specialty inpatient facilities.

Section 31 of the bill would amend PHL §2807-c to allow for periodic updating of the base year for inpatient detoxification facilities.

Section 32 of the bill would amend PHL §2807-c to delay the effective date of the base year updates for hospital inpatient facilities from January 1, 2014 to a period subsequent to April 1, 2014 (but no later than July 1, 2014).

Section 33 of the bill would amend Part H of Chapter 59 of the Laws of 2011, §92, to extend the Medicaid State funds spending cap for one year through March 31, 2016.

Section 34 of the bill would add a new Unconsolidated Law to establish a methodology for distributing available savings under the Medicaid State funds cap to certain eligible Medicaid providers. Such savings would be distributed proportionately among providers and health care plans subject to minimum thresholds established by the Commissioner, wherein up to fifty percent of such distributions may be made available to financially distressed providers.

Section 35 of the bill would amend SSL §365-l to allow DOH to amend certain contracts to expeditiously implement certain MRT initiatives without the competitive bid or request for proposal process.

Sections 36 and 37 of the bill would amend SSL §364-j and PHL §4403-f, respectively, to authorize DOH to require counties that have implemented mandatory managed care programs to utilize the State's contracted enrollment broker for such services.

Section 38 of the bill would amend Part H of Chapter 59 of the Laws of 2011, §90 to restore the two percent Medicaid provider payment reduction and allow for the extension of existing 'alternative method' agreements.

Section 39 of the bill would amend SSL §364-jj to expand the existing Medicaid Managed Care Advisory Review Panel from 12 to 16 members by adding consumer representatives for individuals with behavioral health needs and consumer

representatives for dually eligible individuals, as well as representatives of providers that serve both populations.

Sections 40 and 41 of the bill would amend SSL § §368-d and 368-e, respectively, to incentivize public school districts to claim for eligible Federal medical assistance for the School and Pre-School Supportive Health Services Programs. Federal dollars realized through Certified Public Expenditure reimbursement would be shared from the first dollar of incremental revenue realized for service delivery and administrative claiming on a percentage basis whereby Counties or school districts would share 13.05%, commencing in FY 2016.

Section 42 of the bill would amend SSL §365-l to authorize distribution of health home infrastructure grants to establish better linkages between health homes and the criminal justice system.

Section 43 of the bill would add new subdivision 2-c to SSL §365-l to authorize DOH to distribute funds to applicants for the purpose of further developing health home infrastructure, including workforce training and implementation of health information technology systems.

Section 44 of the bill would amend SSL §398-b to facilitate the transition of children in foster care to Medicaid managed care programs, and to authorize a pilot program initiative with the Office of Children and Family Services and DOH to develop rates for Managed Care, Health Homes, and Foster Care per diems for this population.

Section 45 of the bill would amend SSL §365-n (3) to expand eligibility for the voluntary transfer to Medicaid administration positions within DOH to appointees meeting competitive qualifications to perform these functions.

Section 46 of the bill would amend SSL §365-n to authorize the Commissioner to take actions necessary to review the initial and ongoing eligibility of Medicaid recipients as these functions transition from counties to the State. The Commissioner would be authorized to contract with one or more entities without competitive bid or request for proposal processes.

Section 47 of the bill would add new PHL §206 which would give the Commissioners of DOH, OMH, OASAS, and Office for People with Developmental Disabilities authority to waive regulatory requirements to avoid duplicative requirements under Delivery System Reform Incentive Payments (DSRIP) program projects that involve joint-provider relationships.

Section 48 of the bill would add a new Unconsolidated Law that, notwithstanding State Finance Law, would allow DOH to authorize the negotiation of a contract extension for actuarial services with Mercer Health and Benefit, LLC through December 31, 2016.

Section 49 of the bill would add new SSL §364-j (29) that, notwithstanding State Finance Law, would allow DOH as necessary to enter into contracts essential to implement Medicaid 1115 Waiver or Partnership Plan initiatives without competitive bid or request for proposal processes.

Sections 50-52 of the bill would add new SSL §366 and §369-gg as well as amend SSL §367-a to authorize the Commissioner to establish a Basic Health Program as authorized under the Affordable Care Act (ACA) if it is determined to be in the financial interests of the State. Guidelines for eligibility, enrollment, and cost sharing would be set forth along with specific rules for certain immigrants currently receiving benefits under Medicaid.

Section 53 of this bill would add new State Finance Law §97-0000 to authorize the creation of Basic Health Program Trust fund.

Section 54 of the bill would amend SSL §367-a to correct a statutory cross-reference under ACA-related to income standards for Medicaid.

Section 55 of the bill would amend SSL §364-i to permit hospitals to presumptively enroll all modified adjusted gross income (MAGI) populations to conform to ACA requirements.

Section 56 of the bill would amend SSL §366 (1) to allow the DOH to utilize a MAGI income standard in determining certain spend-down requirements under Medicaid long term care, consistent with ACA requirements.

Section 56-a of the bill would add a new SSL §364-j (30) which, contingent upon prior approval and federal financial participation, and notwithstanding State Finance Law, would allow DOH as necessary to amend, or enter into new contracts for the purpose of integrating eligibility and financial management systems serving New York State health and human service systems.

Sections 57 and 58 of the bill would amend PHL § 2511 to transition the Child Health Plus (CHP) program rate setting methodology from the Division of Financial Services to DOH. This would align the CHP rate methodology from the current prior approval method to a risk-adjusted rate that is consistent with Medicaid and Family Health Plus.

Sections 59 and 60 of the bill would amend PHL §2511 to eliminate the existing CHP waiting period consistent with ACA requirements.

Section 61 of the bill would permanently extend the authorization for certain CHP income and benefit expansions enacted in 1998.

Section 62 of the bill would extend for three years, through March 31, 2017, authorization for the Adirondack Medical Home Multi-Payor Demonstration Program.

Section 63 of the bill would extend for three years, through March 31, 2017, authorization for non-resident services within adult homes, residences for adults, and enriched housing programs.

Section 64 of the bill would extend for three years, through March 31, 2017, authorization for the Commissioner to establish utilization thresholds for Medicaid services.

Section 65 of the bill would extend for three years, through March 31, 2017, authorization for certain pharmacy dispensing fee rates.

Section 66 of this bill would extend for three years, through March 31, 2017, authorization for certain nursing home upper payment limits (UPLs) and intergovernmental transfers (IGTs).

Section 67 of this bill would extend for two years, through 2016, the planning period under which the Commissioner would be authorized to phase in 6,000 Assisted Living Program beds.

Sections 68-71 would set forth time frames of notice, address severability concerns, and provide effective dates.

#### Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget and the State's multi-year Financial Plan. It would keep overall Medicaid spending in DOH within capped levels, which are indexed to the ten-year rolling average of the medical component of the Consumer Price Index (CPI) as proscribed in current statute.

#### Effective Date:

This bill would take effect April 1, 2014 except that: Sections 1-5, 59, and 60 would take effect July 1, 2014; Section 9 would take effect May 1, 2014; Section 26 would be deemed in full force and effect on March 1, 2014; Sections 50-53 would take effect April 1, 2015; and Section 55 would take effect January 1, 2015.

### **Part D - Expand existing exemption in the Nurse Practice Act to direct care staff in non-certified settings funded, authorized or approved by OPWDD**

#### Purpose:

This bill would expand an exemption in the Nurse Practice Act for direct care staff in certified settings to those who are working in non-certified settings funded, authorized or approved by the Office for People with Developmental Disabilities (OPWDD).

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

As OPWDD continues to assist individuals with developmental disabilities in moving from larger, institutional facilities to smaller, homelike settings that are integrated in the community, greater flexibility is needed in the performance of health-related tasks. Expanding the current Nurse Practice Act exemption to non-certified settings (where OPWDD already has been training staff) will assist OPWDD in serving individuals in the most integrated setting, consistent with Olmstead requirements and OPWDD's transformation plan.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget because it provides flexibility to OPWDD to transition individuals with developmental disabilities from institutional settings to more integrated, community-based settings, thereby reducing State costs by \$3.5M in FY 2015 and beyond.

Effective Date:

This bill takes effect immediately.

**Part E - Extend for three years the clarification that Office of Mental Health and the Office for People with Developmental Disabilities facility directors who act as representative payees may use a person's funds for their care and treatment consistent with federal law and regulations**

Purpose:

This bill would extend for three years the clarification that Office of Mental Health (OMH) and Office for People with Developmental Disabilities (OPWDD) facility directors acting as representative payees may use a person's funds for the cost of their care and treatment.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would continue current law to provide that the application of funds for a person's care and treatment by a facility director, acting as a representative payee for such person, does not violate the director's fiduciary obligation under Mental Hygiene Law §33.07(e). Facility directors who act as representative payees must still comply with applicable federal laws and regulations.

Under §43.03 of the Mental Hygiene Law, patients are legally liable for their care in OMH and OPWDD facilities and are assessed charges for care and treatment based

upon all income sources including Social Security benefits. This bill would allow OMH and OPWDD to continue existing practice and avoid potential costs, related to the loss of collecting authority, estimated at \$30 million annually for OMH and \$60 million annually for OPWDD. The amendments enacted under Chapter 111 of the Laws of 2010, and continued here, provide enhanced transparency and maintain additional parameters for the use of funds.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget and will avoid a potential loss of \$30 million in OMH revenue and \$60 million in OPWDD revenue on an annual basis.

Effective Date:

This bill takes effect immediately.

**Part F - Authorize the Office of Mental Health to continue to recover Medicaid exempt income from providers of community residences**

Purpose:

This bill would authorize the Office of Mental Health (OMH) to continue to recover Medicaid exempt income from providers consistent with legislation enacted in prior years.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would expressly authorize the Commissioner of OMH to recoup Medicaid exempt income from providers of community residences licensed by OMH (Medicaid money received in excess of that money to which the provider would otherwise be entitled) in an amount equal to fifty percent of the Medicaid revenue received by providers. Half of the money so recovered would return to the federal government and the other half would reimburse the State for money it has extended to the provider. This authority is consistent with existing contractual agreements between OMH and residential providers. This bill is necessary to continue existing practice and avoid a loss of \$3 million in annual exempt income recoveries.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget and will avoid a potential loss of \$3 million in recoveries on an annual basis.

Effective Date:

This bill takes effect immediately.

**Part G - One-year deferral of the human services “Cost-of-Living Adjustment”**

Purpose:

This bill would defer the human services Cost-of-Living Adjustment (COLA) for SFY 2015 and extend the COLA for an additional year, through March 31, 2018.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill would defer the FY 2015 COLA for designated human services programs under the auspices of several State agencies, including the Office for People with Developmental Disabilities, Office of Mental Health, Office of Alcoholism and Substance Abuse Services, Department of Health, Office for the Aging, and Office of Children and Family Services.

Additionally, this bill reflects renewed support for a three-year COLA by continuing the adjustment for one additional year, through FY 2018.

Budget Implications:

Deferring the formula for the FY 2015 Human Services COLA will result in State savings of \$64.0 million in FY 2015.

Effective Date:

This bill takes effect on April 1, 2014.

The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.