2015-16 NEW YORK STATE EXECUTIVE BUDGET

HEALTH AND MENTAL HYGIENE
ARTICLE VII LEGISLATION

MEMORANDUM IN SUPPORT

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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 program pamphlets developed and distributed by the department of health and the disposition of results of professional misconduct proceedings; to repeal section 2995-a of the public health law relating to the physician profile website; to repeal subdivision 11 of section 6524 of the education law, relating to physician license qualification requirements; to repeal subdivision 9 of section 2803 of the public health law relating to reports to the commissioner of health by general hospitals regarding working conditions and limits on working hours for certain members of the hospital's staff; and to repeal section 461-s of the social services law, relating to enhancing the quality of adult living program for adult care facilities (Part A); to amend the social services law, in relation to statewide supplemental rebates; to amend the social services law, in relation to pharmacy dispensing fees; to amend the public health law, in relation to the clinical drug review program; to amend the public health law, in relation to the prescriber prevails provision; to amend the social services law, in relation to outpatient prescription drugs; to amend the social services law, in relation to the codification of the global cap; to amend the public health law, in relation to hospital quality contributions; to amend the public health law, in relation to hospital payments; to amend parts A and B of chapter 1 of the laws of 2002, relating to the health care reform act of 2000, in relation to upper payment limits; to amend the public health law, in relation to noticing of hospitals; to amend the social services law, in relation to health homes; to amend the public health law, in relation to family planning; to amend part B of chapter 59 of the laws of 2011, amending the public health law relating to rates of payment and medical assistance, in relation to managed care supplemental payments; 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 supplemental Medicaid managed care payments; to amend the social services law, in relation to spousal support; to amend the social services law, in relation to payments for Medicare beneficiaries; to amend the social services law, in relation to personal care; to authorize a mobility management contractor; to amend the public health law, in relation to energy efficiency; to amend the public health law, in relation to recruitment and retention; to amend the civil service law, in relation to term appointments in health insurance program-related positions; to amend the social services law, in relation to working disabled eligibility; to amend the social services law, in relation to family planning benefits; to amend the social services law, in relation to foster care; to amend the public health law, in relation to certified home health agencies; to amend the public health law, in relation to value based payments; to amend the social services law, in relation to the basic health plan program; to repeal certain provisions of the public health law relating thereto; and providing for the repeal of certain provisions upon expiration thereof (Part B); 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 to general hospital reimbursement for annual rates relating to the cap on local Medicaid expenditures, in relation to rates of payment paid to certain providers by the Child Health Plus Program; and to amend 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 rates of payment paid to certain providers by the Child Health Plus Program (Part C); to amend chapter 884 of the laws of 1990, amending the public health law relating to authorizing bad debt and charity care allowances for certified home health agencies, in relation to the effectiveness thereof; to amend chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, in relation to the effectiveness thereof; to amend the public health law, in relation to hospital assessments; to amend chapter

659 of the laws of 1997, constituting the long term care integration and finance act of 1997, in relation to the effectiveness thereof; to amend chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential health care facilities, in relation to the effectiveness thereof; to amend part C of chapter 58 of the laws of 2007, amending the social services law and other laws relating to enacting the major components of legislation necessary to implement the health and mental hygiene budget for the 2007-2008 state fiscal year, in relation to delay of certain administrative costs; to amend chapter 81 of the laws of 1995, amending the public health law and other laws relating to medical reimbursement and welfare reform, in relation to reimbursements and the effectiveness thereof; to amend chapter 474 of the laws of 1996, amending the education law and other laws relating to rates for residential healthcare facilities, in relation to reimbursements; to amend chapter 451 of the laws of 2007, amending the public health law, the social services law and the insurance law, relating to providing enhanced consumer and provider protections, in relation to the effectiveness thereof; to amend the public health law, in relation to rates of payment for long term home health care programs and making such provisions permanent; to amend chapter 303 of the laws of 1999, amending the New York state medical care facilities finance agency act relating to financing health facilities, in relation to the effectiveness thereof; to amend chapter 165 of the laws of 1991, amending the public health law and other laws relating to establishing payments for medical assistance, in relation to the effectiveness thereof; to amend the public authorities law, in relation to the transfer of certain funds; to repeal subdivision (i) of section III of part H of chapter 59 of the laws of 2011, relating to enacting into law major components of legislation necessary to implement the health and mental hygiene budget for the 2011-2012 state fiscal plan, relating to the effectiveness of program oversight and administration of managed long term care plans; to amend chapter 659 of the laws of 1997, amending the public health law and other laws relating to

creation of continuing care retirement communities, in relation to the effectiveness thereof; to amend the public health law, in relation to residential health care facility, and certified home health agency services payments; to amend part B of chapter 109 of the laws of 2010, amending the social services law relating to transportation costs; to amend the social services law, in relation to contracting for transportation services; to amend chapter 21 of the laws of 2011 amending the education law relating to authorizing pharmacists to perform collaborative drug therapy management with physicians in certain settings, in relation to extending the provisions of such chapter; to amend chapter 459 of the laws of 1996 amending the public health law relating to recertification of persons providing emergency medical care, in relation to making such provisions permanent; to amend chapter 505 of the laws of 1995, amending the public health law relating to the operation of department of health facilities, in relation to making such provisions permanent; and to repeal subdivision (o) of section 111 of part H of chapter 59 of the laws of 2011, amending the public health law relating to state wide planning and research cooperative system and general powers and duties, in relation to the effectiveness of certain provisions (Part D); to amend the public health law, in relation to the payment of certain funds for uncompensated care (Part E); to amend the public health law, in relation to the establishment of value based payments within the delivery system reform incentive payment program (Part F); to amend the financial services law, in relation to the financial assessment that offsets the operational costs of the health insurance exchange; and to amend the public health law, in relation to health care reform act pool administration (Part G); to amend the public health law, in relation to the establishment and operation of limited services clinics, standardizing urgent care centers and enhanced oversight of office-based surgery; and to repeal subdivision 4 of section 2951 and section 2956 of such law relating to the statutory authority of upgraded diagnostic and treatment centers (Part H); to amend the criminal procedure law, in relation to the admissibility of condoms as trial

evidence of prosecution; to amend the penal law, in relation to criminal possession of a controlled substance; to amend the general business law, in relation to the definition of drug related paraphernalia; to amend the public health law, in relation to the sale and furnishing of hypodermic needles and syringes; to amend the public health law in relation to simplifying consent for HIV testing; and to repeal subdivision 2-a of section 2781 of the public health law, relating to certain informed consent for HIV related testing (Part I); to amend the education law and the public health law, in relation to establishing a program for home health aides authorizing them to perform advanced tasks (Part J); 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; and to amend the public health law, in relation to public health and health planning council reviews (Part K); to amend the public health law, in relation to the enhanced oversight of office-based surgery (Part L); to amend the public health law, in relation to requiring notice and submission of a plan prior to discontinuing fluoridation of a public water supply (Part M); relating to conducting a study to develop a report addressing the feasibility of creating an office of community living for older adults and individuals of all ages with disabilities (Part N); to amend chapter 111 of the laws of 2010 relating to the recovery of exempt income by the office of mental health for community residences and family-based treatment programs, in relation to the effectiveness thereof (Part O); to amend the education law, in relation to authorizing contracts for the provision of special education and related services for certain patients hospitalized in hospitals operated by the office of mental health; and to amend part M of chapter 56 of the laws of 2012 amending the education law, relating to authorizing contracts for the provision of special education and related services for certain patients hospitalized in hospitals operated by the office of mental health, in relation to the effectiveness thereof (Part P); to amend the public health law and the public authorities law, in relation to establishing a private

equity pilot program (Part Q); 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 R); and to amend the social services law, the executive law and the mental hygiene law, in relation to providing professional services to individuals with developmental disabilities in non-certified settings; 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; and to repeal certain provisions of the mental hygiene law relating thereto (Part S)

PURPOSE: This bill contains provisions needed to implement the Health and Mental Hygiene portions of the 2015-16 Executive Budget.

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

Part A – Amend various statutory provisions to achieve savings reflected in the 2015-16 Health Budget

Purpose:

This bill would amend various statutory provisions to achieve savings reflected in the 2015-16 Health Budget.

Summary of Provisions and Statement in Support:

Section 1 of this bill would repeal Public Health Law (PHL) §2995-a to no longer require the Department of Health (DOH) to collect information and create individual physician profiles for dissemination to the public. Although DOH currently provides this information through the New York State Physician Profiles Website, much of this information is duplicative of data currently available through other publically available sources, such as WebMD.

Section 2 of this bill would amend PHL §2997-b to no longer require DOH to include information promoting the New York State Physician Profile website in the pamphlets it distributes to physicians.

Section 3 of this bill would amend PHL §230(10)(h)(i) as it relates to publically disseminating findings by the Office of Professional Medical Conduct (OPMC). It would ensure that despite the elimination of the New York State Physician Profiles website, OPMC would still be required to identify and serve its findings on any hospital where the licensee has practice privileges, the licensee's primary practice setting, any physicians with whom the physician shares a group practice, and any health care plans with which the licensee is affiliated.

Section 4 of this bill would repeal Education Law §6524(11) as it relates to requiring licensees to update their profiles on the New York State Physician Profile website.

Section 5 of this bill would repeal PHL §2803(9) to no longer require DOH to audit the number of working hours for hospital residents. This function is currently supported with a State surveillance contract and is also duplicative of the Federal process used by the Accreditation Council for Graduate Medical Education (ACGME).

Section 6 of this bill would repeal Social Services Law §461-s to eliminate the Enhancing the Quality of Adult Living (EQUAL) program.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2016 Executive Budget to achieve total savings of $5.6 million in FY 2016 and $5.6 million in FY 2017, as detailed below:

- $1.2 million savings in FY 2016 ($1.2 million in FY 2017) from eliminating the New York State Physician Profile website.

- $1.1 million savings in FY 2016 ($1.1 million in FY 2017) from eliminating the resident working hours audit requirement.

- $3.3 million savings in FY 2016 ($3.3 million in FY 2017) from eliminating the EQUAL program and reinvesting some of the savings in the adult home system.

Effective Date:

This bill would take effect immediately.

Part B - Make statutory changes necessary to continue implementation of Medicaid Redesign Team recommendations

Purpose:

This bill would make statutory changes necessary to continue implementation of Medicaid Redesign Team ("MRT") recommendations.

Summary of Provisions and Statement in Support:

Section 1 would amend Social Services Law (SSL) §367-a(7) by adding a new paragraph (e) to provide the State with the authority to negotiate supplemental rebates directly with manufacturers both inside and outside of Managed Care to leverage total Medicaid prescription brand name drug volume. Such authority shall apply only to covered out-patient drugs for which the manufacturer already has a rebate agreement with the federal government.

Sections 2 and 3 would amend SSL §367-a to increase the current average wholesale price (AWP) discount for brand name drugs from AWP minus 17% to AWP minus 24%; and increase Department of Health (DOH) prescription brand name drug dispensing subsidies to providers from $3.50 to $8.00 per prescription.

Section 4 would amend Public Health Law (PHL) §274 by adding 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 criteria prior to obtaining the Drug Utilization Review Board's evaluation and recommendation.

Section 5 would amend PHL §272 by adding a new paragraph (a-1) to authorize the Commissioner to require manufacturers of brand name drugs utilized in the Medicaid fee-for-service pharmacy program to provide a minimum level supplemental rebate to the State. The manufacturer's drugs may be subject to prior authorization if a minimal supplemental rebate is not provided.

Section 6 would amend PHL §273 to eliminate prescriber prevails provisions for the dispensing of prescription drugs under fee-for-service Medicaid that are not on the preferred drug list.

Section 7 would amend SSL §364-j by adding a new subdivision 24-a to require that federally participating section 340B drug providers bill managed care plans at the actual acquisition cost for 340B drugs in order to align with the same billing requirements as for fee-for-service recipients.

Section 8 would amend SSL by adding a new section §368-g to codify the existing Medicaid State Funds Medical Assistance Cap and related provisions. The Medicaid Cap limits the year-to-year growth of DOH's State Funds Medicaid Assistance spending to no more than the ten year rolling average of the medical component of the Consumer

Price Index, and also authorizes the Commissioner, in consultation with the Director of Budget, to develop a Medical Assistance savings allocation plan if spending exceeds such cap.

Section 9 would repeal PHL§280 to eliminate the New York Prescription Saver Program. This program has been significantly under-utilized and is no longer necessary due to the availability of alternative prescription drug discount programs with less restrictive enrollment requirements.

Section 10 would amend PHL §2807-d-1 to reduce the assessment on inpatient obstetrical services by $15 million annually.

Section 11 would amend PHL §2807 by adding a new subdivision 14 to authorize the Commissioner to establish a general hospital quality pool for the purpose of incentivizing and facilitating quality improvements in hospitals. Awards from such pool will be subject to approval by the Director of Budget.

Section 12 would amend PHL §2807 by adding a new subdivision 22 to authorize enhanced payments or reimbursement of up to $12 million for inpatient and out-patient services at sole community hospitals, as defined by the Medicare program.

Section 13 would amend PHL §2826 to increase the Vital Access Provider (VAP) carve out for Critical Access Hospitals as defined by the Medicare program from $5 million annually to $7.5 million annually (gross).

Section 14 would amend PHL §2826 by adding a new subdivision (f) to allot $10 million (gross) in VAP funding for providers serving rural areas and isolated geographic regions.

Section 15 is intentionally omitted.

Sections 16 through 23 of this bill would amend Chapter 1 of the laws of 2002 and unconsolidated law to modify the existing Upper Payment Limit (UPL) distribution methodology to New York City Health and Hospitals Cooperation hospitals eligible to receive UPL payments, as required by the Centers for Medicare and Medicaid Services (CMS). This bill would provide for retroactive application of these methodologies to 2011 for out-patient UPL payments, and to 2012 for inpatient UPL payments. Additionally, the bill would enable the State to recover such payments in the event of a Medicaid disallowance by CMS.

Section 24 would amend PHL §2807 to discontinue required notice periods for approved hospital inpatient rates and diagnostic and treatment center rates. This timeframe is no longer appropriate because the prerequisite service intensity data is not submitted by hospitals with sufficient time to meet this requirement.

Section 25 would amend SSL §365-l by adding a new subparagraph (2-b) to authorize the Commissioner to distribute up to $5 million (gross) in health home infrastructure grants to establish coordination between health homes and the criminal justice system, and for integration of information between health homes and State and local correctional facilities.

Sections 26 and 27 would amend PHLs §2807 and §2807-c, by adding new subparagraphs (e)(iv) and (35)(k), respectively, to carve out family planning services from the ambulatory patient group and hospital inpatient reimbursement methodologies. This would ensure the State's ability to leverage enhanced Federal Financial Participation for such services.

Section 28 would amend SSL §369-gg to add a new subdivision 6 to authorize the Commissioner to develop rates of payment for the Basic Health Plan program.

Sections 29 and 30 would amend Chapter 59 of the laws of 2011 to provide increased supplemental Medicaid payments to managed care organizations for professional services provided through State University of New York clinical practice management plans. These supplemental payments are already made for fee-for-service reimbursement.

Section 31 and 32 would amend SSL §367-a to ensure that the Medicaid program would not pay any portion of costs associated with Medicare Part B and Medicare Part C claims, respectively, when the total payment to the provider would be greater than the Medicaid rate of payment.

Section 33 would amend SSL §366 to conform with federal law with regard to spousal contributions and responsibilities for spouses residing together in the community.

Section 34 would add unconsolidated law to authorize the Commissioner to contract with a third party to conduct a statewide assessment of the mobility and transportation needs of disabled or other special needs populations. After consulting with other State agencies, the contractor shall make a recommendation for the development of an Olmstead Mobility Management Pilot program to coordinate transportation services, maximize funding, and enhance community integration.

Sections 35 and 36 would amend SSL §§133 and 364-i, to clarify that the State or a local social services district is not required to provide temporary, pre-investigation monetary or other grants for the purpose of obtaining emergency medical care, home care, or related services; and that neither State nor local Medicaid dollars may be used to make a payment for temporary emergency medical care, services, or supplies prior to a Medicaid applicant being found eligible for the program, unless it is during a period of presumptive eligibility specifically authorized by SSL § 364-i. These clarifications are necessary to address a court decision that interpreted SSL §133 as requiring local social services districts to pay for personal care services for individuals prior receiving a Medicaid-eligibility determination and without regard to whether they meet the

requirements for Medicaid eligibility, and that SSL §364-i only precludes State Medicaid dollars from being used to pay for personal care services prior to an eligibility determination. This interpretation imposes an unfunded obligation on social services districts to pay, without State financial participation, for personal care services for Medicaid applicants who are ultimately found ineligible for Medicaid.

Section 37 would establish a new initiative to reinvest any additional federal funding generated through the Consumer First Choice Option into the State's Olmstead plan. The amount of funding available is unknown and pending federal CMS determination.

Section 38 would amend PHL §2808 by adding new subdivision 27 to authorize the Commissioner to establish an energy efficiency and/or disaster preparedness demonstration program to allow nursing homes to retain savings resulting from the implementation of approved energy savings or emergency preparedness measures.

Sections 39 and 40 would amend PHL §3614 to clarify that discrete Recruitment, Training and Retention rate increases and the associated attestation requirements for managed long term care plans are eliminated and paid in the base rate.

Section 41 would amend Civil Service Law by adding a new section 66 to authorize term appointments for health insurance program-related positions requiring special expertise or qualifications within DOH's Office of Health Insurance Programs. These term appointments would be limited in number and duration.

Section 42 of this bill would make technical corrections to conform the numbering within SSL §367-a.

Section 43 would make corrections to SSL §366 to align this section with subsequent amendments to statute.

Section 44 would amend SSL §398-b relating to grants that finance the transition of the foster care population into managed care.

Sections 45 and 46 would amend SSL §366 and §369-gg, respectively, to make technical corrections to the Basic Health Plan program authorizing statute.

Sections 47 through 50 would provide for timeframes of notice, severability provisions, and effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2015-16 Executive Budget and the State's multi-year Financial Plan by keeping overall Medicaid spending within capped levels, which are indexed to the ten-year rolling average of the medical component of the CPI as proscribed in current statute.

Effective Dates:

This bill would take effect April 1, 2015 except that:

- Sections 2 and 3 shall take effect on May 1, 2015;
- Sections 6, 9, and 13 shall take effect June 1, 2015;
- Section 31 shall take effect July 1, 2015; and,
- Section 4 of this act shall take effect September 1, 2015.

Part C - Make statutory changes necessary to align Child Health Plus rates with Medicaid managed care rates for certain providers

Purpose:

This bill would make statutory changes necessary to ensure the financial security and stability of critical health care providers by aligning Child Health Plus (CHP) reimbursement rates for ambulatory behavioral health services with current Medicaid reimbursement standards.

Summary of Provisions and Statement in Support:

Sections 1 and 2 would amend sections 13 and 15 of Chapter 60 of the Laws of 2014 to require that fees paid by managed care organizations for ambulatory behavioral health services provided to patients enrolled in the CHP insurance program be equivalent to the fees paid for the same services under the Medicaid ambulatory patient group rate-setting methodology.

The Commissioner of Health would consult with the Commissioner of the Office of Alcoholism and Substance Abuse (OASAS) and the Commissioner of the Office of Mental Health (OMH) in determining such rates.

Such rates would be effective through December 31, 2016 for patients in New York City, and through December 31, 2017 for patients outside the City of New York.

Alternative rates may be negotiated between MCOs and providers, but would be subject to approval by the Department of Health, in consultation with OASAS and OMH.

Sections 3-6 of this bill would provide for timeframes of notice, severability provisions, and effective dates.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part D - Extend various provisions of the Public Health, Social Services and Mental Hygiene Laws, including continued authorization of previously enacted Medicaid savings initiatives

Purpose:

This bill is necessary to maintain Financial Plan savings by continuing certain previously enacted Medicaid and health savings initiatives authorized in the Public Health and Social Services Laws.

Summary of Provisions and Statement in Support:

Section 1 would permanently extend authorization for bad debt and charity care allowances for certified home health agencies.

Section 2 would permanently extend provisions relating to Medicaid capital cost reimbursement.

Section 3 would permanently extend the nursing home reimbursable cash assessment program.

Section 4 would permanently extend authorization for the continued operation of a managed long-term care operating demonstration project known as "Project Eldercare."

Section 5 would permanently extend the exclusion of the 1996-97 trend factor projections or adjustments from nursing home and inpatient rates.

Section 6 would permanently extend the 0.25 percent trend factor reduction for hospitals and nursing homes.

Sections 7 through 10 would permanently extend the requirement that nursing homes, hospitals, certified home health care agencies, and long term home health care providers maximize Medicare revenues.

Sections 11 and 12 would permanently remove a $1.5 million reconciliation limit for the certified home health care agency and long term home health care program administrative and general caps.

Section 13 would permanently extend the requirement that parties to a contract between a hospital and a managed care organization continue to abide by the terms of

the contract for two months from the effective date of contract termination or non-renewal, unless certain circumstances are met.

Section 14 would permanently extend a limitation on the reimbursement of long term home health care program administrative and general costs to not exceed a Statewide average.

Section 15 would extend for two years the statutory requirement that establishes licensed home care service agencies in adult homes or enriched housing programs as providers of personal care and limited medical services.

Section 16 would permanently extend authorization of certain provisions related to the New York State Medical Care Facilities Financing Act, which relate to the financing of certain health care capital improvements.

Section 17 would permanently extend provisions related to Medicaid co-payments.

Section `8 would extend for two years authorization for Healthcare Efficiency and Affordability Law funding from pools related to the Health Care Reform Act for two years.

Section 19 would permanently extend provisions related to managed long-term care plans, including those related to increased certificates of operation, the authorization of the Commissioner of Health to submit waivers necessary to continue Medicaid managed-long term care, and guidelines for patient assessment timeframes.

Section 20 would permanently extend the authorization of the managed long-term care program.

Section 21 would extend for four years the limit on payment of nursing home appeals to eighty million dollars annually.

Section 22 would permanently extend the authorization of episodic payment per sixty day period of care for certified home health agencies.

Section 23 would permanently extend the authority of the Commissioner of the New York State Department of Heath to contract for Medicaid transportation management.

Section 24 would permanently remove previously enacted fast contracting provisions for the procurement of a transportation management contract.

Section 25 would extend for three years the collaborative drug therapy management program for teaching hospitals.

Section 26 would extend for three years authorization for emergency services personnel in certain areas of the State to be certified or recertified without a written examination if they meet certain requirements.

Section 27 would permanently extend provisions related to the New York State Medical Care Facilities Financing Act, which permits flexibility in contracting for goods and services by State-operated hospitals.

Section 28 would permanently extend provisions related to the Statewide Planning and Research Cooperative System and the Statewide Health Information Network of New York.

Sections 29 through 32 of this bill would provide for timeframes of notice, severability provisions, and effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it ensures the continuation of previously enacted State Financial Plan savings totaling $902.7 million annually.

Effective Date:

This bill would take effect immediately.

Part E - Make statutory changes necessary related to payment of indigent care pool funds for uncompensated care for three years

Purpose:

This bill would make statutory changes necessary to continue the payment of indigent care pool funds for otherwise uncompensated care for three years, as well as grant the Department of Health (DOH) flexibility to change payment methodologies through regulation if available federal funds are reduced.

Summary of Provisions and Statement in Support:

Section 1 would extend Public Health Law (PHL) §2807-k (the General Hospital Indigent Care Pool) for three years to December 31, 2018. It would amend PHL §2807-k to provide DOH with flexibility to adjust Disproportionate Share Hospital (DSH) payments to reflect changes in payment methodologies, capped at a maximum facility reduction in indigent care pool payments of 15% in calendar year 2018.

Section 2 would amend PHL §2807-k to provide DOH with the regulatory authority to adjust DSH payments in response to reductions in federal funding if necessary.

Sections 3-6 of this bill would provide for timeframes of notice, a severability provision, and an effective date.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget, the State's multi-year Financial Plan, and to mitigate potential losses in federal DSH funding.

Effective Date:

This bill would take effect immediately.

Part F - Make statutory changes necessary to implement Value Based Payments within the Delivery System Reform Incentive Payment program

Purpose:

This bill would make statutory changes necessary to implement value based payment (VBP) reimbursement methodologies, a key component of the Department of Health's (DOH) ongoing Delivery System Reform Incentive Payment program (DSRIP) under the federal 1115 waiver.

Summary of Provisions and Statement in Support:

Section 1 would add a new section §4415 to the Public Health Law (PHL) to:

- Authorize managed care organizations (MCOs) to contract for VBPs;
- Authorize DOH to utilize VBP methodologies;
- Authorize DOH to establish VBPs for performing provider systems participating in DSRIP;
- Authorize performing provider systems participating in DSRIP to arrange for the delivery and provision of health services;
- Authorize the Commissioner of Health, in consultation with the Superintendent of Financial Services, to promulgate regulations relating to VBPs, including but not limited to authorizing discrete levels of VBPs, placing certain conditions on such payments, modifying reserve requirements, authorizing the establishment of a reinsurance pool, and changing such VBPs or other reimbursement methodologies as necessary to conform to the terms of the 1115 waiver; and

- Authorize the Commissioner of Health to continue applying VBPs after the 1115 waiver expires.

Sections 2-5 of this bill would provide for timeframes of notice, severability provisions, and effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2015-16 Executive Budget and to conform with the terms and conditions of the 1115 waiver agreement between DOH and the Centers for Medicare and Medicaid Services, under which 90% of payments made by MCOs must be value based by the conclusion of the five year DSRIP program.

Effective Date:

This bill would take effect immediately.

Part G - Make statutory changes necessary to establish an assessment on individual, small group and large group health insurers that will sustain NY State of Health operations

Purpose:

This bill would make statutory changes necessary to establish an assessment on all domestic accident and health insurers in the individual, small group and large group insurance markets to sustain the operations of the NY State of Health.

Summary of Provisions and Statement in Support:

Section 1 would add a new Financial Services Law (FSL) § 208 to establish an assessment on domestic accident and health insurers in the individual, small group and large group insurance markets for the purpose of offsetting the operational costs of the NY State of Health, the State health insurance exchange.

- Subsection (a) of § 208 would direct the Superintendent of Financial Services ("Superintendent") to assess domestic accident and health insurers for the operating expenses attributable the NY State of Health for each fiscal year commencing on or after April 1, 2015. These expenses would be limited to costs attributable to qualified health plan coverage, including direct and indirect expenses related to such coverage, but exclude expenses associated with various public health insurance programs.

- Subsection (b) of § 208 would provide that the payment for such assessment upon domestic accident and health insurers described in subsection (a) for the 2015-2016 Fiscal Year shall be made on or before February 15, 2016 or such

other date as the Superintendent may prescribe. Any overpayment of the assessment based on actual enrollment would be credited against the next estimated quarterly assessment due under this section, until reconciled. In the case of an underpayment, the Superintendent may direct the date of payment.

- Subsection (c) of § 208 would require that for each fiscal year commencing on or after April 1, 2016, this assessment would be paid quarterly.

- Subsection (d) of § 208 addresses the assessment audit provisions and associated recoupment guidelines, as well as outlining noncompliance penalties and records retention requirements for audit purposes. This section would also grant the Superintendent the authority to waive or settle interest and penalties under certain circumstances.

- Subsection (e) of § 208 would grant the Commissioner of Health the authority, under Public Health Law (PHL) § 2807-y, to contract for the purposes of issuing invoices, receiving payment and distributing funds and to deposit such funds into the Special Revenue Funds-Other, Health Care Reform Act (“HCRA”) Resources Fund.

- Subsections (f) and (g) of § 208 would define “accident and health insurer" and "domestic accident and health insurer", respectively, for purposes of this section.

Section 2 would amend PHL § 2807-y(1) by adding a new subdivision (i) to include FSL § 208 to the list of laws that set forth assessments for which the HCRA pool administrator is authorized to receive and distribute funds.

Section 3 would amend PHL § 2807-y(3) to increase the annual cap on the costs and expenses of the HCRA pool administrator from $4.55 million to $6.05 million to allow for the administration of the assessment.

Sections 4 through 6 would provide for severability provisions and effective dates.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2015-16 Executive Budget and to fund operational costs associated with the NY State of Health.

Effective Date:

This bill would take effect immediately and would be deemed to have been in full force and effect on or after April 1, 2015.

Part H - Modify provisions regarding establishing and operating limited services clinics, standardizing urgent care centers, eliminating certain upgraded diagnostic and treatment centers; and charging the Public Health and Health Planning Council with reviewing sedation and anesthesia procedures in outpatient settings

Purpose:

This bill would modify various provisions of the Public Health Law (PHL) relating to establishing and operating limited services clinics, standardizing urgent care centers, eliminating certain upgraded diagnostic and treatment centers, and charging the Public Health and Health Planning Council (PHHPC) with reviewing sedation and anesthesia procedures in outpatient settings.

Summary of Provisions and Statement in Support:

Section 1 of this bill would add a new section PHL §2801-a(17) to:

- Authorize Diagnostic and Treatment Centers (D&TCs) established to provide health care services within retail space, a store open to the general public, or within space used by an employer for providing health care services to its employees, to be operated by legal entities formed under State law. Such D&TCs would be referred to as “limited services clinics”.

- Require such entities to have principal stockholders and members which demonstrate sufficient experience and expertise in delivering high quality health care services, as determined by PHHPC.

- Require PHHPC to adopt rules and regulations relating to the establishment of limited services clinics, including transfer of ownership, oversight, and character and competence qualifications.

- Exempt operators of limited services clinics from statutory requirements regarding a finding of public need, the review of the character and competence of their stockholders and members, the disposition of stock and voting rights, and corporate ownership of stock or membership.

- Define a limited services clinic as a “health care provider” for the purposes of laws relating to health care referrals, and applying certain limitations on prescribers that practice in a limited service clinic.

- Require the Commissioner of Health to promulgate regulations for the operation of limited services clinics, including accreditation requirements, designations or limitations on treatments to be provided, advertising guidelines, and requiring an operator to employ a medical director licensed to practice medicine in New York State.

Section 2 of the bill would add a new PHL §230-e to restrict the use of the name "Urgent Care" to providers that meet specified criteria. It would limit a practice from advertising itself as an "urgent care" provider unless it obtains accredited status, DOH approval, and complies with all applicable rules and regulations. It would also prohibit a practice from advertising itself as a provider of emergency medical care through the use of the term "emergency." Finally, it would require PHHPC to adopt rules and regulations relating to urgent care providers.

Sections 3 and 4 would repeal PHL §§ 2951(4) and 2956 to eliminate upgraded diagnostic and treatment centers. There is no need for this model of care due to the proposed urgent care centers and the existence of freestanding emergency departments.

Section 5 would add a new PHL §225(13) to allow PHHPC to review the types of procedures performed in outpatient settings that involve sedation and anesthesia, and to make recommendations for changes if necessary.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it would generate a State savings of $5 million under the Medicaid Global Cap.

Effective Date:

This bill would take effect immediately, with the following exceptions:

- PHL §230-e(2), as added by section 2 of this act, would take effect January 1, 2017;

- PHL §230-e(3), as added by section 2 of this act, would take effect January 1, 2016; and

- Regulations would be adopted or amended pursuant to PHL §230-e (2), on or before January 1, 2016 and would not take effect until January 1, 2017.

Part I - Modify various provisions of law to remove barriers to obtaining HIV/AIDS treatment and to engaging in appropriate risk reduction activities to limit the spread of HIV/AIDS

Purpose:

This bill would modify various provisions of law to remove barriers to obtaining HIV/AIDS treatment and to engaging in appropriate risk reduction activities to limit the spread of HIV/AIDS.

Summary of Provisions and Statement in Support:

Section 1 would repeal Public Health Law (PHL) §2781(2-a) to eliminate the requirement for written, informed consent for HIV testing in New York State correctional facilities. Such facilities are the only providers or entities still required to obtain written consent to administer an HIV test.

Section 2 would amend the Criminal Procedure Law to add a new §60.47 prohibiting the use of condoms as evidence in cases involving misdemeanor prostitution (Penal L. §230.00) and loitering for the purpose of engaging in prostitution (Penal L. §240.37). This would allow a high risk population to carry condoms without fear of punishment and help further limit the spread of HIV/AIDS.

Section 3 would amend Penal Law §220.45 to state explicitly that an individual shall not be guilty of criminally possessing a hypodermic instrument if he or she obtained the syringe through the State's Expanded Syringe Access Program (ESAP) or a medical provider-based syringe access program.

Section 4 would amend Penal Law §220.03 to state explicitly that an individual shall not be guilty of criminal possession of a controlled substance in the seventh degree if the residual amount of a controlled substance was found in a syringe obtained through ESAP or a medical provider-based syringe access program.

Section 5 would amend General Business Law § 850(2)(g) to clarify that selling syringes through ESAP or a medical provider-based syringe access program will not subject a business to criminal enforcement.

Sections 6 and 7 would amend PHL §§3381(1)(c) and (5)(d), respectively, to remove the limit on the number of syringes that a pharmacy can sell and discontinue the ban on advertising the availability of syringes without a prescription. Current law limits the sale of hypodermic syringes to 10 at one time, and prohibits the 3,200 participating pharmacies from advertising the availability of hypodermic syringes.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part J - Provide an exemption to the Nurse Practice Act for advanced home health aides to authorize such individuals to perform advanced tasks in home care and hospice settings with appropriate training and supervision

Purpose:

This bill would amend Education Law (Educ. L.) §6908 to provide an exemption from the Nurse Practice Act for Advanced Home Health Aides (AHHAs), and would specifically identify advanced tasks that could be performed by such individuals in home care and hospice settings with appropriate training and supervision.

Summary of Provisions and Statement in Support:

Section 1 of this bill would amend Educ. L. §6908 to describe the tasks an AHHA may perform in accordance with regulations developed in consultation with the Commissioner of the New York State Department of Health (the Commissioner of Health). At a minimum, the regulations would:

- specify the advanced tasks that may be performed by AHHAs;
- require that advanced tasks may be performed only in accordance with an authorized practitioner's order of care and only under the direct supervision of a licensed registered professional nurse employed by a home care services agency or a hospice program;
- set forth the qualifications, training and competency requirements of AHHAs;
- require AHHAs training requirements and competency examinations to be included on the New York State Department of Health's (DOH) Home Care Services Worker Registry;
- prohibit AHHAs from accepting employment as a practicing nurse and assessing the medication needs of an individual;
- require AHHAs to document the medication administered to an individual; and
- allow the supervising nurse to retain discretion to decide whether a home health aide may perform advance tasks without threat of retaliation.

Section 2 would amend Public Health Law (PHL) §3602 to define an AHHA as a home health aide who is authorized to perform advanced tasks as set forth in Section 1 of this bill. In addition, the Commissioner of Health would be required to issue regulations regarding AHHAs that would include a process for limiting or revoking an AHHA's authorization to perform advanced tasks.

Section 3 would add a new subdivision to PHL §3613 requiring DOH to include information on the Home Care Services Worker Registry regarding all trainings and re-certifications completed by an AHHA as well as any limitation or revocation of an AHHA's authorization.

Section 4 would require the Commissioner of the New York State Education Department (the Commissioner of Education), in developing the regulations that would be required under Section 1 of this bill, to consider the recommendations of the AHHA workgroup of stakeholders convened by the Commissioner of Health.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect October 1, 2015, provided that the Commissioner of Education has adopted regulations.

Part K - Implement various provisions related to streamlining the Certificate of Need (CON) process for hospitals and diagnostic and treatment centers

Purpose:

This bill would modify various provisions of the Public Health Law to streamline the Certificate of Need (CON) process for hospitals and diagnostic and treatment centers (D&TCs).

Summary of Provisions and Statement in Support:

Section 1 would amend Public Health Law §2802 to:

- streamline the CON approval process for hospitals and D&TCs that provide primary care services by allowing the Commissioner of Health and the Public Health and Health Planning Council (PHHPC) to approve their applications to construct a facility without a public needs assessment;

- streamline the CON approval process for hospitals and D&TCs by allowing DOH and PHHPC to approve construction projects without a public needs assessment when the application does not involve a change related to: (i) capacity; (ii) the types of services provided; (iii) major medical equipment; (iv) facility replacement; or (v) the geographic location of services; and

- permit, rather than require, the Commissioner to consider a CON applicant's financial resources and future revenue sources when reviewing both types of applications.

Section 2 would amend PHL §2807-z to clarify that certain construction applications are not subject to a public needs assessment, which is otherwise implied by the phrase “certificate of need”.

Section 3 would amend PHL §2801-a to authorize PHHPC to approve the establishment of D&TCs that provide primary care without requiring a full public needs assessment and financial resources review.

Section 4 would amend PHL §2801-a(3) to:

- clarify that members, principal members, and principal stockholders are eligible candidates for character and competence reviews as part of PHHPC's CON review process;

- reduce the look-back period for character and competence reviews for incorporators, directors, sponsors, members, principal members, stockholders, principal stockholders, or operators who have already been subject to such a review from 10 to 7 years; and

- determine that violations of the State hospital code shall not be the basis of a finding that a substantially high level of care has not been rendered when the proposed incorporator, director, sponsor, member, principal member, stockholder, principal stockholder or operator demonstrates, and PHHPC finds, that such violations cannot be attributed to the action or inaction of the proposed incorporator, director, sponsor, member, principal member, stockholder, principal stockholder or operator.

Section 5 would amend PHL §§2801-a(4)(b) and (4)(c) to:

- increase transparency regarding the transfer of ownership interests of facility operators licensed as a PHL Article 28 hospital. Specifically, any transfer of voting rights or ownership interests greater than 10% to an owner not previously approved by PHHPC would now be subject to PHHPC approval, regardless of the type of business organization. In the absence of such prior approval, the facility’s operating certificate would be subject to revocation or suspension; and

- add "stockholders" and "operators" to the list of individuals requiring PHHPC approval for transfers of voting rights or ownership interests of less than 10%.

Section 6 would amend PHL § 3611-a to establish PHHPC approval for transfers of ownership interests or voting rights of greater than 10% for licensed home care service agencies or certified home health agencies. Failure to obtain such approval would

subject the agency's license to revocation or suspension. Further, this amendment would clarify that both transfers of interests to persons already approved by PHHPC and transfers of less than 10% to new persons shall not be effective absent 90 days' notice.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part L - Modify various provisions of the public health law to expand office-based surgery requirements to include office-based anesthesia, to standardize and limit the procedures permitted in such settings, and to strengthen accreditation requirements

Purpose:

This bill modifies various provisions of the public health law (PHL) to enhance office-based surgery requirements to include office-based anesthesia, to standardize and limit the procedures permitted in such settings, and to strengthen accreditation requirements for such entities.

Summary of Provisions and Statement in Support:

Section 1 of this bill would amend PHL §230-d to:

- add "office based anesthesia" to sections of the professional misconduct statute that include office-based surgery and provide a definition of such procedures;

- broaden the definition of an "adverse event" to include an emergency room visit or a required observation period within 72 hours of an office-based surgical procedure;

- expand the definition of "office-based surgery" to include certain office-based, non-surgical procedures involving neuraxial anesthesia and major upper or lower extremity regional nerve blocks;

- add podiatrists and chiropractors to the list of licensees that may perform office-based surgery or administer office-based anesthesia, respectively, and subject those licensees to Department of Health (DOH) oversight;

- clarify that neuraxial anesthesia and major upper or lower extremity regional nerve blocks are included in the definition of office-based anesthesia;

- require practices in which office-based surgery or office-based anesthesia is performed to maintain full accreditation status and register with DOH;

- increase the timeframe for reporting adverse events from one to three days, and authorize DOH to request additional data to evaluate such events; and

- limit office-based surgical and office-based anesthesia procedures solely to those procedures with an expected duration of no more than six hours and an expected safe discharge within six hours. Currently there are no limitations for the length of such procedures in private practices.

Section 2 of this bill would amend PHL §2998-e to:

- Require the Commissioner of Health to amend any agreements with accrediting agencies so that such agencies will require office-based surgical and office-based anesthesia practices to conduct quality improvement and assurance activities and determine the competency of their practitioners. The accreditation agencies shall also be required to report their findings to DOH and establish confidentiality requirements related to such information.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect one year after enactment.

Part M - Require local governments to notify the public and the Department of Health of their intent to discontinue water fluoridation, and establish a grant program to provide assistance to local governments to cover the cost of installing, replacing, repairing, or upgrading water fluoridation equipment

Purpose:

Tooth decay is the most common chronic childhood disease. Research shows that community water fluoridation is a cost-effective public health strategy that significantly improves dental health outcomes and the cost of dental care. This bill would require any local government seeking to discontinue fluoridating its water supply to notify the public and the Department of Health (DOH), and also submit a plan for discontinuance

to DOH. This bill would also establish a grant program to provide assistance to local governments to install, replace, repair, or upgrade water fluoridation equipment.

Summary of Provisions and Statement in Support:

This bill would amend Public Health Law §1100-a to:

- Prohibit a county, city, town, or village (local government) from discontinuing the addition of fluoride to its public water supply unless it issues a notice to the public of its preliminary decision to do so. Such notice shall include the local government's justification for the proposed discontinuance, the availability of alternatives to fluoridation, and a summary of consultations with the DOH and health professionals concerning the proposed discontinuance.

- Require the local government, if it wishes to proceed with the proposed discontinuance after receiving public comment, to provide written notice to DOH 90 days prior of the intent to discontinue fluoridation and submit a plan that includes information that may be required under the State sanitary code, a public notice of the final determination and the date of discontinuance, and alternatives to fluoridation, if any, that will be made available in the community.

- Authorize the Commissioner of Health to make grants available, within amounts appropriated therefor, to qualifying local governments to defray the cost of installing, repairing, replacing or upgrading water fluoridation equipment.

Budget Implications:

The Executive Budget includes a $5 million appropriation to support grants to local governments. Over time, this State cost is expected to be more than offset by savings in the Medicaid Program associated with lower childhood dental claims.

Effective Date:

This bill would take effect immediately.

Part N - Authorize the State Office for the Aging to seek public input on the creation of an Office of Community Living to address the expansion of community living integration services for older adults and disabled individuals

Purpose:

This bill would authorize the State Office for the Aging (SOFA) to seek public input on the creation of an Office of Community Living (OCL) to address the expansion of community living integration services for older adults and disabled individuals.

Summary of Provisions and Statement in Support:

Section 1 would define the purpose of this bill as seeking public input on creating an OCL to improve service delivery and program outcomes through the expansion of community living integration services for older adults and disabled individuals of all ages.

Section 2 would require the Director of SOFA, in collaboration with other State agencies, to consult with stakeholders, providers, and advocates to gather data and information on the creation of an OCL. Areas of focus would include:

- furthering the goals of the Governor's Olmstead plan;
- strengthening the No Wrong Door approach;
- reinforcing Balancing Incentive Program initiatives;
- opportunities for leveraging resources;
- evaluating methods for service delivery improvement;
- analyzing the fiscal impact of an OCL on services, individuals, and providers;
- examining the recent federal initiatives to create an administration on community living;
- examining other states' efforts to expand services supporting community integration; and
- examining local and regional coordination efforts.

Section 3 would require the Director of SOFA to provide a report and recommendations to the Governor and legislative leaders by December 15, 2015 on the feasibility of expanding SOFA's current mission to include community living integration services by April 1, 2016.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect immediately.

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

Purpose:

This bill would extend the Office of Mental Health's (OMH) authority to recover Medicaid exempt income from providers consistent with legislation enacted in prior years and a recent court decision.

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

This bill would amend unconsolidated law by extending the relevant fiscal period through to June 30, 2016, during which OMH may seek to recover excess income. Specifically, the bill would validate the Commissioner of OMH's authority to recoup Medicaid exempt income from providers of community residences licensed by OMH. Legislation enacted in prior years extended and confirmed OMH's statutory authority to recoup exempt income for specific time periods.

This bill would allow OMH to continue its practice and permit it to recover an amount equal to fifty percent of the Medicaid revenue received by providers that exceeds the fixed amount of annual budgeted Medicaid revenue, as established by OMH. This authority is consistent with 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.

Recent legislation ratified OMH's authority to recoup exempt income during established timeframes, however, some providers maintained that OMH lacked sufficient legal authority to continue this action. Litigation brought against the State on this issue resulted in a favorable outcome and supported the agency's practice of recouping exempt income.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget and would avoid a potential loss of $3 million in recoveries on an annual basis.

Effective Date:

This bill would take effect immediately.

Part P - Extend pilot program to restructure educational services for children and youth residing in Office of Mental Health hospitals

Purpose:

This bill would improve the educational offerings for children who reside in Office of Mental Health (OMH) hospitals by authorizing an agreement between OMH and the New York State Education Department (SED) for pilot programs establishing responsibility for educational programming with the local education system.

Summary of Provisions and Statement in Support:

This bill would amend a pilot program providing students residing in OMH hospitals with specialized educational programming that comports more closely with the curriculum and related therapy services they would receive in their home school districts. School districts and Board of Cooperative Educational Services (BOCES) programs already provide specialized programs as a matter of routine, and are better qualified than OMH to assume this very critical function. Furthermore, since the early 1980s, the Education Law has established local school district's responsibility for the education of students who were placed by parents in private hospitals for psychiatric reasons.

Section 1 of this bill would amend Section 1950 of the Education Law to authorize BOCES to provide these students with any of the educational services provided to their component school districts at OMH hospitals when requested to do so by the school district where the hospital is located.

Section 2 of this bill would amend Section 3202 of the Education Law to authorize BOCES to provide these students with any of the educational services provided to their component school districts at OMH hospitals when requested to do so by the school district where the hospital is located.

Section 3 of this bill would extend the pilot program authorized under Part M of L. 2012, c. 56 for three years.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it will ensure that appropriate educational programming be provided for students residing in OMH hospitals and ensure the agency's better compliance with federal statutes. It is assumed that this proposal would be cost neutral as OMH would shift funds to SED, but total fiscal implications have not yet been determined.

Effective Date:

This bill would take effect immediately and expire on June 30, 2018.

Part Q - Establish a private equity pilot program, allowing up to five business corporations to make private capital investments to assist in restructuring health care delivery systems

Purpose:

This bill would authorize up to five business corporations to participate in a private equity demonstration program to encourage investment of private capital for restructuring health care delivery systems.

Summary of Provisions and Statement in Support:

Section 1 of this bill would amend Public Health Law §2801-a by adding a new subdivision 17 to:

- Authorize the Commissioner of Health (the Commissioner) to establish a pilot program to assist in restructuring health care delivery systems by allowing for private capital investment;

- Limit the pilot program to up to five business corporations approved by the Public Health and Health Planning Council (PHHPC), in consultation with the Commissioner. The business corporation must affiliate with at least one medical institution or a teaching hospital and cannot be publically traded;

- Allow the business corporation to be eligible for debt financing provided through the Dormitory Authority of the State of New York (DASNY);

- Exempt the business corporation from certain PHHPC establishment requirements but still allow PPHPC to request the identity of the business corporation's stockholders;

- Limit the business corporation's powers to the ownership and operation of specifically identified hospitals, which may include ownership and operation of certified home health agencies, licensed home health agencies, and hospices;

- Require that in operating the business corporation, its directors and officers consider how their actions would impact:

    - the ability of the business corporation to accomplish its purpose;
    - the business corporation's shareholders;
    - the employees and workforce of the hospital(s);
    - the interests of the hospital's patients;
    - the communities surrounding the hospital; and
    - the short and long-term interests of the business corporation.

- Require that PHHPC, in consultation with the Commissioner, consider specific factors when deciding whether to approve a business corporation for participation in the pilot program, including the extent to which the business corporation:

    - provides for equal or majority governance rights of the hospital partner, regardless of equity stake;
    - incorporates a governance model which delineates responsibility for the hospital's operations, defines mechanisms for shareholder approval, and reserves powers to local governments to assure quality and access are not diminished;
    - incorporates as a benefit corporation under the business corporation law;
    - commits to maintaining or enhancing existing levels of services and charity care and community benefits;
    - identifies a strategy to monitor, maintain, or improve the quality of care;
    - explains how the existing workforce will be retained or retrained, and how benefit and pension obligations will be met;
    - creates a foundation to address the public health needs of the surrounding community; and
    - identifies how profits would be disbursed without affecting the community's access to quality care;

- Prohibit approval of any business corporation that fails to:

    - provide the not-for-profit hospital partner with exclusive authority over functions related to its tax exempt status;
    - commit to monitoring and reporting on quality and access to care;
    - provide for a local advisory board consisting of community representatives that will, among other duties, make recommendations on matters regarding the hospital's mission statement and monitor the hospital's quality and access to care;

- Require the business corporation to identify the time period for which it expects to keep its investment in the hospital, whether it will allow a buy back option, and what safeguards will be established to protect access to services if it begins negotiations with another investor;

- Require the Commissioner, prior to the sale or exchange of the business corporation and its assets, to determine whether the transaction would require the new investor to maintain safeguards in order to protect quality and access to care, guarantee the previous business corporation's prior obligations, and maintain the institution's governance structure. No transition may occur within three years of the business corporation receiving approval to participate in the pilot program; and

- Require the Commissioner to report on the effectiveness of the pilot program to the Governor and the Legislature.

Sections 2 and 3 would amend Public Authorities Law §§1676 and 1680 to allow business corporations established under the pilot program to acquire, construct, reconstruct, rehabilitate and improve health care institutions.

Budget Implications:

Enactment of this bill is necessary to conform to the policy objectives of the 2015-16 Executive Budget.

Effective Date:

This bill would take effect immediately.

Part R - Authorize the Office of Mental Health facility directors who act as representative payees to continue to use funds for care and treatment consistent with federal law and regulations

Purpose:

This bill would extend for three years the clarification that the Office of Mental Health (OMH) facility directors acting as representative payees may continue to use funds for the cost of a resident's care and treatment.

Summary of Provisions and Statement in Support:

This bill would amend Chapter 111 of the Laws of 2010 to clarify that State facility directors who act as federally-appointed representative payees may continue to use funds for the cost of a resident's care and treatment, consistent with federal law and regulations. This bill would continue current statute and existing practice that the application of funds for a person's care and treatment by a facility director, acting as a representative payee for such person, is not a violation of 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 facilities, and are assessed charges for care and treatment based upon all income sources including Social Security benefits. This bill would allow OMH to continue existing practice and avoid potential costs, related to the loss of collecting authority, estimated at $30 million annually. 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 2015-16 Executive Budget because it would avoid a potential loss of $30 million in revenue on an annual basis.

Effective Date:

This bill would take effect immediately.

Part S - Make technical amendments required to implement the expansion of the Nurse Practice Act exemption for direct care staff in non-certified settings funded, authorized or approved by the Office for People with Developmental Disabilities

Purpose:

This bill would make technical amendments to the Social Services Law, Executive Law and Mental Hygiene Law to allow the Office for People with Developmental Disabilities (OPWDD) to implement a FY 2015 Enacted Budget amendment related to the Nurse Practice Act exemption for direct care staff working in non-certified settings.

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

The FY 2015 Enacted Budget expanded OPWDD's Nurse Practice Act exemption for staff working in non-certified settings -- such as individuals living in their own apartment or homes -- subject to the completion of a Memorandum of Understanding (MOU) between OPWDD and the State Education Department (SED).

Before approving the MOU, technical amendments to Social Services Law, Executive Law and Mental Hygiene Law must be enacted to clarify that OPWDD has statutory authority to oversee nursing-related services in non-certified settings, as well as authority to engage in the corporate practice of nursing. 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 administration of medications and other tasks and activities. These technical changes are needed to implement provisions of the FY 2015 Enacted Budget.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget because it allows the previously approved exemption of the Nurse Practice Act to be implemented, which will create service efficiencies resulting in a savings of $3.8 million in FY 2016 and beyond.

Effective Date:

This bill would take effect immediately.

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.