

# BUDGET #8R

FY 2020 Executive Budget Amendments

## Amendments to Senate S.1507; Assembly A.2007 (Health and Mental Hygiene Article VII Bill)

**Part G**, relating to fiscal intermediary contracting and related federal financial participation, is amended to:

- Maintain the requirement for fiscal intermediary oversight with the Department of Health until January 1, 2020.
- Clarify that eligible fiscal intermediary applicants include all independent living centers.

**Part H**, relating to hospital related Medicaid Redesign Team recommendations, is amended to:

- Include statutory authorization to implement rate adjustments for lower performing providers.
- Add authority to promulgate regulations regulating reimbursement for services provided to individuals dually enrolled in Medicaid and Medicare.
- Reduce annual indigent care pool distributions for certain providers.

**Part I**, relating to pharmacy benefit managers, is amended to:

- Include in the definition of services performed by a Pharmacy Benefit Managers the "negotiation of rebates".

**Part P**, relating to lead based paint standards recommendations, is amended to:

- Clarify that lead safe standards adopted by the Department of Health in ensuring rental properties do not expose children to lead based paint would neither be superseded by Uniform Building Code standards nor would they take the place of such standards.

**Part R**, relating to establishing the Maternal Mortality Review Board, is amended to:

- Make various technical corrections.

**Part BB**, relating to mental health and substance use disorder health insurance parity, is amended to:

- Make a technical correction changing "outpatient substance use" to "autism spectrum".

**New Part CC**, relating to prescriber assistance, is added to:

- Allow for the use of additional pharmacy technicians in pharmacies under the supervision of pharmacists.

Part DD, relating to Medicaid across the board savings, is added to:

- Authorize a uniform across the board reduction to the Department of Health Medicaid claims.

Amend Senate S1507, Assembly A2007, AN ACT to amend the public health law, in relation to ...

Page	Line	Amendment
page 4,	Unnumbered line 14 (AN ACT CLAUSE),	After "(Part AA);" strike out "and"
Page 4,	Unnumbered line 26 (AN ACT CLAUSE),	After "(Part BB)" insert "; to amend the public health law, in relation to prescriber assistance in allowing unlicensed certified pharmacy technicians to assist in dispensing of drugs (Part CC); and to authorize a uniform across the board reduction to the Department of Health Medicaid claims (Part DD)"
Page 4,	Line 4,	After "through" strike out "BB" and insert "DD"
Page 32,	Line 29,	After "Paragraphs" strike out "(b),"
Page 32,	Line 30,	After "4-a and" strike out "subdivisions 4-b and" and insert "subdivision"
Page 32,	Line 32,	After "paragraph", strike out "(b)" and insert "(c)"
Pages 32 Through 36,	Lines 33 Through 25,	Strike out §3 in its entirety
Page 36,	Between lines 25 and 26,	<p>Insert "§3. Subdivision 4-a of section 365-f of the social services law is redesignated as subdivision 5, and subparagraph (i) of paragraph (a) of such subdivision is amended as follows:</p> <p>[4-a]5. Fiscal intermediary services.</p> <p>(a) For the purposes of this section:            (i) "Fiscal intermediary" means an entity that provides fiscal intermediary services and has a contract for providing such services with:            (A) a local department of social services;            (B) an organization licensed under article forty-four of the public health law; or            (C) an accountable care organization certified under article twenty-nine-E of the public health law or an integrated delivery system composed primarily of health care providers recognized by the department as a performing provider system under the delivery system reform incentive payment program] <u>the department of health and is selected through the procurement process described in paragraph (b) of this subdivision, or by authorization upon application in accordance with such criteria as the department may develop together with such other forms and information prescribed by, or acceptable to, the commissioner. Eligible applicants for authorization under this paragraph are limited to entities that:</u></p>

Page	Line	Amendment
		<p><u>(A) are a service center for independent living under section one thousand one hundred twenty-one of the education law; or</u>  <u>(B) have a history of providing fiscal intermediary services for persons with disabilities, as demonstrated by having a continuous history of arrangements with local departments of social services beginning no later than January first, two thousand twelve.</u></p> <p>§4. Paragraph (b) of subdivision 4-a, redesignated as subdivision 5 pursuant to section 3 of this Part, of section 365-f of the social services law is amended as follows:</p> <p>(b) [No entity shall provide, directly or through contract, fiscal intermediary services without an authorization as a fiscal intermediary issued by the commissioner in accordance with this subdivision]  <u>Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner is authorized to enter into a contract or contracts under this subdivision with an entity or entities without a competitive bid or request for proposal process, provided, however, that:</u></p> <p><u>(i) the department shall post on its website, for a period of no less than thirty days:</u>  <u>(A) a description of the proposed services to be provided pursuant to the contract or contracts;</u>  <u>(B) the criteria for selection of a contractor or contractors;</u>  <u>(C) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and</u>  <u>(D) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;</u>  <u>(ii) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner; and</u>  <u>(iii) the commissioner shall select such contractor or contractors that, in the commissioner's discretion, are best suited to serve the purposes of this section.</u></p> <p>§5. Subdivision 4-b of section 365-f of the social services law is REPEALED and current subdivisions 5, 6, 7, 8, and 9 are redesignated as subdivisions 6, 7, 8, 9, and 10.</p>
Page 36,	Line 26	After "\$" strike out "4." and insert "6."
Page 36,	Line 28	After "that" strike out "section three" and insert "sections three, four, and five"

Page	Line	Amendment
Page 37,	Line 17 through 29,	<p>After "\$4." strike out "Paragraph (b) of subdivision 35 of section 2807-c of the public health law is amended by adding a new subparagraph (xiv) to read as follows: <u>(xiv) Such rates and payment methodologies may incorporate methodologies to reduce payments to facilities with a higher percentage of potentially avoidable inpatient services by instituting lower inpatient payment rates for both fee-for-service and managed care to incentivize the provision of preventative care to reduce preventable events and overall inpatient costs. A portion of such savings derived from the implementation of such payment methodologies shall be reinvested in initiatives to incentivize the provision of preventative care, maternity services, and other ambulatory care services to reduce preventable health care costs.</u>" And insert "Subdivision 35 of section 2807-c of the public health law is amended by adding a new paragraph (k) to read as follows: <u>(k) Notwithstanding any contrary provision of law, the commissioner may make such adjustments to general hospital inpatient rates and to the methodology for computing such rates as is necessary to reduce payments to facilities with a higher percentage of potentially avoidable inpatient services by instituting lower inpatient payment rates for both fee-for-service and managed care to incentivize the provision of preventative care to reduce preventable events and overall inpatient costs. A portion of such savings derived from the implementation of such payment methodologies shall be reinvested in initiatives to incentivize the provision of preventative care, maternity services, and other ambulatory care services to reduce preventable health care costs.</u>"</p>
Page 37,	Line 30,	<p>After "\$5." insert new §5:  "\$ 5. Social Services Law section 367-u, as amended by chapter 6 of the laws of 2015, is amended to read as follows:  § 367-u. Payment for home telehealth services.  1. Subject to the approval of the state director of the budget, the commissioner may authorize the payment of medical assistance funds for demonstration rates or fees established for home telehealth services provided pursuant to subdivision three-c of section thirty-six hundred fourteen of the public health law.  2. Subject to federal financial participation and the approval of the director of the budget, the commissioner shall not exclude from the payment of medical assistance funds the delivery of health care services through telehealth, as defined in subdivision four of section two thousand nine hundred ninety-nine-cc of the public health law; provided, however, for</p>

Page	Line	Amendment
		<p>telehealth services provided to individuals dually enrolled in Medicaid and Medicare, the commissioner is authorized to promulgate regulations governing Medicaid coverage and reimbursement of such services, including development of a covered services list which may be limited to higher priority services and procedures. Such services shall meet the requirements of federal law, rules and regulations for the provision of medical assistance pursuant to this title.</p> <p>§6. Subdivision 5-d of section 2807-k of the public health law, as amended by chapter 57 of the laws of 28, is amended to read as follows.</p> <p>5-d.</p> <p>(a) Notwithstanding any inconsistent provision of this section, section twenty-eight hundred seven-w of this article or any other contrary provision of law, and subject to the availability of federal financial participation, for periods on and after January first, two thousand thirteen, through March thirty-first, two thousand [twenty] <u>twenty-one</u>, all funds available for distribution pursuant to this section, except for funds distributed pursuant to subparagraph (v) of paragraph (b) of subdivision five-b of this section, and all funds available for distribution pursuant to section twenty-eight hundred seven-w of this article, shall be reserved and set aside and distributed in accordance with the provisions of this subdivision.</p> <p>(b) The commissioner shall promulgate regulations, and may promulgate emergency regulations, establishing methodologies for the distribution of funds as described in paragraph (a) of this subdivision and such regulations shall include, but not be limited to, the following:</p> <p>(i) Such regulations shall establish methodologies for determining each facility's relative uncompensated care need amount based on uninsured inpatient and outpatient units of service from the cost reporting year two years prior to the distribution year, multiplied by the applicable medicaid rates in effect January first of the distribution year, as summed and adjusted by a statewide cost adjustment factor and reduced by the sum of all payment amounts collected from such uninsured patients, and as further adjusted by application of a nominal need computation that shall take into account each facility's medicaid inpatient share.</p> <p>(ii) Annual distributions pursuant to such regulations for the two thousand thirteen through two thousand [nineteen] <u>twenty</u> calendar years shall be in accord with the following:</p> <p>(A) one hundred thirty-nine million four hundred thousand dollars shall be distributed as</p>

Page	Line	Amendment
		<p>Medicaid Disproportionate Share Hospital ("DSH") payments to major public general hospitals; and</p> <p>(B) [nine hundred ninety-four] <u>seven hundred nineteen million [nine] four hundred thousand</u> dollars as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals; and</p> <p><u>(C) provided, however, that notwithstanding any inconsistent provision of this section, for all calendar years beginning on January first, two thousand twenty, general hospitals located in a city with a population of more than one million persons and/or in the counties of Westchester, Suffolk and Nassau, that have, or that that are part of a system of co-established general hospitals that collectively has, an average operating margin greater than 2.98 where average operating margin is calculated by subtracting total operating expenses from total operating revenue and dividing the result by the total operating revenue, and that also have, or that that are part of a system of co-established general hospitals that collectively has, a net operating income of more than sixty-eight million dollars, both as determined by the department pursuant to the hospital institutional cost reports for year two thousand seventeen, shall only be eligible for indigent care pool payments of a maximum of ten thousand dollars.</u></p> <p>(iii)</p> <p>(A) Such regulations shall establish transition adjustments to the distributions made pursuant to clauses (A) and (B) of subparagraph (ii) of this paragraph such that no facility experiences a reduction in indigent care pool payments pursuant to this subdivision that is greater than the percentages, as specified in clause (C) of this subparagraph as compared to the average distribution that each such facility received for the three calendar years prior to two thousand thirteen pursuant to this section and section twenty-eight hundred seven-w of this article.</p> <p>(B) Such regulations shall also establish adjustments limiting the increases in indigent care pool payments experienced by facilities pursuant to this subdivision by an amount that will be, as determined by the commissioner and in conjunction with such other funding as may be available for this purpose, sufficient to ensure full funding for the transition adjustment payments authorized by clause (A) of this subparagraph.</p> <p>(C) No facility shall experience a reduction in indigent care pool payments pursuant to this subdivision that: for the calendar year beginning January first, two thousand thirteen, is greater than two and one-half percent; for the calendar year beginning January first, two</p>

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		<p>thousand fourteen, is greater than five percent; and, for the calendar year beginning on January first, two thousand fifteen; is greater than seven and one-half percent, and for the calendar year beginning on January first, two thousand sixteen, is greater than ten percent; and for the calendar year beginning on January first, two thousand seventeen, is greater than twelve and one-half percent; and for the calendar year beginning on January first, two thousand eighteen, is greater than fifteen percent; and for the calendar year beginning on January first, two thousand nineteen, is greater than seventeen and one-half percent.</p> <p>(iv) Such regulations shall reserve one percent of the funds available for distribution in the two thousand fourteen and two thousand fifteen calendar years, and for calendar years thereafter, pursuant to this subdivision, subdivision fourteen-f of section twenty-eight hundred seven-c of this article, and sections two hundred eleven and two hundred twelve of chapter four hundred seventy-four of the laws of nineteen hundred ninety-six, in a "financial assistance compliance pool" and shall establish methodologies for the distribution of such pool funds to facilities based on their level of compliance, as determined by the commissioner, with the provisions of subdivision nine-a of this section.</p> <p>(c) The commissioner shall annually report to the governor and the legislature on the distribution of funds under this subdivision including, but not limited to:</p> <p>(i) the impact on safety net providers, including community providers, rural general hospitals and major public general hospitals;</p> <p>(ii) the provision of indigent care by units of services and funds distributed by general hospitals; and</p> <p>(iii) the extent to which access to care has been enhanced.</p> <p>§7."</p>
Page 38,	Line 18,	After " <u>pharmacies,</u> " insert " <u>negotiation of rebates,</u> "
Page 93,	Line 26,	<p>After "§3." insert "Subdivision one of section three hundred eighty-three of the executive law, as added by chapter 707 of the laws of 1984, paragraph c as amended by chapter 772 of the laws of 1986, is amended by adding a new paragraph d, to read as follows:</p> <p><u>d. The regulations promulgated by the commissioner of health pursuant to subdivision two of section thirteen hundred seventy-f of the public health law</u></p> <p><u>(i) shall not be superseded by the provisions of this article, by the provisions of the uniform fire prevention and building code, or by the</u></p>



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		<p><u>provisions of the building and fire prevention codes in effect in a city with a population of over one million;</u>  <u>(ii) shall be applicable in addition to, and not in substitution for or limitation of, the provisions of the uniform fire prevention and building code and the provisions of building and fire prevention codes in effect in cities with a population of over one million; and</u>  <u>(iii) shall be administered and enforced by commissioner of health, the local health officer of a county, the commissioner of the New York City department of health and mental hygiene, or a municipal government entering into an agreement or contract authorized by subdivision five of section thirteen hundred seventy-f of the public health law, in the manner provided in said subdivision.</u>  <u>§4. "</u></p>
Page 94,	Line 30,	After " <u>maternal</u> " strike out " <u>morality</u> " insert " <u>mortality</u> "
Page 95,	Line 20,	After " <u>not subject to</u> " strike out " <u>the open meetings law</u> " and insert " <u>Article 7 of the public officers law</u> "
Page 95,	Line 40,	After " <u>the commissioner,</u> " strike out " <u>, or the city commissioner,</u> "
Page 135,	Line 34,	After " <u>to</u> " strike out " <u>outpatient substance use</u> " and insert " <u>autism spectrum</u> ".
page 152,	Between lines 25 and 26,	Insert Part CC (LBD #71039-02-9) Part DD (LBD #71040-02-9)
page 152,	line 36,	After " <u>through</u> " strike out " <u>BB</u> " and insert " <u>DD</u> "

(Part V); to amend part D of 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 W); to amend the criminal procedure law, in relation to authorizing restorations to competency within correctional facility based residential settings; and providing for the repeal of such provisions upon expiration thereof (Part X); to amend part C of chapter 57 of the laws of 2006, relating to establishing a cost of living adjustment for designated human services programs, in relation to the inclusion and development of certain cost of living adjustments (Part Y); to amend the public health law and the mental hygiene law, in relation to integrated services (Part Z); to amend the social services law, in relation to the definition of a facility or a provider agency (Part AA); and to amend the insurance law, in relation to mental health and substance use disorder health insurance parity; to amend the public health law, in relation to health maintenance organizations; and to repeal certain provisions of the insurance law relating thereto (Subpart A); to amend the public health law, in relation to general hospital policies for substance use disorder treatment (Subpart B); to repeal subparagraph (v) of paragraph (a) of subdivision 2 of section 3343-a of the public health law relating to general hospital prescription drug monitoring (Subpart C); to amend the social services law, in relation to court ordered substance use disorder treatment (Subpart D); and to amend the public health law, in relation to including fentanyl analogs as controlled substances (Subpart E) (Part BB)

*Insert Long title insert*

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation  
 2 which are necessary to implement the state fiscal plan for the 2019-2020  
 3 state fiscal year. Each component is wholly contained within a Part  
 4 identified as Parts A through BB. The effective date for each particular  
 5 provision contained within such Part is set forth in the last section of  
 6 such Part. Any provision in any section contained within a Part, includ- DD  
 7 ing the effective date of the Part, which makes a reference to a section  
 8 "of this act", when used in connection with that particular component,  
 9 shall be deemed to mean and refer to the corresponding section of the  
 10 Part in which it is found. Section three of this act sets forth the  
 11 general effective date of this act.

12 PART A

13 Section 1. Subdivision 4 of section 365-h of the social services law,  
 14 as separately amended by section 50 of part B and section 24 of part D  
 15 of chapter 57 of the laws of 2015, is amended to read as follows:

16 4. The commissioner of health is authorized to assume responsibility  
 17 from a local social services official for the provision and reimburse-  
 18 ment of transportation costs under this section. If the commissioner  
 19 elects to assume such responsibility, the commissioner shall notify the  
 20 local social services official in writing as to the election, the date  
 21 upon which the election shall be effective and such information as to  
 22 transition of responsibilities as the commissioner deems prudent. The  
 23 commissioner is authorized to contract with a transportation manager or

1

PART G

2 Section 1. Paragraph (a) of subdivision 3 of section 366 of the social  
3 services law is REPEALED and a new paragraph (a) is added to read as  
4 follows:

5 (a) Medical assistance shall be furnished without consideration of the  
6 income and resources of an applicant's legally responsible relative if  
7 the applicant's eligibility would normally be determined by comparing  
8 the amount of available income and/or resources of the applicant,  
9 including amounts deemed available to the applicant from legally respon-  
10 sible relatives, to an applicable eligibility standard, and:

11 (1) (i) the legally responsible relative is a community spouse, as  
12 defined in section three hundred sixty-six-c of this title;

13 (ii) such relative is refusing to make his or her income and/or  
14 resources available to meet the cost of necessary medical care,  
15 services, and supplies; and

16 (iii) the applicant executes an assignment of support from the commu-  
17 nity spouse in favor of the social services district and the department,  
18 unless the applicant is unable to execute such assignment due to phys-  
19 ical or mental impairment or to deny assistance would create an undue  
20 hardship, as defined by the commissioner; or

21 (2) the legally responsible relative is absent from the applicant's  
22 household, and fails or refuses to make his or her income and/or  
23 resources available to meet the cost of necessary medical care,  
24 services, and supplies.

25 In such cases, however, the furnishing of such assistance shall create  
26 an implied contract with such relative, and the cost thereof may be  
27 recovered from such relative in accordance with title six of article  
28 three of this chapter and other applicable provisions of law.

Subdivision

29 § 2. Paragraphs (b), (c), (d), (e), (f), (g), and (h) of subdivision  
30 4-a and subdivisions 4-b and 4-c of section 365-f of the social services  
31 law are REPEALED, and paragraph (i) of subdivision 4-a is relettered  
32 paragraph (b).

33 § 3. Section 365-f of the social services law is REPEALED, and a new  
34 section 365-f is added to read as follows:

35 § 365-f. Consumer directed personal assistance program. 1. Purpose and  
36 intent. The consumer directed personal assistance program is intended to  
37 permit chronically ill and/or physically disabled individuals receiving  
38 home care services under the medical assistance program greater flexi-  
39 bility and freedom of choice in obtaining such services. The department  
40 shall regularly monitor district participation in the program by review-  
41 ing the implementation plans submitted pursuant to this section. The  
42 department shall provide guidance to the districts to improve compliance  
43 with implementation plans and promote consistency among counties  
44 regarding approved service levels based on the assessments required by  
45 this section. In addition, the department shall provide technical  
46 assistance and such other assistance as may be necessary to assist such  
47 districts in assuring access to the program for eligible individuals.

48 2. Eligibility. All eligible individuals receiving home care shall be  
49 provided notice of the availability of the program, and no less  
50 frequently than annually thereafter, and shall have the opportunity to  
51 apply for participation in the program. Each social services district  
52 shall file an implementation plan with the commissioner of the depart-  
53 ment of health, which shall be updated annually. Such updates shall be  
54 submitted no later than November thirtieth of each year. The plans and  
55 updates submitted by districts shall require the approval of the depart-

1 ~~ment. Implementation plans shall include district enrollment targets,~~  
2 ~~describe methods for the provision of notice and assistance to inter-~~  
3 ~~ested individuals eligible for enrollment in the program, and shall~~  
4 ~~contain such other information as, shall be required by the department.~~  
5 ~~An "eligible individual", for purposes of this section is a person who:~~  
6 ~~(a) is eligible for long term care and services provided by a certi-~~  
7 ~~fied home health agency, long term home health care program or AIDS home~~  
8 ~~care program authorized pursuant to article thirty-six of the public~~  
9 ~~health law, or is eligible for personal care services provided pursuant~~  
10 ~~to this article;~~  
11 ~~(b) is eligible for medical assistance;~~  
12 ~~(c) has been determined by the social services district or an entity~~  
13 ~~certified under article forty-four of the public health law, pursuant~~  
14 ~~to an assessment of the person's appropriateness for the program,~~  
15 ~~conducted with an appropriate long term home health care program, a~~  
16 ~~certified home health agency, or an AIDS home care program or pursuant~~  
17 ~~to the personal care program, as being in need of home care services or~~  
18 ~~private duty nursing and is able and willing or has a designated repre-~~  
19 ~~sentative, including a legal guardian able and willing to make informed~~  
20 ~~choices, or a designated relative or other adult who is able and willing~~  
21 ~~to assist in making informed choices, as to the type and quality of~~  
22 ~~services, including but not limited to such services as nursing care,~~  
23 ~~personal care, transportation and respite services; and~~  
24 ~~(d) meets such other criteria, as may be established by the commis-~~  
25 ~~sioner, which are necessary to effectively implement the objectives of~~  
26 ~~this section.~~  
27 ~~3. Eligible individuals. Eligible individuals who elect to participate~~  
28 ~~in the program assume the responsibility for services under such~~  
29 ~~program as mutually agreed to by the eligible individual and provider~~  
30 ~~and as documented in the eligible individual's record, including, but~~  
31 ~~not limited to, recruiting, hiring and supervising their personal~~  
32 ~~assistants. For the purposes of this section, personal assistant shall~~  
33 ~~mean an adult who provides services under this section to the eligible~~  
34 ~~individual under the eligible individual's instruction, supervision and~~  
35 ~~direction or under the instruction, supervision and direction of the~~  
36 ~~eligible individual's designated representative, provided that a person~~  
37 ~~legally responsible for an eligible individual's care and support, an~~  
38 ~~eligible individual's spouse or designated representative may not be the~~  
39 ~~personal assistant for the eligible individual; however, a personal~~  
40 ~~assistant may include any other adult relative of the eligible individ-~~  
41 ~~ual, provided, however, that the program determines that the services~~  
42 ~~provided by such relative are consistent with an individual's plan of~~  
43 ~~care and that the aggregate cost for such services does not exceed the~~  
44 ~~aggregate costs for equivalent services provided by a non-relative~~  
45 ~~personal assistant. Such individuals shall be assisted as appropriate~~  
46 ~~with service coverage, supervision, advocacy and management. Providers~~  
47 ~~shall not be liable for fulfillment of responsibilities agreed to be~~  
48 ~~undertaken by the eligible individual. This subdivision, however, shall~~  
49 ~~not diminish the participating provider's liability for failure to exer-~~  
50 ~~cise reasonable care in properly carrying out its responsibilities~~  
51 ~~under this program, which shall include monitoring such individual's~~  
52 ~~continuing ability to fulfill those responsibilities documented in his~~  
53 ~~or her records. Failure of the individual to carry out his or her~~  
54 ~~agreed to responsibilities may be considered in determining such indi-~~  
55 ~~vidual's continued appropriateness for the program.~~

~~1 4. Participating providers. All agencies or individuals who meet the  
2 qualifications to provide home health, personal care or nursing services  
3 and who elect to provide such services to persons receiving medical  
4 assistance may participate in the program. Any agency or individuals  
5 providing services under a patient managed home care program authorized  
6 under the former section thirty-six hundred twenty-two of the public  
7 health law or the former section three hundred sixty-five of this  
8 chapter may continue to provide such services under this section.~~

~~9 5. Fiscal intermediaries. (a) For the purposes of this section "fiscal  
10 intermediary" means:~~

~~11 (i) an entity that has a contract with the department of health to  
12 provide fiscal intermediary services pursuant to paragraph (e) of this  
13 subdivision; or~~

~~14 (ii) an entity authorized by the commissioner upon application with a  
15 history of providing fiscal intermediary services that:~~

~~16 (A) is a service center for independent living under section one thou-  
17 sand one hundred twenty-one of the education law; or~~

~~18 (B) has experience providing fiscal intermediary services for persons  
19 with disabilities, in accordance with such criteria as the department  
20 may develop, as demonstrated by having a continuous history of arrange-  
21 ments with local departments of social services beginning no later than  
22 January first, two thousand twelve.~~

~~23 (b) An application for authorization as a fiscal intermediary under  
24 subparagraph (ii) of paragraph (a) of this subdivision shall be filed  
25 with the commissioner, together with such other forms and information as  
26 shall be prescribed by, or acceptable to the commissioner.~~

~~27 (c) Fiscal intermediary services shall include the following services,  
28 performed on behalf of the consumer to facilitate his or her role as the  
29 employer:~~

~~30 (i) wage and benefit processing for consumer directed personal assist-  
31 ants;~~

~~32 (ii) processing all income tax and other required wage withholdings;~~

~~33 (iii) complying with workers' compensation, disability and unemploy-  
34 ment requirements;~~

~~35 (iv) maintaining personnel records for each consumer directed personal  
36 assistants including time sheets and other documentation needed for  
37 wages and benefit processing and a copy of the medical documentation  
38 required pursuant to regulations established by the commissioner;~~

~~39 (v) ensuring that the health status of each consumer directed personal  
40 assistant is assessed prior to service delivery pursuant to regulations  
41 issued by the commissioner;~~

~~42 (vi) maintaining records of service authorizations or reauthori-  
43 zations;~~

~~44 (vii) monitoring the consumer's or, if applicable, the designated  
45 representative's continuing ability to fulfill the consumer's responsi-  
46 bilities under the program and promptly notifying the authorizing entity  
47 of any circumstance that may affect the consumer's or, if applicable,  
48 the designated representative's ability to fulfill such responsibi-~~

~~49 ties;~~  
~~50 (viii) complying with regulations established by the commissioner  
51 specifying the responsibilities of fiscal intermediaries providing  
52 services under this title; and~~

~~53 (ix) entering into a department approved memorandum of understanding  
54 with the consumer that describes the parties' responsibilities under  
55 this program. ]~~

1 ~~(d) Fiscal intermediaries are not responsible for, and fiscal interme-~~  
 2 ~~diary services shall not include, fulfillment of the responsibilities of~~  
 3 ~~the consumer or, if applicable, the consumer's designated representative~~  
 4 ~~as established by the commissioner. A fiscal intermediary's responsibil-~~  
 5 ~~ities shall not include, and a fiscal intermediary shall not engage in:~~  
 6 ~~managing the plan of care including recruiting and hiring a sufficient~~  
 7 ~~number of individuals who meet the definition of consumer directed~~  
 8 ~~personal assistant, as such term is defined by the commissioner, to~~  
 9 ~~provide authorized services that are included on the consumer's plan of~~  
 10 ~~care; training, supervising and scheduling each consumer directed~~  
 11 ~~personal assistant; terminating the consumer directed personal assist-~~  
 12 ~~ant's employment; or assuring that each consumer directed personal~~  
 13 ~~assistant competently and safely performs the personal care services,~~  
 14 ~~home health aide services and skilled nursing tasks that are included~~  
 15 ~~on the consumer's plan of care. A fiscal intermediary shall exercise~~  
 16 ~~reasonable care in properly carrying out its responsibilities under the~~  
 17 ~~program.~~

18 ~~(e) Notwithstanding any inconsistent provision of sections one hundred~~  
 19 ~~twelve and one hundred sixty-three of the state finance law, or section~~  
 20 ~~one hundred forty-two of the economic development law, or any other law,~~  
 21 ~~the commissioner is authorized to enter into a contract or contracts~~  
 22 ~~under this subdivision with an entity or entities without a competitive~~  
 23 ~~bid or request for proposal process, provided, however, that:~~

24 ~~(i) the department shall post on its website, for a period of no less~~  
 25 ~~than thirty days:~~

26 ~~(A) a description of the proposed services to be provided pursuant to~~  
 27 ~~the contract or contracts;~~

28 ~~(B) the criteria for selection of a contractor or contractors;~~

29 ~~(C) the period of time during which a prospective contractor may seek~~  
 30 ~~selection, which shall be no less than thirty days after such informa-~~  
 31 ~~tion is first posted on the website; and~~

32 ~~(D) the manner by which a prospective contractor may seek such~~  
 33 ~~selection, which may include submission by electronic means;~~

34 ~~(ii) all reasonable and responsive submissions that are received from~~  
 35 ~~prospective contractors in a timely fashion shall be reviewed by the~~  
 36 ~~commissioner; and~~

37 ~~(iii) the commissioner shall select such contractor or contractors~~  
 38 ~~that, in his or her discretion, are best suited to serve the purposes of~~  
 39 ~~this section.~~

40 ~~6. Actions involving the authorization of a fiscal intermediary. (a) A~~  
 41 ~~fiscal intermediary's authorization under subparagraph (ii) of paragraph~~  
 42 ~~(a) of subdivision five of this section may be revoked, suspended,~~  
 43 ~~limited or annulled upon thirty days' written notice to the fiscal~~  
 44 ~~intermediary, if the commissioner finds that the fiscal intermediary has~~  
 45 ~~failed to comply with the provisions of this subdivision or regulations~~  
 46 ~~promulgated hereunder. Notwithstanding the foregoing, upon determining~~  
 47 ~~that the public health or safety would be imminently endangered by the~~  
 48 ~~continued authorization of the fiscal intermediary, the commissioner may~~  
 49 ~~revoke, suspend, limit or annul the fiscal intermediary's authorization~~  
 50 ~~immediately.~~

51 ~~(b) All orders or determinations under this subdivision shall be~~  
 52 ~~subject to review as provided in article seventy-eight of the civil~~  
 53 ~~practice law and rules.~~

54 ~~7. Waivers, regulations and effectiveness. (a) The commissioner may,~~  
 55 ~~subject to the approval of the director of budget, file for such federal~~  
 56 ~~waivers as may be needed for the implementation of the program.~~

~~1. (b) Notwithstanding any other provision of law, the commissioner is authorized to waive any provision of section three hundred sixty seven-b of this title related to payment and may promulgate regulations necessary to carry out the objectives of the program, and which describe the responsibilities of the eligible individuals in arranging and paying for services and the protections assured such individuals if they are unable or no longer desire to continue in the program.~~

~~8. Notwithstanding any inconsistent provision of this section or any other contrary provision of law, managed care programs established pursuant to section three hundred sixty-four-j of this title and managed long term care plans and other care coordination models established pursuant to section four thousand four hundred three-f of the public health law shall offer consumer directed personal assistance programs to enrollees.~~

~~9. Notwithstanding any provision of this section or any other law to the contrary, the provisions pertaining to consumer directed personal assistance services and fiscal intermediaries pursuant to this section shall only be available if the commissioner of health determines that there is adequate Federal Financial Participation to fund such programs and/or entities.~~

~~10. Subject to the availability of federal financial participation, the provisions of this section governing consumer directed personal assistance services shall also apply to such services when offered under the home and community-based attendant services and supports state plan option, community first choice, pursuant to 42 U.S.C. § 1396n(k).~~

6. § 4. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2019; provided however, that [section three] of this act shall take effect January 1, 2020.

Sections three, four, and five

PART H

Section 1. Subparagraph (v) of paragraph (b) of subdivision 5-b of section 2807-k of the public health law is REPEALED.

§ 2. Section 2807 of the public health law is amended by adding a new subdivision 20-a to read as follows:

20-a. Notwithstanding any provision of law to the contrary, the commissioners of the department of health, the office of mental health, the office of people with developmental disabilities, and the office of alcoholism and substance abuse services are authorized to waive any regulatory requirements as are necessary, consistent with applicable law, to allow providers that are involved in DSRIP projects or replication and scaling activities, as approved by the authorizing commissioner, to avoid duplication of requirements and to allow the efficient scaling and replication of DSRIP promising practices, as determined by the authorizing commissioner; provided however, that regulations pertaining to patient safety may not be waived, nor shall any regulations be waived if such waiver would risk patient safety.

§ 3. Subparagraph (i) of paragraph (e-1) of subdivision 4 of section 2807-c of the public health law, as amended by section 29 of part C of chapter 60 of the laws of 2014, is amended to read as follows:

(i) For rate periods on and after April first, two thousand ten, the commissioner, in consultation with the commissioner of the office of mental health, shall promulgate regulations, and may promulgate emergency regulations, establishing methodologies for determining the operating cost components of rates of payments for services described in this

Insert §3

Insert §4

§5. Subdivision 4-b of section 365-f of the Social Services law is REPEALED and current subdivisions 5, 6, 7, 8, and 9 are redesignated as subdivisions 6, 7, 8, 9, and 10.

1 paragraph. Such regulations shall utilize two thousand five operating  
 2 costs as submitted to the department prior to July first, two thousand  
 3 nine and [shall] may provide for methodologies establishing per diem  
 4 inpatient rates that utilize case mix adjustment mechanisms. Such regu-  
 5 lations [shall] may contain criteria for adjustments based on length of  
 6 stay and may also provide for a base year update, provided, however,  
 7 that such base year update shall take effect no earlier than April  
 8 first, two thousand fifteen, and provided further, however, that the  
 9 commissioner may make such adjustments to such utilization and to the  
 10 methodology for computing such rates as is necessary to achieve no  
 11 aggregate, net growth in overall Medicaid expenditures related to such  
 12 rates, as compared to such aggregate expenditures from the prior year.  
 13 In determining the updated base year to be utilized pursuant to this  
 14 subparagraph, the commissioner shall take into account the base year  
 15 determined in accordance with paragraph (c) of subdivision thirty-five  
 16 of this section.

17 § 4. Paragraph (b) of subdivision 35 of section 2007 e of the public  
 18 health law is amended by adding a new subparagraph (xiv) to read as  
 19 follows.

20 ~~(xiv) Such rates and payment methodologies may incorporate methodol-~~  
 21 ~~ogies to reduce payments to facilities with a higher percentage of~~  
 22 ~~potentially avoidable inpatient services by instituting lower inpatient~~  
 23 ~~payment rates for both fee for service and managed care to incentivize~~  
 24 ~~the provision of preventative care to reduce preventable events and~~  
 25 ~~overall inpatient costs. A portion of such savings derived from the~~  
 26 ~~implementation of such payment methodologies shall be reinvested in~~  
 27 ~~initiatives to incentivize the provision of preventative care, maternity~~  
 28 ~~services, and other ambulatory care services to reduce preventable~~  
 29 ~~health care costs.~~ - Insert A

30 § 5. This act shall take effect immediately.

31 <sup>↑</sup> Insert B + Insert ~~§~~ B2 PART I

32 Section 1. The insurance law is amended by adding a new article 29 to  
 33 read as follows:

34 ARTICLE 29

35 PHARMACY BENEFIT MANAGERS

- 36 Section 2901. Definitions.  
 37 2902. Acting without a registration.  
 38 2903. Registration requirements for pharmacy benefit managers.  
 39 2904. Reporting requirements for pharmacy benefit managers.  
 40 2905. Acting without a license.  
 41 2906. Licensing of a pharmacy benefit manager.  
 42 2907. Revocation or suspension of a registration or license of a  
 43 pharmacy benefit manager.  
 44 2908. Penalties for violations.  
 45 2909. Stay or suspension of superintendent's determination.  
 46 2910. Revoked registration or licenses.  
 47 2911. Change of address.  
 48 2912. Applicability of other laws.  
 49 2913. Assessments.

50 § 2901. Definitions. For purposes of this article:  
 51 (a) "Controlling person" is any person or other entity who or which  
 52 directly or indirectly has the power to direct or cause to be directed  
 53 the management, control or activities of a pharmacy benefit manager.



1 (b) "Health insurer" means an insurance company authorized in this  
 2 state to write accident and health insurance, a company organized pursu-  
 3 ant to article forty-three of this chapter, a municipal cooperative  
 4 health benefit plan established pursuant to article forty-seven of this  
 5 chapter, an organization certified pursuant to article forty-four of the  
 6 public health law, an institution of higher education certified pursuant  
 7 to section one thousand one hundred twenty-four of this chapter, or the  
 8 New York state health insurance plan established under article eleven of  
 9 the civil service law.

10 (c) "Pharmacy benefit management services" means directly or through  
 11 an intermediary, managing the prescription drug coverage provided by a  
 12 health insurer under a contract or policy delivered or issued for deliv-  
 13 ery in this state or a plan subject to section three hundred  
 14 sixty-four-j of the social services law, including the processing and  
 15 payment of claims for prescription drugs, the performance of drug utili-  
 16 zation review, the processing of drug prior authorization requests, the  
 17 adjudication of appeals or grievances related to prescription drug  
 18 coverage, contracting with network pharmacies, and controlling the cost  
 19 of covered prescription drugs.

*negotiation  
of rebates*

20 (d) "Pharmacy benefit manager" means a person, firm, association,  
 21 corporation or other entity that, pursuant to a contract with a health  
 22 insurer provides pharmacy benefit management services, except that term  
 23 shall not include:

24 (1) an officer or employee of a registered or licensed pharmacy bene-  
 25 fit manager; or

26 (2) a health insurer, or any manager thereof, individual or corporate,  
 27 or any officer, director or regular salaried employee thereof, providing  
 28 pharmacy benefit management services under a policy or contract issued  
 29 by the health insurer.

30 § 2902. Acting without a registration. (a) No person, firm, associ-  
 31 ation, corporation or other entity may act as a pharmacy benefits manag-  
 32 er prior to January first, two thousand twenty without having a valid  
 33 registration as a pharmacy benefit manager filed with the superintendent  
 34 in accordance with this article and any regulations promulgated there-  
 35 under.

36 (b) Prior to January first, two thousand twenty, no health insurer may  
 37 pay any fee or other compensation to any person, firm, association,  
 38 corporation or other entity for performing pharmacy benefit management  
 39 services unless the person, firm, association, corporation or other  
 40 entity is registered as a pharmacy benefit manager in accordance with  
 41 this article.

42 (c) Any person, firm, association, corporation or other entity that  
 43 violates this section shall, in addition to any other penalty provided  
 44 by law, be liable for restitution to any insurer or insured harmed by  
 45 the violation and shall also be subject to a penalty of the greater of  
 46 (1) one thousand dollars for the first violation and two thousand five  
 47 hundred dollars for each subsequent violation or (2) the aggregate  
 48 economic gross receipts attributable to all violations.

49 § 2903. Registration requirements for pharmacy benefit managers. (a)  
 50 Every pharmacy benefit manager that performs pharmacy benefit management  
 51 services prior to January first, two thousand twenty-one shall register  
 52 with the superintendent in a manner acceptable to the superintendent,  
 53 and shall pay a fee of one thousand dollars for each year or fraction of  
 54 a year in which the registration shall be valid. The superintendent, in  
 55 consultation with the commissioner of health, may establish, by regu-  
 56 lation, minimum registration standards required for a pharmacy benefit

1 4. All paint on any residential rental property on which the original  
 2 construction was completed prior to January first, nineteen hundred  
 3 seventy-eight, shall be presumed to be lead-based paint. This presump-  
 4 tion may be overcome by a certification issued by a federally certified  
 5 lead-based paint inspector or risk assessor that the property has been  
 6 determined not to contain lead-based paint, or by such other means as  
 7 may be prescribed by the rules and regulations adopted by the commis-  
 8 sioner pursuant to this section.

9 5. The commissioner, local health officer of a county and, in the City  
 10 of New York, the commissioner of the New York City department of health  
 11 and mental hygiene, may enter into an agreement or contract with a  
 12 municipal government regarding inspection of the lead conditions in  
 13 residential rental properties and such health department may designate  
 14 the local housing maintenance code enforcement agency in which the  
 15 residential rental property is located as an agency authorized to  
 16 administer and ensure compliance with the provisions of this section  
 17 and subsequent regulations pursuant to subdivision one of section thir-  
 18 teen hundred seventy-five of this title.

19 6. If the commissioner, or other officer having jurisdiction, deter-  
 20 mines that an owner of residential rental property is in violation of  
 21 this section or any rules or regulations promulgated pursuant to this  
 22 section, the commissioner or other officer having jurisdiction shall  
 23 have the authority to order the abatement of any lead condition present  
 24 at the residential rental property and assess fines not to exceed two  
 25 thousand dollars for each violation.

26 § 3. This act shall take effect immediately.

↑  
 Insert C

27

PART Q

28 Section 1. Section 2825-f of the public health law is amended by  
 29 adding two new subdivisions 4-a and 4-b to read as follows:

30 4-a. Notwithstanding subdivision two of this section or any inconsis-  
 31 ent provision of law to the contrary, and upon approval of the director  
 32 of the budget, the commissioner may, subject to the availability of  
 33 lawful appropriation, award up to three hundred million dollars of the  
 34 funds made available pursuant to this section for unfunded project  
 35 applications submitted in response to the request for applications  
 36 number 17648 issued by the department on January eighth, two thousand  
 37 eighteen pursuant to section twenty-eight hundred twenty-five-e of this  
 38 article, provided however that the provisions of subdivisions three and  
 39 four of this section shall apply.

40 4-b. Authorized amounts to be awarded pursuant to applications submit-  
 41 ted in response to the request for application number 17648 shall be  
 42 awarded no later than May first, two thousand nineteen.

43 § 2. This act shall take effect immediately.

44

PART R

45 Section 1. Legislative findings and intent. The legislature finds that  
 46 maternal mortality and morbidity is a serious public health concern and  
 47 has a serious family and societal impact. New York state has among the  
 48 highest maternal mortality rates in the country and racial disparities  
 49 remain significant. The U.S. Centers for Disease Control and Prevention  
 50 has determined that a regular process for professional, multi-discipli-  
 51 nary, confidential review of all maternal deaths can help identify the  
 52 causes of maternal mortality, and those findings can lead to clinical

1 and social change that can help prevent maternal mortality. The same is  
2 true for severe maternal morbidity. Confidentiality is important to  
3 ensure that full information is made available in the review process to  
4 maximize protection of maternal health.

5 Section 3 of article 17 of the state constitution states: "The  
6 protection and promotion of the health of the inhabitants of the state  
7 are matters of public concern and provision therefor shall be made by  
8 the state and by such of its subdivisions and in such manner, and by  
9 such means as the legislature shall from time to time determine." The  
10 legislature finds that the creation of a state maternal mortality review  
11 board, and recognition and protection of any maternal mortality review  
12 board, including a New York city maternal mortality review board, are a  
13 matter of state concern and an important exercise of the legislature's  
14 constitutional mandate to protect the public health.

15 § 2. The public health law is amended by adding a new section 2509 to  
16 read as follows:

17 § 2509. Maternal mortality review board. 1. (a) There is hereby estab-  
18 lished in the department the maternal mortality review board for the  
19 purpose of reviewing maternal deaths and severe maternal morbidity and  
20 developing findings, recommendations, and best practices to the commis-  
21 sioner to contribute to the prevention of maternal mortality and severe  
22 maternal morbidity. The board shall assess the cause of death, factors  
23 leading to death and preventability for each maternal death reviewed  
24 and, at the discretion of the board, cases of severe maternal morbidity,  
25 and shall develop strategies for reducing the risk of maternal mortality  
26 and severe maternal morbidity, where cases of severe maternal morbidity  
27 were reviewed, taking into account factors such as racial, economic, or  
28 other disparities. The boards' findings, recommendations and best prac-  
29 tices shall be given to the commissioner for dissemination.

30 (b) Any maternal ~~mortality~~ review board, including a New York city  
31 maternal mortality review board, shall provide to the commissioner the  
32 results and the findings of its reviews, including recommendations and  
33 best practices and upon request information and data, including case  
34 summaries, to support statewide surveillance and enforcement.

mortality

35 2. As used in this section:

36 (a) "Advisory council" and "council" mean the advisory council on  
37 maternal mortality and severe maternal morbidity, established under this  
38 section.

39 (b) "Board" means a maternal mortality review board established by  
40 this section, referred to in this section as the "state board", or any  
41 board operating, including a New York city maternal mortality review  
42 board, under this section.

43 (c) "Maternal death" means the death of a woman during pregnancy or  
44 within a year from the end of pregnancy.

45 (d) "Severe maternal morbidity" means unexpected outcomes of pregnan-  
46 cy, labor, or delivery that result in significant short- or long-term  
47 consequences to a woman's health.

48 3. (a) The members of the state board shall be comprised of multidis-  
49 ciplinary experts in the field of maternal mortality, women's health and  
50 public health, and shall include health care professionals and other  
51 experts who serve and are representative of the racial and ethnic diver-  
52 sity of the women and mothers of the state.

53 (b) The state board shall be composed of at least fifteen members, all  
54 of whom shall be appointed by the commissioner.

1 (c) The terms of the state board members shall be three years. The  
2 commissioner may choose to reappoint state board members to additional  
3 three year terms.

4 (d) A majority of the appointed membership of the state board, no less  
5 than three, shall constitute a quorum.

6 (e) When any member of the state board fails to attend three consec-  
7 utive regular meetings, unless such absence is for good cause, that  
8 membership may be deemed vacant for purposes of the appointment of a  
9 successor.

10 (f) Meetings of the state board shall be held at least twice a year  
11 but may be held more frequently as deemed necessary, subject to request  
12 of the department.

13 (g) Members of the state board shall be indemnified under section  
14 seventeen of the public officers law.

15 (h) Members of the state board shall not be compensated for their  
16 participation on the board but may receive reimbursement for their ordi-  
17 nary and necessary expenses of participation.

18 (i) Membership on a board shall not disqualify any person from holding  
19 any public office or employment.

20 (j) The board is not subject to the open meetings law. *Article 7 of the public officers law.*

21 4. (a) The commissioner shall receive upon request from any depart-  
22 ment, division, board, bureau, commission, local health departments or  
23 other agency of the state or political subdivision thereof or any public  
24 authority, as well as hospitals established pursuant to article twenty-  
25 eight of this chapter, birthing facilities, medical examiners, coroners  
26 and coroner physicians and any other facility providing services associ-  
27 ated with maternal mortality, such information, including, but not  
28 limited to, death records, medical records, autopsy reports, toxicology  
29 reports, hospital discharge records, birth records and any other infor-  
30 mation.

31 (b) The commissioner shall receive information, including oral or  
32 written statements, relating to any maternal death and case of severe  
33 maternal morbidity, from any family member or other interested party  
34 (including the patient in a case of severe maternal morbidity) relating  
35 to any case that may come before the board. Oral statements received  
36 under this paragraph shall be transcribed or summarized in writing. The  
37 commissioner and the city commissioner shall transmit that information  
38 to the board considering the case.

39 (c) Before transmitting any information to the board, the commission-  
40 er, ~~or the city commissioner,~~ shall remove all personal identifying  
41 information of the woman, health care practitioner or practitioners or  
42 anyone else individually named in such information, as well as the  
43 hospital or facility that treated the woman, and any other information  
44 such as geographic location that may inadvertently identify the woman,  
45 practitioner or facility. This paragraph shall not preclude the trans-  
46 mitting of information to the board that is reasonably necessary to  
47 enable the board to perform an appropriate review under this section.

48 5. Each board:

49 (a) shall make and report findings, recommendations and best practices  
50 to the commissioner regarding the cause of death, factors leading to  
51 death, and preventability of each maternal death case, and each case of  
52 severe maternal morbidity reviewed by the board, by reviewing relevant  
53 information for each case and consulting with experts as needed to eval-  
54 uate the information for each death; and shall provide such de-identi-  
55 fied findings and recommendations, including best practices and strate-  
56 gies for reducing the risk of maternal mortality and severe maternal



Insert new part CC (LBD# 71039-02-9)  
Insert new part DD (LBD# 71040-02-9)

1 (C) Substitution in or on the piperidine ring with alkyl, alkenyl,  
 2 alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;  
 3 (D) Replacement of the aniline ring with any aromatic monocycle wheth-  
 4 er or not further substituted in or on the aromatic monocycle; and/or  
 5 (E) Replacement of the N-propionyl group by another acyl group.  
 6 § 2. Section 3308 of the public health law is amended by adding a new  
 7 subdivision 7 to read as follows:  
 8 7. The commissioner may, by regulation, classify as a Schedule I  
 9 controlled substance in section three thousand three hundred six of this  
 10 article any substance listed in Schedule I of the federal schedules of  
 11 controlled substances in 21 USC §812 or 21 CFR §1308.11.  
 12 § 3. This act shall take effect on the ninetieth day after it shall  
 13 have become a law.  
 14 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
 15 sion, section or part of this act shall be adjudged by any court of  
 16 competent jurisdiction to be invalid, such judgment shall not affect,  
 17 impair, or invalidate the remainder thereof, but shall be confined in  
 18 its operation to the clause, sentence, paragraph, subdivision, section  
 19 or part thereof directly involved in the controversy in which such judg-  
 20 ment shall have been rendered. It has hereby declared to be the intent  
 21 of the legislature that this act would have been enacted even if such  
 22 invalid provisions had not been included herein.  
 23 § 3. This act shall take effect immediately provided, however, that  
 24 the applicable effective date of Subparts A through E of this act shall  
 25 be as specifically set forth in the last section of such Subparts.  
 26 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
 27 sion, section or part of this act shall be adjudged by any court of  
 28 competent jurisdiction to be invalid, such judgment shall not affect,  
 29 impair, or invalidate the remainder thereof, but shall be confined in  
 30 its operation to the clause, sentence, paragraph, subdivision, section  
 31 or part thereof directly involved in the controversy in which such judg-  
 32 ment shall have been rendered. It is hereby declared to be the intent of  
 33 the legislature that this act would have been enacted even if such  
 34 invalid provisions had not been included herein.  
 35 § 3. This act shall take effect immediately provided, however, that  
 36 the applicable effective date of Parts A through ~~BB~~ of this act shall be  
 37 as specifically set forth in the last section of such Parts.

DD

HMH Article VII Bill

Long Title Insert

; to amend the public health law, in relation to prescriber assistance in allowing unlicensed certified pharmacy technicians to assist in dispensing of drugs (Part CC); and to authorize a uniform across the board reduction to the Department of Health Medicaid claims (Part DD)

§→[4-a]. Fiscal intermediary services. (a) For the purposes of this section:

(i) "Fiscal intermediary" means an entity that provides fiscal intermediary services and has a contract for providing such services with:

(A) a local department of social services;

(B) an organization licensed under article forty-four of the public health law; or

(C) an accountable care organization certified under article twenty-nine-E of the public health law or an integrated delivery system composed primarily of health care providers recognized by the department as a performing provider system under the delivery system reform incentive payment program.

Electronic Insert D

Section 3. Subdivision 4-a of section 365-f of the social services law is redesignated as subdivision 5, and subparagraph (i) of paragraph (a) of such subdivision is amended as follows:

4-a. Fiscal intermediary services. (a) For the purposes of this section:

(i) "Fiscal intermediary" means an entity that provides fiscal intermediary services and has a contract for providing such services with:

- (A) a local department of social services;
- (B) an organization licensed under article forty-four of the public health law; or
- (C) an accountable care organization certified under article twenty-nine-E of the public health law or an integrated delivery system composed primarily of health care providers recognized by the department as a performing provider system under the delivery system reform incentive payment program.

(ii) Fiscal intermediary services shall include the following services, performed on behalf of the consumer to facilitate his or her role as the employer:

- (A) wage and benefit processing for consumer directed personal assistants;
- (B) processing all income tax and other required wage withholdings;
- (C) complying with workers' compensation, disability and unemployment requirements;
- (D) maintaining personnel records for each consumer directed personal assistant, including time sheets and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to regulations established by the commissioner;
- (E) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to regulations issued by the commissioner;
- (F) maintaining records of service authorizations or reauthorizations;

(G) monitoring the consumer's or, if applicable, the designated representative's continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the authorizing entity of any circumstance that may affect the consumer's or, if applicable, the designated representative's ability to fulfill such responsibilities;

(H) complying with regulations established by the commissioner specifying the responsibilities of fiscal intermediaries providing services under this title; and

(I) entering into a department approved memorandum of understanding with the consumer that describes the parties' responsibilities under this program.

(iii) Fiscal intermediaries are not responsible for, and fiscal intermediary services shall not include, fulfillment of the responsibilities of the consumer or, if applicable, the consumer's designated representative as established by the commissioner. A fiscal intermediary's responsibilities shall not include, and a fiscal intermediary shall not engage in: managing the plan of care including recruiting and hiring a sufficient number of individuals who meet the definition of consumer directed personal assistant, as such term is defined by the commissioner, to provide authorized services that are included on the consumer's plan of care; training, supervising and scheduling each consumer directed personal assistant; terminating the consumer directed personal assistant's employment; or assuring that each consumer directed personal assistant competently and safely performs the personal care services, home health aide services and skilled nursing tasks that are included on the consumer's plan of care. A fiscal intermediary shall exercise reasonable care in properly carrying out its responsibilities under the program.

(b) [No entity shall provide, directly or through contract, fiscal intermediary services without an authorization as a fiscal intermediary issued by the commissioner in accordance with this subdivision.]

§ 4. Paragraph (b) of subdivision 4-a, redesignated as subdivision 5 pursuant to section 3 of this Part, of section 365-f of the social services law is amended as follows:

Electronic Insert E



Inserts for S1507 / A2007 HMH Article VII Bill

Insert A

§ 4. Subdivision 35 of section 2807-c of the public health law is amended by adding a new paragraph (k) to read as follows:

(k) Notwithstanding any contrary provision of law, the commissioner may make such adjustments to general hospital inpatient rates and to the methodology for computing such rates as is necessary to reduce payments to facilities with a higher percentage of potentially avoidable inpatient services by instituting lower inpatient payment rates for both fee-for-service and managed care to incentivize the provision of preventative care to reduce preventable events and overall inpatient costs. A portion of such savings derived from the implementation of such payment methodologies shall be reinvested in initiatives to incentivize the provision of preventative care, maternity services, and other ambulatory care services to reduce preventable health care costs.

Insert B

§ 5 . Social Services Law section 367-u, as amended by chapter 6 of the laws of 2015, is amended to read as follows:

§ 367-u. Payment for home telehealth services. 1. Subject to the approval of the state director of the budget, the commissioner may authorize the payment of medical assistance funds for demonstration rates or fees established for home telehealth services provided pursuant to subdivision three-c of section thirty-six hundred fourteen of the public health law.

2. Subject to federal financial participation and the approval of the director of the budget, the commissioner shall not exclude from the payment of medical assistance funds the delivery of health care services through telehealth, as defined in subdivision four of section two thousand nine hundred ninety-nine-cc of the public health law; provided, however, for telehealth services provided to individuals dually enrolled in Medicaid and Medicare, the commissioner is authorized to promulgate regulations governing Medicaid coverage and reimbursement of such services, including development of a covered services list which may be limited to higher priority services and procedures. Such services shall meet the requirements of federal law, rules and regulations for the provision of medical assistance pursuant to this title.

§ 6 .

Insert B1

Subdivision 5-d of section 2807-k of the public health law, as amended by chapter 57 of the laws of 2018, is amended to read as follows.

**5-d.**

(a) Notwithstanding any inconsistent provision of this section, section twenty-eight hundred seven-w of this article or any other contrary provision of law, and subject to the availability of federal financial participation, for periods on and after January first, two thousand thirteen, through March thirty-first, two thousand [twenty] twenty-one, all funds available for distribution pursuant to this section, except for funds distributed pursuant to subparagraph (v) of paragraph (b) of subdivision five-b of this section, and all funds available for distribution pursuant to section twenty-eight hundred seven-w of this article, shall be reserved and set aside and distributed in accordance with the provisions of this subdivision.

(b) The commissioner shall promulgate regulations, and may promulgate emergency regulations, establishing methodologies for the distribution of funds as described in paragraph (a) of this subdivision and such regulations shall include, but not be limited to, the following:

(i) Such regulations shall establish methodologies for determining each facility's relative uncompensated care need amount based on uninsured inpatient and outpatient units of service from the cost reporting year two years prior to the distribution year, multiplied by the applicable medicaid rates in effect January first of the distribution year, as summed and adjusted by a statewide cost adjustment factor and reduced by the sum of all payment amounts collected from such uninsured patients, and as further adjusted by application of a nominal need computation that shall take into account each facility's medicaid inpatient share.

(ii) Annual distributions pursuant to such regulations for the two thousand thirteen through two thousand [~~nineteen~~] twenty calendar years shall be in accord with the following:

(A) one hundred thirty-nine million four hundred thousand dollars shall be distributed as Medicaid Disproportionate Share Hospital ("DSH") payments to major public general hospitals; and

(B) [~~nine hundred ninety-four~~] seven hundred nineteen million [nine] four hundred thousand dollars as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals; and

(C) provided, however, that notwithstanding any inconsistent provision of this section, for all calendar years beginning on January first, two thousand twenty, general hospitals located in a city with a population of more than one million persons and/or in the counties of Westchester, Suffolk and Nassau, that have, or that that are part of a system of co-established general hospitals that collectively

has, an average operating margin greater than 2.98 where average operating margin is calculated by subtracting total operating expenses from total operating revenue and dividing the result by the total operating revenue, and that also have, or that that are part of a system of co-established general hospitals that collectively has, a net operating income of more than sixty-eight million dollars, both as determined by the department pursuant to the hospital institutional cost reports for year two thousand seventeen, shall only be eligible for indigent care pool payments of a maximum of ten thousand dollars.

(iii)

(A) Such regulations shall establish transition adjustments to the distributions made pursuant to clauses (A) and (B) of subparagraph (ii) of this paragraph such that no facility experiences a reduction in indigent care pool payments pursuant to this subdivision that is greater than the percentages, as specified in clause (C) of this subparagraph as compared to the average distribution that each such facility received for the three calendar years prior to two thousand thirteen pursuant to this section and section twenty-eight hundred seven-w of this article.

(B) Such regulations shall also establish adjustments limiting the increases in indigent care pool payments experienced by facilities pursuant to this subdivision by an amount that will be, as determined by the commissioner and in conjunction with such other funding as may be available for this purpose, sufficient to ensure full funding for the transition adjustment payments authorized by clause (A) of this subparagraph.

(C) No facility shall experience a reduction in indigent care pool payments pursuant to this subdivision that: for the calendar year beginning January first, two thousand thirteen, is greater than two and one-half percent; for the calendar year beginning January first, two thousand fourteen, is greater than five percent; and, for the calendar year beginning on January first, two thousand fifteen, is greater than seven and one-half percent, and for the calendar year beginning on January first, two thousand sixteen, is greater than ten percent; and for the calendar year beginning on January first, two thousand seventeen, is greater than twelve and one-half percent; and for the calendar year beginning on January first, two thousand eighteen, is greater than fifteen percent; and for the calendar year beginning on January first, two thousand nineteen, is greater than seventeen and one-half percent.

(iv) Such regulations shall reserve one percent of the funds available for distribution in the two thousand fourteen and two thousand fifteen calendar years, and for calendar years thereafter, pursuant to this subdivision, subdivision fourteen-f of section twenty-eight hundred seven-c of this article, and sections two hundred eleven and two hundred twelve of chapter four hundred seventy-four of the laws of nineteen hundred ninety-six, in a “financial assistance compliance pool” and shall establish methodologies for the

distribution of such pool funds to facilities based on their level of compliance, as determined by the commissioner, with the provisions of subdivision nine-a of this section.

(c) The commissioner shall annually report to the governor and the legislature on the distribution of funds under this subdivision including, but not limited to:

(i) the impact on safety net providers, including community providers, rural general hospitals and major public general hospitals;

(ii) the provision of indigent care by units of services and funds distributed by general hospitals; and

(iii) the extent to which access to care has been enhanced.

Insert C

§ 3. Subdivision one of section three hundred eighty-three of the executive law, as added by chapter 707 of the laws of 1984, paragraph c as amended by chapter 772 of the laws of 1986, is amended by adding a new paragraph d, to read as follows:

d. The regulations promulgated by the commissioner of health pursuant to subdivision two of section thirteen hundred seventy-f of the public health law

(i) shall not be superseded by the provisions of this article, by the provisions of the uniform fire prevention and building code, or by the provisions of the building and fire prevention codes in effect in a city with a population of over one million;

(ii) shall be applicable in addition to, and not in substitution for or limitation of, the provisions of the uniform fire prevention and building code and the provisions of building and fire prevention codes in effect in cities with a population of over one million; and

(iii) shall be administered and enforced by commissioner of health, the local health officer of a county, the commissioner of the New York City department of health and mental hygiene, or a municipal government entering into an agreement or contract authorized by subdivision five of section thirteen hundred seventy-f of the public health law, in the manner provided in said subdivision.

§ 4.

Insert D

the department of health and is selected through the procurement process described in paragraph (b) of this subdivision, or by authorization upon application in accordance with such criteria as the department may develop together with such other forms and information prescribed by, or acceptable to, the commissioner. Eligible applicants for authorization under this paragraph are limited to entities that:

(A) are a service center for independent living under section one thousand one hundred twenty-one of the education law; or

(B) have a history of providing fiscal intermediary services for persons with disabilities, as demonstrated by having a continuous history of arrangements with local departments of social services beginning no later than January first, two thousand twelve

Insert E

Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner is authorized to enter into a contract or contracts under this subdivision with an entity or entities without a competitive bid or request for proposal process, provided, however, that:

- (i) the department shall post on its website, for a period of no less than thirty days:
  - (A) a description of the proposed services to be provided pursuant to the contract or contracts;
  - (B) the criteria for selection of a contractor or contractors;
  - (C) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and
  - (D) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;
- (ii) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner; and
- (iii) the commissioner shall select such contractor or contractors that, in the commissioner's discretion, are best suited to serve the purposes of this section



DRAFT LBDC

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 prescriber assistance in allowing unlicensed certified pharmacy technicians to assist in dispensing of drugs (Part \_\_);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 PART CC

2 Section 1. The public health law is amended by adding a new section  
3 280-d to read as follows:

4 § 280-d. Prescriber assistance. 1. Unlicensed assistants may be  
5 employed in licensed pharmacies for purposes other than the practice of  
6 pharmacy, including at least two unlicensed persons per pharmacist to  
7 assist in the dispensing of drugs, provided, however, that a pharmacist  
8 may obtain the assistance of up to four additional unlicensed persons  
9 where such additional unlicensed persons are certified as pharmacy tech-  
10 nicians by a nationally accredited pharmacy technician certification  
11 program. Proof of certification for such individuals employed by a phar-  
12 macy shall be maintained by the pharmacy and provided to state agencies  
13 upon request. The department and state board of pharmacy shall consider  
14 and may establish regulations permitting a pharmacist to obtain the  
15 assistance of a greater number of unlicensed persons.

16 2. (a) The compounding, preparation, labeling, or dispensing of drugs,  
17 in accordance with article one hundred thirty-seven of the education  
18 law, in facilities licensed in accordance with article twenty-eight of

1 this chapter shall be performed by: (i) a licensed pharmacist, as  
2 defined in article one hundred thirty-seven of the education law; (ii) a  
3 pharmacy intern, under the direct supervision of a licensed pharmacist  
4 as defined in article one hundred thirty-seven of the education law; or  
5 (iii) under the direct supervision of a licensed pharmacist an individ-  
6 ual who has received certification from a nationally accredited pharmacy  
7 technician certification program may assist in the preparation and  
8 dispensing of drugs including weighing, mixing, and measuring when prop-  
9 erly trained. Proof of certification and training for such individuals  
10 employed by a facility shall be maintained by the facility and provided  
11 to state agencies upon request.

12 (b) A person employed in a facility licensed in accordance with arti-  
13 cle twenty-eight of this chapter who directly assists licensed pharma-  
14 cists to dispense prescriptions in such facility on the effective date  
15 of this section shall be exempt from the certification requirement in  
16 paragraph (a) of this subdivision if he or she submits evidence to, and  
17 verified by, his or her employer, of a minimum of five (5) years of  
18 employment in good standing in a pharmacy within the previous eight (8)  
19 years, including eighteen consecutive months with a single employer.  
20 Such evidence and verification shall be documented and maintained by the  
21 facility and provided to state agencies upon request. Such individual  
22 shall not be permitted to assist in the compounding of medications.

23 § 2. This act shall take effect immediately.

DRAFT LBDC

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

AN ACT to authorize a Medicaid across the board reduction (Part  
—);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

PART DD

1

2 Section 1. (a) Notwithstanding any other provision of law to the  
3 contrary, for the state fiscal years beginning April 1, 2019 and ending  
4 on March 31, 2021, all Medicaid payments made for services provided on  
5 and after April 1, 2019, shall, except as hereinafter provided, be  
6 subject to a uniform reduction and such reduction shall be applied, to  
7 the extent practicable, in equal amounts during the fiscal year,  
8 provided, however, that an alternative method may be considered at the  
9 discretion of the commissioner of health and the director of the budget  
10 based upon consultation with the health care industry including but not  
11 limited to, a uniform reduction in Medicaid rates of payments or other  
12 reductions provided that any method selected achieves up to \$190,200,000  
13 in Medicaid state share savings in state fiscal year 2019-2020 and up to  
14 \$190,200,000 in state fiscal year 2020-2021, except as hereinafter  
15 provided, for services provided on and after April 1, 2019 through March  
16 31, 2021. Any alternative methods to achieve the reduction must be  
17 provided in writing and shall be filed with the senate finance committee  
18 and the assembly ways and means committee not less than thirty days  
19 before the date on which implementation is expected to begin. Nothing in

1 this section shall be deemed to prevent all or part of such alternative  
2 reduction plan from taking effect retroactively, to the extent permitted  
3 by the federal centers for medicare and Medicaid services.

4 (b) The following types of appropriations shall be exempt from  
5 reductions pursuant to this section:

6 (i) any reductions that would violate federal law including, but not  
7 limited to, payments required pursuant to the federal medicare program;

8 (ii) any reductions related to direct payments pursuant to article 32,  
9 article 31 and article 16 of the mental hygiene law;

10 (iii) payments the state is obligated to make pursuant to court orders  
11 or judgments;

12 (iv) payments for which the non-federal share does not reflect any  
13 state funding; and

14 (v) at the discretion of the commissioner of health and the director  
15 of the budget, payments with regard to which it is determined by the  
16 commissioner of health and the director of the budget that application  
17 of reductions pursuant to this section would result, by operation of  
18 federal law, in a lower federal medical assistance percentage applicable  
19 to such payments.

20 (c) Reductions to Medicaid payments or Medicaid rates of payments made  
21 pursuant to this section shall be subject to the receipt of all neces-  
22 sary federal approvals.

23 § 2. This act shall take effect immediately.