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Healthcare Alert

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Summary of select health related provisions in the State Fiscal 2025-26 Executive Budget

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Governor Hochul's Executive Budget would substantially increase the State's oversight of healthcare transactions.

What's the impact?

- The Executive Budget also includes substantial proposed changes to laws governing managed care, reproductive health, professional licensing, scope of practice, and more.
- The Executive will continue to negotiate with the State Legislature until final bills are enacted, on or about April 1, 2025.

Key health-related provisions in the 2025-26 Executive Budget

This week, Governor Hochul released the proposed Executive Budget for State Fiscal 2025-26, which recommends $134.3 billion in appropriations for the New York State Department of Health (NYSDOH), including $111.2 billion for Medicaid and $1.51 billion for capital projects—a $9.2 billion

increase from last year's budget. Below is a summary of some of the key healthcare initiatives impacting healthcare providers—not related directly to rates or reimbursement—if the New York State Assembly and Senate were to approve the budget, as presented. The Executive will continue to negotiate with the State Legislature until final budget bills are enacted, on or about April 1, 2025 (though in recent years the budget process has not consistently been resolved by that date).

Increased review of healthcare deals

After the enactment of New York's material transaction disclosure law following the 2023–24 New York budget process, New York State may not be done regulating certain healthcare transactions. Included in Governor Kathy Hochul's 2025–26 budget bills are proposed changes to New York's material transaction disclosure law that would require transaction parties to provide additional information to the NYSDOH and afford NYSDOH discretion to conduct a cost and market impact review of the transaction. Such changes would likely result in higher transaction costs and significantly longer transaction timelines. Significantly, as of now, the proposal does NOT require NYSDOH approval to proceed with a transaction.

Currently, Section 4552(1) of the New York Public Health Law (PHL) requires healthcare entities (broadly defined to include physician practices, management services organizations, and similar entities) to notify NYSDOH at least thirty days before the closing date of a material transaction. Healthcare entities must also provide certain details about the deal, including the names of the parties, the definitive transaction documents, any plans to reduce or eliminate services, and a description of the nature and purpose of the transaction and its anticipated impact on cost, quality, access, health equity, and competition in the impacted markets. See Nixon Peabody's analysis of the material transaction disclosure law for an overview of the law's current requirements.

The governor's bill would amend Section 4552 to extend the notice period to sixty days before closing and empower NYSDOH to require additional documents and data from healthcare entities and their affiliates as part of the initial disclosure. This data would include statements as to whether:

- a transaction party, or a controlling person or parent company of such party, owns any other healthcare entity that in the last three years, has closed, is in the process of closing or has substantially reduced its services; and
- a sale-leaseback agreement, mortgage or lease payments, or any other payments in connection with real estate are part of the transaction (and, if so, any effectuating documents would need to be provided).

After conducting a preliminary review of the information it receives from the parties, NYSDOH would then have the discretion to conduct a full "cost and market impact review" of the deal's

effect on costs, quality, access, health equity, and competition. Should NYSDOH decide to conduct such a review, NYSDOH has up to 180 days to complete that work or else the closing of the transaction may proceed.

Regardless of whether a full cost and market impact review is required, NYSDOH may require parties to the transaction (including any parent entity or subsidiary) to submit additional documentation to allow the agency to assess the deal's effects on costs, quality, access, health equity, and competition. This information would have to be submitted to NYSDOH within twenty-one days of the request.

The bill would require parties to report annually to NYSDOH for five years on the effect the deal had on cost, quality, access, health equity, and competition. NYSDOH could request additional information in connection with any of these annual reports.

Consistent with current law, apart from the public summary of the transaction it must post on its website, NYSDOH would be required to keep the information it receives confidential. However, NYSDOH would be permitted to use the information in connection with investigations, reviews, or other NYSDOH actions, including, but not limited to, certificate of need applications of the same entities or unrelated parties located in the same market area identified in a cost and market impact review.

The bill would further increase transaction costs by allowing NYSDOH to collect its actual, reasonable, and direct costs incurred in the review of a transaction from the transaction parties.

The bill offers no additional clarity on the existing material transaction disclosure law, most notably the de minimis exception that takes a transaction out of the definition of an otherwise disclosable transaction. The bill would require NYSDOH to promulgate regulations that may provide this additional detail and perhaps further regulatory requirements.

The law would go into effect one year from its enactment. It remains to be seen whether this language, or a version of it, is ultimately enacted by the New York State Legislature. Notably, when the governor first proposed the material transaction review law two years ago, the language had changed substantially by the time it was adopted. Most significantly, the governor's 2023 bill required NYSDOH approval of material transactions. The version that became law included no such requirement (and neither does the current bill).

Eliminate "prescriber prevails" in the Medicaid Program

As with the budget bills for many past years, this Executive Budget includes a provision that would eliminate the "prescriber prevails" language from the State's Medicaid Program. Currently, prior authorized prescription drugs must be approved and paid for if the prescriber

believes the drugs are medically necessary and warranted. The proposed budget would eliminate, as of January 1, 2026, this requirement allowing Medicaid to have the final determination if a drug should be considered after reviewing the prescriber's justification for use of a drug not on the preferred drug list or formulary. The Executive asserts that this cost control mechanism on patient prescriptions would result in net savings of $61.9 million to the State Medicaid program. This requirement could result in patient's not receiving necessary medication.

Update to medical debt consent law

We previously reported that the NYSDOH had issued guidance with respect to PHL § 18-c, indicating that its implementation of the "consent to payment" provisions was "on hold" pending further guidance regarding the meaning of the law. In the Executive Budget, Governor Hochul has proposed to repeal language in the statute that could be interpreted as requiring that a patient receive medical services before consenting to payment. The budget bill otherwise retains the requirement to separate consent for payment and consent for treatment, while clarifying that the requirement to discuss treatment costs with a patient before the patient consents to payment applies only to "non-emergency" services.

General hospitals to report "community benefit expense" spending.

General hospitals would be required to report, in a format prescribed by NYSDOH, how it spent "community benefit expenses," as well as how those expenses "support the priorities of New York [S]tate, as outlined in guidance," including NYSDOH's Prevention Agenda.

Maternal and reproductive health

While New York law requires hospitals to provide stabilizing care for patients with emergency medical conditions, it does not define abortion as emergency medical care. The Executive Budget amends PHL § 2805-b to include language to codify abortion as "protected emergency medical care," and require hospitals provide emergency abortion services when they are medically necessary to stabilize an individual. If the hospital has limited capability for receiving and treating high risk maternity patients in need of specialized emergency care, the hospital must have appropriate triage, treatment, and transfer protocols. If the hospital must transfer the individual to another hospital, it may only do so when the individual's condition is stable or being managed, the attending practitioner authorizes the transfer, and the receiving hospital is informed and capable of providing the necessary resources to care for the individual.

The budget bill also amends PHL § 2599-bb to protect the identity of medication abortion prescribers. The budget bill adds a requirement that, if at a healthcare prescriber's request, the prescription label would include only the prescribing healthcare facility name or address rather than the name of the practitioner. This requirement also applies to pharmacies that receive electronic prescriptions.

Update to SAFE Law for general hospitals

Hospitals would be required to maintain Sexual Violence Response Coordinators and sufficient Sexual Assault Forensic Examiners (SAFE) who are properly trained in forensic examinations of sexual offense victims, able to assess the victim's physical injuries, provide necessary medical treatment like STI testing and emergency contraception, and manage any immediate medical needs. Hospitals must maintain sufficient Sexual Violence Response Coordinators and Sexual Assault Forensic Examiners to meet the hospital's needs on a twenty-four-hour day basis every day of the year.

Scope of practice expansions

Certified medical aides

NYSDOH, in consultation with the New York State Education Department (NYSED), would specify medication-related tasks that could be performed by certified medical aides in residential healthcare facilities, including administration of routine and pre-packaged medications, under appropriate supervision as determined by NYSDOH.

Medical assistants for purposes of administering immunizations

Physicians and physician assistants would be permitted to delegate drawing up and administering immunizations to "medical assistants" in outpatient office settings, with training and supervision to be determined by NYSDOH regulations.

Immunizations by pharmacists and pharmacy technicians

Pharmacists would be permitted to administer COVID-19 vaccines to minors aged 2 and older. Pharmacy technicians would be permitted to administer the same immunizations as pharmacists when under the direct supervision of a license pharmacist, subject to certain training and other requirements.

Experienced PAs to practice without physician supervision

Effective December 31, 2025, where a PA has more than 8,000 hours in a primary care or a substantially similar specialty, the PA would be permitted to practice without physician supervision. Such experienced PAs would also be permitted to practice without physician supervision if employed by a "health system" or hospital, and the health system or hospital determines that the PA meets the qualifications of the medical staff bylaws and grants the PA such privileges.

The budget bill would remove the limit on physicians supervising more than six PAs. PAs would also be authorized to prescribe and dispense medications, including controlled substances.

Expanded scope of practice for dental hygienists

The Executive Budget would expand the scope of practice for dental hygienists to include several new activities, including block anesthesia, with appropriate certification.

Transfer of licensing authority for physicians, PAs, and SAs to NYSDOH

The Executive has reintroduced a proposal to transfer responsibility for licensing physicians, physician assistants, and specialist assistant from NYSED to NYSDOH.

Reintroduction of Nurse Licensure Compact

The Executive Budget reintroduces legislation to New York's Education Law permitting New York to join the Interstate Medical Nurse Licensure Compact for registered nurses (RNs) and licensed practical nurses (LPNs). This legislation would enable nurses licensed in other states to practice in New York, either physically or virtually, and offer virtual care to patients who travel to other states.

New "hospital at home" proposal

The Executive Budget includes a new proposal that would permit general hospitals to offer hospital services at patient homes, through a "medical professional"—a term that includes a physician, registered nurse, nurse practitioner, or physician assistant—to a patient that has a "preexisting clinical relationship" with the hospital. The hospital would be required to have appropriate discharge planning in place to coordinate discharge planning to a home care agency, if appropriate. The hospital would also be required to report operating costs for such programs to NYSDOH, which the agency would use to inform Medicaid reimbursement rates.

Managed care

No Surprises Act excludes Medicaid

New York State's dispute resolution process related to bills for emergency services (a "surprise bill") would no longer apply to Medicaid or Medicaid managed care organizations (MMCOs) resulting in savings to the program. This Budget Bill proposal would align State law with the Federal Independent Dispute Resolution process.

Benefits

Coverage for long-term care nursing homes would be carved out of the Medicaid managed care benefit package and those individuals would be covered through Medicaid fee-for-service.

The Executive Budget looks to provide Medicaid coverage for standard fertility preservation services to prevent or treat infertility, including the collection, freezing, preservation and storage of eggs and sperms and medically necessary prescription drugs.

Medicaid Managed Care enforcement

The Executive Budget empowers NYSDOH, in its sole discretion, to penalize MMCOs—between $250–$25,000 per violation—for failing to meet certain contractual obligations in the contract between NYSDOH and the MMCO regarding administration of the Medicaid program. Such fines may also be off set against premiums owed to the MMCOs by NYSDOH. In no event, however, shall penalties be passed on to network providers and rather must be paid out of the MMCOs administrative costs and profits. MMCOs shall, prior to the assessment of any fees, be entitled to the opportunity for a formal hearing.

Social networks and network adequacy requirements

As part of the 1115 Waiver, the Executive Budget provides funding for screening and navigation for Medicaid members to access social care networks to identify housing, food, nutrition assistance, transportation, and other educational and employment support services.

The Health Care Briefing Book also suggests that NYSDOH will be provided with funding to undertake a comprehensive review of New York's network adequacy requirements and standards to ensure that MMCOs offer, and consumers are afforded meaningful and timely access to healthcare providers.

Extend payor and hospital termination period

Unless otherwise agreed upon, New York currently imposes a 2-month "cooling off period" prior to a hospital and managed care organization termination extending the terms of the contractual relationship for 60 days. This was first enacted into law in 2007 with a sunset date that has been extended multiple times. The budget bill extends the law until June 30, 2027.

Pharmacy benefit managers

PBMs (that are now required to be licensed in New York State under the Insurance Law) will be required, by July 1st each year, to publish on its website (and submitted to the Department of Financial Services and NYSDOH) a report that identifies the aggregated dollar amount of rebates, fees, price protection payments, and any other payments received from drug manufacturers through a rebate contract and the portion passed onto payors or retained by the PBM. In addition, the budget bill requires that key contractual provisions be summarized and disclosed to the public, including the drug codes associated with each rebate contract, the rebate contracting parties, and key terms regarding formulary placement, exclusions and prior authorization, the total number of prescriptions filled, and units dispensed under a rebate contract, and the financial terms between the PBM and the drug manufacturer related to rebates.

Nixon Peabody will continue to monitor these provisions in the coming months and will report further on the State Fiscal 2026 Budget's impact to healthcare.

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