

# VILLAGE CARE PUBLIC POLICY OBSERVER

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## State Budget Wrap-Up – 125 Days Late(r)

With the state Assembly and Senate finally closing out their legislative sessions for the year, it's time to take an overall look at the various budget and related actions that were taken, along with their impacts.

Much took place this year, and it was extraordinary, even by Albany standards.

First, let's look at the environment in which the budget debate took place this year.

In January, Governor Paterson introduced a budget that included a projected deficit of \$7.4 billion. To address the deficit, the Executive Budget included more than \$5.5 billion in cuts, including more than \$1 billion in health care cuts, and a series of revenue-raising proposals such as the tax on sugared beverages and cigarettes. Unfortunately, the deficit did not stay at \$7.4 billion, and with tax receipt estimates continuing to drop, the deficit soon swelled to \$9.5 billion. It appeared, however, that the governor's low popularity ratings, did not induce the Legislature to adopt his proposed budget, and squabbling between the Legislature and the Governor elevated to some of the worst ever seen.

Political drama, unfortunately, also took the stage at the State Capitol. A temporary defection of Democratic Senators Espada and Monserrate to the Republican conference threatened to bring back the chaos of the 2009 legislative session. Republicans and Democrats openly fought over who legally had control over the Senate. Attempts at power sharing deals were rejected, and the Democrats held razor thin control over the legislature. Eventually the two Senators returned to the Democratic side of the aisle, only after being publicly admonished by the press. Allegations of fiscal impropriety arose against Espada, and Monserrate was charged with domestic violence. Monserrate was expelled from the Senate after a misdemeanor conviction of physically abusing his girlfriend, which brought the Democratic majority to only a single vote above 50 percent. Any lone Senator had it within his or her power the ability to swing crucial votes one way or the other. This was how the session functioned for much of the year.

The April 1 deadline for passing a state budget came and went with no results or agreement on a budget. To make matters worse, Senate Democrats put forth budget proposals that would only worsen the state's fiscal condition, specifically calling, for example, for suburban property tax relief, but without proposing revenues that would cover the added hole created in the state budget.

But the truly extraordinary moves, in the end, came from the Governor in tactics that ultimately were remarkable in that the Governor and his Budget Division were able to get the lion's share of what they had sought back in January.

After April 1, in order to keep state government operating, the Legislature needed to approve emergency spending bills, which were submitted by the Governor. This presented the Governor with an unparalleled opportunity. He began to include in the emergency bills provisions that called for year-long adjustments to the budget that followed his Executive Budget outline, including provisions that the Executive and Legislative had already negotiated and agreed to, but which the Legislature had yet to pass.

These were bitter pills delivered to the Legislature: Since there was no amending the spending bills – the Governor said he would veto such moves – the Legislature either had to vote for the emergency legislation, or allow state government to shut down and face the consequences. As a result, the Legislature fell in behind the Governor and voted for each week's spending bill, thirteen in all, until the state budget was all but completed. When Senator Ruben Diaz, Sr. finally said he would no longer support the emergency spending bills because of the proposed cuts, some Republican senators merely crossed the aisle to vote for the bills. The 2010-11 state budget was thusly completed with virtually no legislative input into final version. Quite amazing.

Here is a compilation of some of the major health care and other proposals that were acted upon this legislative session.

The following were ENACTED:

- Elimination of the 2010 Medicaid trend factor for hospitals, nursing homes, home and personal care providers.
- Payments for indigent care reimbursement were reduced by \$72.2 million.
- \$3.5 million in funding for Doctors Across New York was eliminated.
- The Governor vetoed almost all legislative member items (funding for specific not-for-profit organizations that are sponsored by individual legislators).
- An increase in the excise tax on cigarettes of \$1.60 a pack. The budget also raises the tax on smokeless tobacco, cigars and other kinds of tobacco. These taxes are expected to raise \$440 million in revenue.
- A host of programs were also eliminated: Infertility grant program, disease management demo, long-term care insurance education and outreach program, maternal & early childhood foundation, eating disorders programs, arthritis foundation, shaken baby syndrome public education program, graduate medical education innovations pools, and more.
- Reduction in nursing home bed holds to 95 percent of operating rates, with reimbursement limited to fourteen days annually for hospitalization and ten days annually for therapeutic leaves.
- A statutory cap was established on nursing home rate appeals and the Department of Health was authorized to negotiate settlements where appropriate.
- Prescription drug costs are now excluded from nursing home rates and reimbursed by Medicaid fee-for-service.
- A reimbursement plan for nursing homes based on regional pricing has once again been delayed. The new date for implementation is now July 2011.
- The Medicare Part D drug wrap was eliminated. Medicaid coverage for anti-depressants, anti-psychotics, anti-retroviral and anti-rejection drugs for dual eligible enrollees was eliminated. Wrap-around will continue for drugs not covered by Medicare (barbiturates and benzodiazepines).
- Medicaid preferred drug program for anti-depressants, anti-psychotics, anti-retroviral and anti-rejection drugs was discontinued in order to collect additional drug rebates from these classes of drugs. However, the State stated that these drugs will not be subject to prior authorization.
- The higher specialty pharmacy reimbursement for HIV pharmacies was discontinued.
- EPIC participants will be required to exhaust the Medicare Part D appeals process prior to access EPIC drug coverage. EPIC will essentially not automatically provide drug coverage when Medicare denies a prescription.
- Medicaid managed care premiums were reduced 1.7 percent.
- Prior approval for health premium increases has been reinstated. The state Insurance Department is again authorized to review health insurance premiums to protect consumers from unnecessary increases.

The following are significant proposals from the Governor that were NOT ENACTED:

- A 12-hour cap on personal care services.
- Creation of a prospective payment system for certified home health agencies. This rejected proposal threatened to reduce reimbursements for home care programs that have higher need clients (such as specialty CHHAs).
- Any new health care provider taxes or assessments.
- Proposed increase in Medicaid fraud targets.
- Tax on sugared sodas.

Last day of session activities:

The following was also passed in the very last day of session as part of the contingency budget in case the extension of enhanced Medicaid monies was not approved by Congress (representing a potential loss of \$1 billion for New York State):

- Uniform, across-the-board cuts in state grants to local assistance, including Medicaid. Effective September 16, the cuts would apply to any as-of-yet undisbursed Medicaid amounts for the period beginning September 1, 2010, through the close of the state fiscal year, on March 31, 2011. The amount of the cut would be determined by the Division of the Budget, but some associations were predicting anywhere reductions of 3.5-to-4 percent.

In addition, the legislature approved a revenue bill, which includes the following:

- Reinstatement of the 4 percent state sales tax on clothing and shoe purchases under \$110 starting October 1. This exception would be phased back in over the next two fiscal years.
- A 50 percent reduction in the allowable charitable deduction for those with incomes of \$10 million or more.
- The deferment of several business tax credits greater than \$2 million a year, including certain low-income housing tax credits.

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