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MEMORANDUM REGARDING FY 2025 EXECUTIVE BUDGET

The New York State Psychiatric Association (NYSPA), the medical specialty society of nearly 4,000 psychiatrists practicing in New York State and a division of the American Psychiatric Association, appreciates the opportunity to comment on the Executive Budget proposal for fiscal year 2025.

I. PROVISIONS NYSPA SUPPORTS

1. NYSPA SUPPORTS PROVISIONS RELATED TO ENFORCEMENT OF MENTAL HEALTH & SUBSTANCE USE DISORDER PARITY LAWS (PART HH, S8308/A8808)

NYSPA **strongly supports** (Part HH) of the Transportation, Economic Development and Environmental Conservation Article VII Budget Legislation (A8808/S8308), which would authorize the Department of Financial Services to levy a fine of up to \$2,000 per offense against health plans and insurers after finding a “willful violation” of federal or state mental health and substance use disorder parity (MH/SUD) laws and/or regulations. NYSPA has, for years, actively supported efforts to increase oversight, compliance and enforcement of the federal and state (MH/SUD) parity laws and regulations as critical means for sustaining access to high quality care and treatment.

Despite of the protections of Timothy’s Law, New York mental health mandate, and the federal parity law, non-compliance by health plans and insurers persists, making the enactment of this provision so critical for New Yorkers living with MH/SUD and their families to assure access to benefits and coverage. Governor Hochul’s State of the State rightly captures the need to raise fines for non-compliance stating, “While these laws have been on the books for many years, the frustration and delays that many New Yorkers experience in trying to access mental health care today indicate that far stronger enforcement is necessary to realize true parity.” As Governor Hochul noted, it is time to “...bring the full weight of the State’s enforcement authority to bear.”

Further, a recent investigation by New York Attorney General Letitia James included a survey of nearly 400 mental health providers listed as in-network participating providers and found that 86 percent of those providers were in fact unreachable, not in-network or not accepting new patients. NYSPA and other stakeholders have long raised the issue of “ghost” networks. An increase in fines is also a critical step in ensuring full enforcement and implementation of network adequacy regulations recently promulgated by the Department of Financial Services.

While not proposed as part of the FY 2024-25 Executive Budget, NYSPA also strongly supports the establishment of a parity private right of action, allowing individuals to bring legal action against insurers and health plans for violations of parity laws and to recover “actual damages.” Enactment of a private right of action would provide accountability and would mirror a private right of action that already exists under the federal law. The New York Legislature must not allow this disparity to persist as we continue to face parity non-compliance. Parity non-compliance is clearly evident in the reports submitted by carriers to the Department of Financial Services pursuant to the Mental Health and Substance Use Disorder Parity Report Act of 2018, an act led and championed by NYSPA.

These two initiatives will bring New York one step closer to achieving the full spirit and intent of the parity laws and we strongly encourage their inclusion in the enacted budget.

2. NYSPA SUPPORTS PERMANENT EXTENSION OF NEW YORK’S TELEHEALTH PAYMENT PARITY LAW

We are pleased that the Executive Budget proposes a one-year extension of New York’s telehealth payment parity law (Part B, A8807/S8307). However, NYSPA urges permanent extension of this provision as part of the FY 2025 state budget.

NYSPA strongly supported enactment of the telehealth reimbursement parity law in 2022 (Part V, Chapter 57 of the Laws of 2022) and now supports a permanent extension, which is critical for sustaining access to care especially as we continue to see the effects of the COVID-19 pandemic and New York contends with rising overdose rates and increased mental health symptoms, particularly among children and adolescents.

Mental health conditions continue to make up the top five diagnoses of those seeking telehealth services and during the pandemic, New York saw an approximately 130-fold increase in telehealth usage.¹ According to FAIR Health’s monthly regional tracker for the Northeast for December 2022, mental health conditions continued to lead, accounting for 70% of telehealth claims, followed by acute respiratory diseases and infections at 3%, COVID-19 at 2.8%, substance use disorders at 1.5% and developmental disorders at 1.3%.² The FAIR Health data further bolsters the urgent need to permanently extend New York’s parity reimbursement statute as the December 2022 also study showed that, in the Northeast, the use of telehealth continues to be strong, consisting of 6.3% of overall claim lines, an increase since December 2021. Evidence has shown that telehealth substantially reduces the rate of missed appointments, providing for greater adherence to a treatment plan, which is particularly important for those with mental health conditions. Audio-only telehealth has been critically important throughout the pandemic for many New Yorkers and will continue to be so as more than one million or 13.8% of households in New York State do not have access or a subscription to broadband services.

The significant value of telehealth has already been highlighted by the Department of Health in the New York State Register on September 14, 2022:

“Providers have reported that this expansion of telehealth has improved access to care, improved patient experience, and improved provider satisfaction. Telehealth also has the potential to improve patient outcomes... Furthermore, expanded use of telehealth during the pandemic has resulted in Medicaid program savings related to avoidance of emergency room and urgent care visits, and decreased utilization of Medicaid-covered non-emergency medical transportation services. Telehealth mitigates provider access issues by connecting patients in rural areas with needed specialist care.”³

More recently, the Department of Health’s 2023 telehealth consumer survey of over 8,700 consumers further demonstrates the importance of telehealth as means to addressing transportation barriers and disparities that otherwise inhibit access. The survey found 84% of those surveyed who are Medicaid members used telehealth service in the last two years; and, 81% of those surveyed who are non-Medicaid members have used a telehealth service in last two years. The benefit of telehealth as found in the survey:

- 95% reported lowered travel time and costs
- More than 80% can easily use application or software provided for the visit
- 90% were comfortable sharing private health information and using the Internet.

¹ https://www.governor.ny.gov/sites/default/files/atoms/files/CRNY_Report.pdf

² <https://s3.amazonaws.com/media2.fairhealth.org/infographic/telehealth/dec-2022-northeast-telehealth.pdf>

³ https://regs.health.ny.gov/sites/default/files/pdf/recently_adopted_regulations/Telehealth%20Services.pdf

Without telehealth, some individuals may delay or forgo care, potentially disrupting medication and treatment regimens, which can have serious consequences for those with mental health and substance use disorders. For all of the above reasons, NYSPA urges that the telehealth payment parity law be made permanent.

3. NYSPA SUPPORTS INVESTMENTS TO INCREASE INPATIENT & OUTPATIENT CAPACITY

NYSPA appreciates and supports the \$1 billion multi-year investments in mental health enacted in the FY 2024 budget. This includes supports to increase inpatient capacity by 1,000 beds, including the reopening of 850 beds in community Article 28 hospitals that were closed during the pandemic but never re-opened. NYSPA supported provisions to authorize the Office of Mental Health (OMH) to issue fines for non-compliance. NYSPA thanks the work of the administration and OMH, which has led to the reopening of more than 600 of the 850 beds and continued efforts to reopen the remaining beds.

NYSPA supports the proposed investments in the FY 2025 executive budget including:

- **\$55 million** to create 200 new inpatient psychiatric beds, including setting aside a portion for children and adolescents.
- **\$43 million** to maintain supportive housing units for people in need of mental health services.
- **\$42.2 million** to increase reimbursement for mental health treatment services.
- **\$37 million** to build new programs for unhoused individuals living with mental illness
- **\$60 million** – in support of the 9-8-8 suicide prevention crisis hotline
- **6.2 million** to provide mental health specialists and peers in mental health courts, **\$2.8 million** to provide housing and supports to individuals with mental illness experiencing homelessness and/or involved in the criminal justice system, and **\$9.6 million** to enhance and expand specialized Forensic Assertive Community Treatment (FACT) teams to support individuals with serious mental illness in the community.
- **\$45 million** for youth mental health including school-based services and peer-to-peer counseling.
- **Over \$53 million** for services and expenses related to home-based crisis intervention program for children
- **\$9.6 million to create 12 new Youth Assertive Community Treatment (ACT) Teams** – These additional youth teams will help address the needs of children who are at risk of needing, or returning home from, high end services.
- **\$10 million** for services and expenses related to youth suicide prevention
- **\$10 million** for services and expenses related to high fidelity wrap around services for children
- **\$2.8 million** invested annually to enhance Partial Hospitalization Program (PHP) children's services rates by 25 percent and develop several new PHP programs.
- **\$24 million** to help people with mental health problems who are in the criminal justice system.

NYSPA also supports continued funding for the Community Health Access to Addiction and Mental Healthcare Project (CHAMP), a joint project of OASAS and OMH, which provides New Yorkers with assistance in addressing insurance related barriers that prevent or delay access and continuity of care for New Yorkers seeking MH or SUD treatment. CHAMP is a critical resource helping New Yorkers navigate and secure access to care.

4. NYSPA SUPPORTS INVESTMENTS IN THE WORKFORCE

NYSPA supports critical investments in the proposed FY 2025 budget to support the mental health workforce as well as the investments outlined in the New York's approved 1115 waiver from the federal Centers for Medicare and Medicaid Services including:

- **\$3 million** appropriation to DOH to provide for physician loan repayment awards to psychiatrists who are licensed to practice in New York State and who agree to work for a period of at least three years in one or more hospitals or outpatient programs that are operated by OMH and deemed to be in one or more underserved areas, as determined by the OMH Commissioner.

- **\$14 million** for the recruitment and retention of psychiatrists, psychiatric nurse practitioners, and other licensed mental health professionals in licensed programs with critical capacity shortages through the Community Mental Health Loan Repayment Program; and additional **\$4 million** proposed for FY 2025 to expand the program to clinicians who work in child-serving agencies and treat children and families, including both OMH and the Office of Children and Family Services (OCFS) licensed settings (not limited to state-operated facilities, but non-profit organizations with clinics, residential treatment facilities and other programs licensed by those state agencies).

However, NYSPA stands with its colleagues in urging that the proposed 1.5% cost of living increase for health and human services programs under OMH, OPWDD, and OASAS, among others, be increased to 3.2% recognizing widespread staffing shortages and rising inflationary costs impacting these programs. These programs are seeing rates of turnover as high as 40% and are the backbone of the system helping individuals transition from higher levels of care to living in the community.

5. CARVING MH/SUD OUT OF MEDICAID MANAGED CARE

NYSPA has joined a broad array of stakeholders urging New York State to carve mental health and substance use disorder services out of Medicaid managed care and provide these services on a Fee for Service basis. Prior to 2015, these services were provided on a fee for service basis. Systemic issues have arisen under managed care including delayed payment and lack of parity compliance, resulting in significant reductions in access to necessary care and treatment.

6. SEEKING \$350,000 IN FUNDING FOR THE VETERANS MENTAL HEALTH TRAINING INITIATIVE

NYSPA, the Medical Society of the State of New York (MSSNY), and the New York State Chapter of the National Association of Social Workers (NASW-NYS) **are seeking funding in the 2024-2025 New York State budget** for the continuation and expansion of the Veterans Mental Health Training Initiative (VMHTI). VMHTI, a comprehensive statewide training program, educates both community mental healthcare providers and primary care healthcare providers on veteran-specific mental health issues, including combat-related post-traumatic stress disorder, traumatic brain injury, suicide in veterans, substance use, military culture, and women veterans’ mental health conditions including the impact of military sexual trauma. To date, the initiative has trained over 10,000 community primary care and mental health practitioners.

The funding requests for each organization are as follows:

NYSPA	\$100,000
MSSNY	\$100,000
NASW-NYS	\$150,000

The VMHTI has two pathways: one led by NYSPA and MSSNY, training primary care physicians and health practitioners from across the primary care specialties, including internal medicine, family practice, emergency medicine and OB-GYN and another led by the NASW-NYS, providing an accredited education and training program for community mental health workers. The trainings are also of benefit to psychiatrists whose practices have seen a dramatic influx of combat-related mental health problems. The program educates both community mental healthcare providers and primary care healthcare providers on veteran-specific mental health issues including service-related post-traumatic stress disorder, traumatic brain injury, substance use disorders, suicide and suicide prevention, as well as enhancing competency on military culture.

The VMHTI has worked side-by-side with veteran peers including the Joseph P. Dwyer Peer to Peer Program. The Dwyer Program has a specific charge of peer support for veterans and their families. Peer support covers

many areas including connection to concrete services, peer-based group and individual support as well as service activities. The Dwyer Program does not provide medical or mental health clinical services. The VMHTI seeks to serve as a bridge between the Dwyer Program and clinical services by working together to create a referral system for veterans seeking medical and mental health care. The continued funding of the VMHTI will provide wrap around support for veterans by providing a direct connection to trained clinicians.

For the above reasons, NYSPA **strongly supports** additional funding for the VMHTI, which goes hand-in-hand with the proposed investments to expand the Dwyer Program to all counties in New York State.

II. PROVISIONS NYSPA OPPOSES

1. NYSPA OPPOSES ELIMINATION OF PRESCRIBER PREVAILS (PART I OF A8807/S8307)

NYSPA urges the Legislature to reject the proposed repeal of the authority of physicians and other qualified prescribers to make a final determination regarding medication prescribed to individuals covered under Medicaid Fee-for-Service and Medicaid Managed Care, commonly referred to as “prescriber prevails.”

Repealing this critical patient protection would jeopardize patient care as well as undercut initiatives the State has undertaken to reduce unnecessary and avoidable hospitalizations. A key component in sustaining and accelerating such a trend is assuring individuals are able to obtain the medications prescribed by their physician to alleviate the symptomatology of their physical and/or mental health conditions. We thank the Senate and Assembly for standing up for patients and rejecting this proposed change in previous budget years and urge you to do so again.

2. NYSPA OPPOSES SCOPE OF PRACTICE PROPOSALS (PART Q S8307/A8807)

NYSPA urges removal of the Part Q scope of practice proposals, including independent practice for physician assistants. NYSPA acknowledges that Physician Assistants and Certified Nurse Aides are essential in the delivery of patient care in our health care system. However, we are concerned that the scope of practice provisions in the Executive Budget would adversely impact patient care by undermining the physician’s role in overseeing and coordinating patient care, particularly as it relates to the ordering of diagnostic tests, the evaluation of the effectiveness of various prescription medications and treatments and the ongoing assessment of the patient’s response to treatment. Patients are best served by a collaborative, team-based approach with a skilled physician overseeing care from a variety of health care providers.

Further, the proposals to expand the scopes of practice for Dentists and Dental Hygienists are also cause for concern, as they authorize providers to reach beyond their education and experience level, potentially endangering patient care. Despite the good intentions of Part Q to address provider shortages, these proposals would adversely impact care by facilitating ‘silos’ in our health care system instead of coordinated care and treatment. These provisions deserve further study and review outside of the budget process.

3. NYSPA OPPOSES ELIMINATION OF THE COMMITTEE FOR PHYSICIAN HEALTH AND STRONGLY URGES RESTORATION

NYSPA strongly opposes elimination of the MSSNY Committee for Physician Health (CPH) Program, as set forth Part L of the Health and Mental Hygiene Article VII bill (S8307/A8807). The proposed elimination is an extraordinary about-face from last year’s Executive budget which proposed a ten-year extension of this vital program. Ultimately, the FY 2024 enacted budget provided a five-year extension through 2028.

Pursuant to Public Health Law §230, the CPH Program provides non-disciplinary, confidential assistance to physicians, residents, medical students, and physician’s assistants experiencing problems from stress and difficult adjustment, emotional, substance abuse and other psychiatric disorders, including psychiatric problems that may arise as a result of medical illness.

The program is not funded from General Appropriations but by a \$30 surcharge paid by physicians as part of the license and biennial registration fee. CPH provides important, confidential peer to peer services to physicians in need of support for their health and well-being. Studies that review the long-term model effect of physician health programs show that physician recovery rates are markedly higher than the general population—even when extended into five years or more.

The value of the CPH Program cannot be understated. Since the inception of this program over 40 years ago, CPH has assisted over 7,000 physicians, routinely monitors the recovery of 450 physicians, and annually reaches out to 175 physicians thought to be suffering from mental illness or substance use disorder. Many of the MH/SUD conditions treated through the CPH Program have been exacerbated by the pandemic, making CPH more essential than ever. As rates of burnout among physicians rise, it is essential that we maintain access to this vital program.

NYSPA joins MSSNY and fellow statewide medical specialty societies in urging reinstatement of legal authorization for this program in the HMH Article 7 bill and to restore the \$990,000 appropriation it has historically received through the Aid to Localities Budget Bill (identified as “medical society contract pursuant to Chapter 582 of the Laws of 1984”) to continue this absolutely essential program to address physician wellness.

4. NYSPA OPPOSES CHANGES TO EXCESS MEDICAL MALPRACTICE INSURANCE PROGRAM (PART K, S8307/A8807)

NYSPA opposes Part K of the Health/Mental Hygiene Article 7 bill (S8307/A8807), which would shift 50% percent of the cost of the Excess Medical Malpractice Insurance program to the 15,000 physicians currently enrolled. This proposal was advanced several times in the past by the previous administration but was rejected by the State Legislature, recognizing its adverse impact not only on physicians, but ultimately on patients. We urge the Legislature to again reject this proposal.

The Excess Medical Malpractice Insurance Program provides an additional layer of \$1M of coverage to physicians with hospital privileges who maintain primary coverage at the \$1.3 million/\$3.9 million level. The program was created in response to the liability insurance crisis of the mid-1980’s to address concerns among physicians that their liability exposure far exceeded available coverage limitations. Physicians legitimately feared that everything they had worked for all their professional lives could be lost as a result of one wildly aberrant jury verdict.

As proposed, Part K would shift \$40 million of new costs onto the backs of community-based physicians who are struggling to stay in practice to deliver needed care at a time when liability premiums have already gone up by 10% in the last two years. It is also likely that many physicians will simply forego the coverage to avoid the exorbitant new cost. This program remains absolutely essential for maintaining patient access to expert specialized care as New York’s physicians and hospitals continue to incur the highest liability awards and costs in the nation.

The size of medical liability awards in New York State has continued to rise significantly and physician liability premiums remain far out of proportion compared to the rest of the country. A recent report from Diederich Healthcare showed that in 2019, New York once again had the highest cumulative medical liability payouts of any state in the country, 68% more than the state with the second highest amount (Pennsylvania). It also had the highest per capita liability payment, 10% more than the 2nd highest state (Massachusetts). Excessive liability costs disproportionately impact physicians working in underserved communities who have experienced heightened financial strain from the pandemic. As a result, New York is regularly ranked worst among states in the country for physicians to practice medicine.⁴

⁴ <https://wallethub.com/edu/best-and-worst-states-for-doctors/11376>

NYSPA joins fellow medical specialty societies in opposing this ill-timed proposal, which would impact physician practices at a time when many are still seeking to recover losses stemming from the COVID-19 public health emergency. Absent comprehensive liability reform to bring down New York's grossly disproportionate medical liability costs, maintenance of an adequately funded Excess Medical Malpractice Insurance Program is essential to ensuring the availability of skilled physician care in New York.