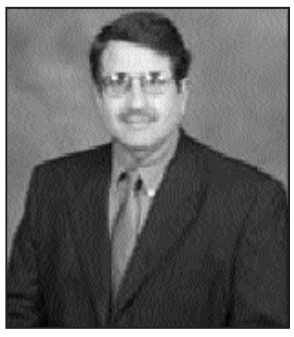
THE BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Spring 2004, Vol. 47, #1 • Bringing New York State Psychiatrists Together

President's Message: E-Bulletin

By Barry Perlman, M.D.



Barry B. Perlman, M.D.

Alert! NYSPA's E-BulletinπSPAM! Or to restate the preceding in words the NYSPA E-Bulletin is not spam! Given the relatively small proportion of NYSPA members who have provided their email addresses in order to receive it, I have begun to wonder whether confusion on this matter exists in members' minds. I feel compelled to make this announcement to our membership through our paper Bulletin because only 500 of our members receive our electronic EBulleetin out of our total membership of 4350, despite repeated calls for members to provide NYSPA their email addresses so that we can get information out to them on a timely basis. Our excellent Bulletin remains constrained by the fact that it is published only quarterly. As a result there is often a considerable time lag between the time when "news" breaks and the time it reaches the reader. That time lag diminishes NYSPA's impact as an advocacy organization and delays our members hearing of NYSPA's successes when they occur.

While I shall use the remainder of this presidential piece to provide specifics related to this matter, I first wish to urge those of you who do not receive the E-Bulletin to contact the NYSPA office and place your names on the E-Bulletin email list. You can do this be either calling (516) 542-0077 or emailing your email address to centraloffice@nyspsych.org without further delay.

This past year has been filled with "news" important to psychiatric physicians practicing in New York State. For those who do not receive the E-Bulletin there was a delay in learning that Oxford had pulled back from their heavy handed, unfounded audit of the medical records of participating psychiatrists during the course of which they demonstrated a wanton disregard for patients' privacy rights. NYSPA, APA, and other professional organizations will be meeting with Oxford around these matters this year. Those not online through our E-Bulletin were delayed in receiving word of this success but that delay did not weaken our organization's capacity for advocacy. Not being online did ill serve NYSPA's members' interests and those of the patients we serve when members did not hear about the budget proposal to eliminate the Medicaid crossover payment for patients insured jointly by Medicare and Medicaid. By the time the bill was passed, psychiatrists providing outpatient therapy services suffered a 40% decrease in payment based on the Medicare rate. As a result of not receiving the E-Bulletin, members lacked the timely access to the information which would have permitted

[See **E-Bulletin** on page 2]

Oxford Discontinues Audits

Since its surprising announcement on November 25, 2003 that it would drop the audits of psychiatrists and other mental health professionals, Oxford Health Plans has closed 314 provider audits and returned records in all these cases. The audit targeted approximately 100 each of psychiatrists, psychologists and social workers. Only 2 audits remain open because Oxford is seeking to validate that services were provided. Regarding refunds of settlement payments, Oxford reported that 20 providers had made financial settlements with Oxford before the audits were discontinued. Oxford reported that it has refunded settlements in full to 13 providers where the disallowance was based upon documentation issues.

However, Oxford has declined to refund settlements paid by the 7 other providers who previously settled because their overpayment involved issues other than documentation such as billing for non-covered services. Oxford also reported that it is still pursuing overpayments resulting from the audit in the case of 7 additional providers where the audit revealed billing for non-covered services or other non-documentation issues. Seth P. Stein, NYSPA Executive Director, urged NYSPA members who settled with Oxford, but who did not receive a refund, to contact NYSPA if they believe a refund is due.

In its November 25th press release, Oxford also announced that it would be working with representatives from the American Psychiatric Association, New York State Psychiatric Association and other mental health professions regarding documentation standards for psychotherapy treatment records. On January 29, 2004, the first meeting was held with representatives from APA, NYSPA, American Psychoanalytic Association, New York State Psychological Association, American Psychological Association, and National Association of Social Workers. APA was represented by Tracy Gordy, M.D., Sam Muszynski, J.D., Director, APA Office of Healthcare Systems and Financing, Ellen Jaffe, APA Managed Care Specialist, and Rebecca Yowell, Assistant Director, APA Office of Healthcare Systems and Financing. NYSPA was represented by Edward Gordon, M.D., and Seth Stein, Esq.

Alan Muney, M.D., Oxford Medical Director, presented a proposal for a minimum documentation requirement for psychotherapy records that would be meet audit requirements if Oxford resumed its audit of records. There was extensive discussion regarding the minimum requirements and each organization will be responding to the proposal. Mr. Stein noted that "the requirements proposed by Oxford seem minimal and would already be part of most psychotherapy treatment records." Dr. Muney indicated that additional meetings will be held to discuss issues raised by NYSPA and other organizations regarding authorization for release of information, HIPAA issues, the qualification of reviewers, provider education and the use of extrapolation in audits. ■

Fifth Annual Legislative Brunch

By Liz Lipton, M.A.

Congresswoman Carolyn Maloney

The Fifth Annual Josef Weissberg, M.D., Legislative Brunch was held on December 7 at the Mark Hotel in Manhattan. Ann Sullivan, M.D., NYCDB's Legislative Representative and NYSPA's Area II Trustee, moderated the event. Hosted by NYCDB in conjunction with the Brooklyn, Bronx, and Queens District Branches; the brunch is partially funded by NYSPA.

The event featured speeches by six legislators and a representative from NYS-OMH. Detailed information about their speeches is included in the sections below.

Lloyd Sederer, M.D., the Executive Deputy Commissioner for Mental Hygiene in the NYC Department of Health and Mental Hygiene, spoke about legislative and clinical topics. (See page 7 to read about his presentation.)

Other speakers were NYCDB President Vivian Pender, M.D., who emphasized the importance of psychiatrists and legislators working together; President Barry Perlman, M.D., (please see Page 1 to read his column); and Herbert Fox, M.D., who spoke on electroconvulsive therapy. Andrew Kolodny, M.D., the former Daniel X. Freedman Congressional Fellow, spoke about his experience working in Senator Joseph Lieberman's Washington, DC, office. (*The Bulletin's* spring issue and summer issue each feature an article about Dr. Kolodny who now works as the Special Projects Coordinator in the Mental Hygiene Division of the NYC Department of Health and Mental Hygiene.)

Representatives from the offices of Senator Carl Andrews (D-20th District) and NYC Council Member Leroy Comrie, (D-27th District), also attended the event.

Each attendee received a copy of *Advocacy Works: Grassroots Pocket Guide.* Created for the NYCDB by APA's Division of Government Relations, this pocket guide includes tips for communicating with legislators and the media, a checklist of things to do before meeting with legislators, and a listing of the local media. During their speeches, some of the legislators said that it is an excellent resource.

Marcus Lockhart, the NYCDB's Executive Director, noted that APA's DGR can produce these pocket guides for any district branch: "I would recommend it for other district branches. It is one of the best tools, and it is so helpful in terms of … contacting legislators," he said.

For more information about ordering pocket guides for your district branch, contact Lisa Fields, APA's State Legislative Coordinator at (703) 907-8587 or lfields@psych.org.

Carolyn B. Maloney: Medicare Law

Congresswoman Carolyn B. Maloney (Democrat) represents the 14th district in New York City. She serves on the House Financial Services Committee, the

[See **Brunch** on page 6]

Albany Report

By Richard Gallo & Karin Moran, MSW

The 2004 Legislative Session is well under way with the completion of two early session events; the Governor's Annual State of the State Message on January 7, and the presentation of his Executive Budget on January 20. By tradition and design, the State of the State is a broad brush presentation of hopes, dreams, aspirations and scant details. In contrast, the Budget Request, accompanied by briefing books and budget bills affords the opportunity to examine the particulars of the State's fiscal plans, provided one is willing to dig way beneath the surface rhetoric to find them.

As we have in the past, NYSPA is analyzing the Budget Request and has tentatively formulated its position which, when finalized will be presented to the Legislature and the Governor. (See Budget Overview below) Principally, we will continue our quest for the reinstatement of the Medicaid "Crossover" funding and will lobby to maximize State financial support for various mental health programs consistent with NYSPA's traditional areas of interest.

NYSPA's other immediate concerns for the 2004 legislative session includes several issues carried forward from last year. These include:

- Restoration of Crossover;
- The passage of Timothy's Law;
- Opposition to legislative initiatives that seek to restrict the administration of Electroconvulsive Therapy (ECT); and
- The exemption of psychotropic medications from legislation establishing a Preferred Drug List (PDL) for Medicaid or other health programs;

Restoration of Crossover

We have extensively reported on this issue in previous Bulletin articles. Specifically, the fact that the Legislature did not fully restore the 2003-4 Executive Budget cuts for Medicaid funding of the coinsurance costs associated with the Medicaid/ Medicare "dually eligible" population. This action results in a 40% reduction in reimbursement for psychiatrists treating dually eligible patients in private practice.

In conjunction with MSSNY and other organizations whose members were affected by the "Crossover" cut, NYSPA has been actively involved in discussions with the Department of Health and the Legislature since the law was enacted. As a result of legislative discussions, Assemblyman Kevin Cahill (D-Kingston) with twenty-five of his Assembly colleagues have introduced A.9345. Presently, Assemblyman Cahill is circulating to his colleagues, a "sign on" letter addressed to the Speaker of the Assembly, Sheldon Silver, asking for a full restoration of Medicaid Crossover funds in the context of the Assembly Majority budget position.

Timothy's Law

Last year, Senator Thomas Libous (R-Binghamton) and Assemblyman Paul Tonko (D-Amsterdam) introduced S.5239 and A.8301 into their respective houses. In early June, after an enormous amount of advocacy and grassroots efforts, the Assembly bill overwhelmingly passed that house. Unfortunately, even though Senator Libous tirelessly championed the cause in his house, the bill did not pass the Senate by session's end. However, NYSPA, along with the other organizations affiliated with Timothy's Law Cam-paign (TLC), continued the campaign throughout the summer and fall months. TLC is currently engaged in discussions with both houses to foster an accord between them.

[See **Albany Report** on page 4]

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Information for Contributors
The Bulletin welcomes articles and letters that NYSPA members will find timely, relevant, and compelling. Articles should be between 750 and 1500 words (three to five double-spaced manuscript pages) and letters no more than 750 words. All submissions must be made electronically, preferably by email to the editor. All authors are encouraged to also provide a photograph of themselves which will be printed alongside their article.

Information for Advertisers
The Bulletin welcomes advertisements from both NYSPA members and commercial enterprises. Total circulation averages 5,500 copies per issue. *The Bulletin* is received by members of the American Psychiatric Association who belong to a district branch in New York State. *The Bulletin* is also sent to the leadership of other district branches across the United States and to New York State legislators, medical libraries, and science writers. *The Bulletin* is published quarterly. Both classified advertisements and display advertisements are available. Please contact the editor for current rates and media requirements. NYSPA members receive a discount of 50% off the basic classified ad rate.

The opinions expressed in the articles or letters are the sole responsibility of the individual authors, and may not necessarily represent the views of NYSPA, its members, or its officers.

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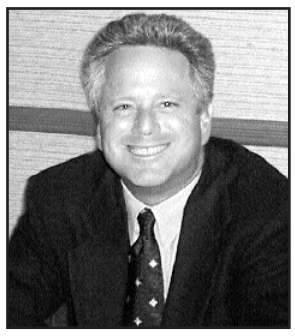
FROM THE EDITOR'S DESK... By Jeffrey Borenstein, M.D.


Jeffrey Borenstein, M.D.

This edition of the Bulletin highlights a number of legislative and public policy issues which will impact the practice of psychiatry in New York. The article on the Legislative Brunch provides an overview of the information provided by a number of political leaders; we also have a summary of the presentation by the Executive Deputy Commissioner for Mental Hygiene in the New York City Department of Health and Mental Hygiene at the Legislative Brunch. The Assembly Report reviews the upcoming Legislative session and the budget's impact on psychiatry. The President's message focuses on the E-Bulletin and the need for members to have timely information and to actively participate as advocates for our profession and patients. The Trustee report summarizes key issues at the national level.

We also report on two initiatives which will have a positive effect on patient care. One is the mental health court and the treatment which results from this program. The other is an outreach program by NAMI which promotes mental illness education in the schools.

In addition, we provide an update on the discontinuation of the Oxford audits. We have an article about the revised New York law which requires subpoenas to be accompanied by a written patient authorization. We also included an E-Bulletin dated February 13, which provides time sensitive information about the mandatory excess medical malpractice insurance risk management course; the deadline to complete this course has been extended to May 1, 2004. For people who have not signed up for the E-Bulletin, please sign up today. ■

President's Message: E-Bulletin continued from page 1

them to express their concerns to their legislators. As a result, psychiatrists have suffered a considerable financial loss and their patients have most likely lost access to high quality, cost effective care received in a private practice setting. This issue will be central to NYSPA's and the Medical Society of the State of New York's legislative agenda this year. Likewise, the continuing fight to pass "Timothy's Law", the NYS bill the goal of which is the achievement of a parity mental health benefit in our state, the ongoing struggle to preserve appropriate access to ECT treatment and access to a full array of necessary psychotropic medications under Medicaid's approved pharmacy.

Not to participate in NYSPA's E-Bulletin limits our ability as a profession to make our collective voice heard. In like manner, not contributing to the NYSPA PAC also limits our ability to make our collective voice heard. During 2003 only 316 NYSPA members contributed to the NYSPA PAC, a tiny increase from 2002. Unfortunately, the total of the contributions made decreased. The lack of participation by a vast majority of NYSPA members means that the burden of financially supporting our advocacy effort rests on the shoulders of a relative few. While some may reject such participation out of a sense of principle, I suspect that most do so out of laziness, neglectfulness or an unwillingness to share the cost of effective advocacy.

In conclusion, I urge each NYSPA member to be certain to be online to receive our excellent E-Bulletin and respond to its pleas for action and also to respond affirmatively to the PAC solicitation with an affordable contribution. By taking these steps you will be announcing that we are an organization of actively participating members. ■

Mental Health Court by Liz Lipton, M.A.

The statistics are sobering: Rikers Island and the L.A. County Jail are the largest psychiatric institutions in the United States.[i] About 25 percent of everyone who goes through Rikers Island receives treatment for mental illness on any given day.[ii]

One program that offers an alternative to jail and prison for offenders with serious mental illness is the Brooklyn Mental Health Court in Brooklyn, NY, a borough where, according to a 2003 journal article, 18.5 percent of the adults awaiting night arraignment had a current diagnosis of serious mental illness.[iii] Here is an example of how this program has helped one participant: A college student, who was experiencing his first psychotic break, heard voices that told him to rob two women, which he did. It looked like he would be sentenced to ten years in prison. Instead, he is participating in the Brooklyn Mental Health Court program and back in college. If he continues to do as well as he has been doing, the Kings County District Attorney's Office will dismiss his case in early summer after two years of court supervision.

Most of the other participants have also dramatically improved their lives. This article offers some basic information about the court, and then asks—what is the underlying reason that this program is successful?

Basic Information

The Brooklyn Mental Health Court is a voluntary, court-supervised mental health program for defendants arrested in Brooklyn whose serious and persistent mental illness significantly contributed to their arrest and who probably would have been incarcerated. As an alternative to jail or prison, the program links participants to long-term treatment in the community. To be accepted into the 12- to 24-month program, candidates must plead guilty to their charges and thus, give up their right to have their cases proceed through the regular court system.

The Brooklyn Mental Health Court, which opened on October 1, 2002, is the first court of its kind in New York State. Operating out of a dedicated courtroom in the Kings County Supreme Court, the court is a joint project of the New York State Office of Mental Health, the New York State Unified Court System, and the Center for Court Innovation. In session on Tuesdays, it follows the successful model of existing problem-solving courts in New York, such as drug treatment courts and domestic violence courts.

Participants receive an individualized, court-mandated mental health treatment plan. The treatment plans usually require that participants take all the medications prescribed by their treating psychiatrist.

To enable them to follow their treatment plan, the court's team--which consists of two social workers and two full-time and one part-time forensic coordinator--links the participants to services in the community including mental health treatment and intensive case management. (Several consulting psychiatrists also work as part of the team doing evaluations.) Many participants are also linked to alcohol and substance abuse disorder treatment and supported housing.

The team closely monitors the participants to make sure they are following their individualized court-mandated treatment plan. Also, the participants appear regularly before the Presiding Judge, Matthew D'Emic. He is also a judge of the New York State Court of Claims assigned to the Kings County Supreme Court and a judge for the Kings County Domestic Violence Court. Additionally, he presides over cases in the Kings County District Attorney's Office's Treatment Alternatives for Dually Diagnosed Defendants (TADD) program, an alternative-to-incarceration program for offenders who suffer from co-occurring mental illness and substance abuse disorder.

On their court date, the defendants appear one at time before Judge D'Emic. He may praise the individual, award the participant a certificate, mandate a change in the individual's treatment plan, and/or issue a sanction to the individual. In very rare cases when participants pose a danger to themselves or to society, Judge D'Emic will send them to jail for a short time.

Judge D'Emic summarized the overall goal of the program: "The good habits of staying in treatment, staying on medication, having a good life—that will be reinforced, and the bad habits will be done away with."

Graduates

If participants graduate from the Brooklyn Mental Health Court, their charges are reduced or dismissed; Seven participants have graduated since the court opened on October 1, 2002; And most of the 66 current participants are in compliance with their treatment plan.


Presiding Judge, Matthew D'Emic
Photo Credit: Liz Lipton, M.A.

If a defendant voluntarily withdraws or is discharged, he or she must serve a prison sentence that was agreed to by Judge D'Emic, the Assistant District Attorney, and the defendant when the individual first entered the program. The minimum sentence is one year in prison, but most participants face longer prison sentences. Because of this minimum sentence and because defendants must participate in court-mandated services for 12 to 24 months, the Brooklyn Mental Health Court is designed for more serious offenders, not for people charged with low level, quality-of-life offenses that would result in only days or weeks in jail.

So far one person has voluntarily withdrawn, and three people have been discharged because they failed--over an extended period of time--to comply with their court-mandated treatment plan.

Before They Enroll

Judges, defense attorneys, and prosecutors refer defendants with mental health problems to the Brooklyn Mental Health Court. Only potential candidates who meet specific mental health and criminal justice criteria are eligible to participate. Regarding the mental health criteria, they must be diagnosed with a major mental illness such as schizophrenia, bipolar disorder, major depression, or schizoaffective disorder. Many of the participants also have personality disorders or co-occurring alcohol or substance abuse disorders.

Regarding the criminal justice criteria, all nonviolent felony offenders are eligible,

[See **Court** on page 3]

Promoting Mental Illness Education in the Schools

By Janet Susin, Chair, NAMI Breaking the Silence Education Committee

"There is a deafening silence about mental illness in our classrooms today". That is the phrase that rang through our minds in 1998 as we considered what to name our educational package of lessons, games, and posters that teach students in upper elementary, middle, and high school about mental illness.

We knew that students in health classes were learning about AIDS, drug and alcohol abuse, and sex and that major illnesses such as cancer, heart disease, and diabetes also had a regular place in the classroom, often by state mandate. But it was the rare teacher who taught about mental illness. So we decided to call our materials "Breaking the Silence: Teaching the Next Generation About Mental Illness".

Since first published in 1999 the response has been overwhelmingly positive. Written by three veteran teachers who know first hand the heartbreak of having a child with a serious mental illness, the lessons use stories to put a human face on mental illness and teach that it is biology, not a character flaw that causes mental illness. Students also learn the warning signs of mental illness, that psychiatric disorders are treatable, and how to fight the stigma that surrounds mental illness.

These lessons speak to all children, especially the three to five million children ages five to seventeen (5-9%) in the United States who are affected by mental illness. One of those is Rebecca. She recalls how she first heard voices at age five when she would go into the woods. Her mother's advice was simply, "Stay out of the woods." It wasn't until she was seventeen and driving a car too fast that she first got treatment. Stopped by a policeman who was alarmed by Rebecca's explanation of why she was speeding, he took her to a psychiatric hospital, rather than giving her a ticket. In Rebecca's words, "I had a knife on the counter in the kitchen and was racing home so I could use the knife to kill myself."

Rebecca is sure that if she had had a lesson on mental illness as a child it would have made all the difference in her life. So is Jill Bolte Taylor, a neuroscientist and former NAMI (National Alliance for the Mentally Ill) board member. When she first heard one of our lessons read aloud she cried. She remembered the guilt she felt as a child because of her sister's mental illness. Her parents were very hush-hush about it and she had only a vague understanding of what was happening to her. Consequently, she spent much of her childhood blaming herself for having caused her sister's illness.

It is the Rebecca's and Jill's of the world that we are trying to reach with our message of hope and help as well as those who may never be directly affected by mental illness, but should understand its impact on society. To that end we are constantly seeking new ways to promote our educational materials.

Our most recent approach has been to develop a Tool Kit, which advocates around the country can use to guide them in their efforts to promote mental illness education in the schools. Thanks to the generous support of the American Psychiatric Foundation we have been given funding to develop and disseminate this training manual. It will be available free of charge to NAMI affiliates and other advocates of mental illness education throughout 2004.

The manual includes such topics as rationale for mental illness education, how to organize and fund a "Breaking the Silence" (BTS) project, how to enlist and train volunteers for the project, and teaching future educators about BTS.

We are particularly anxious to share our innovative approach to recruiting competent volunteers to do outreach to local schools, colleges, and universities. As we considered who would be the most comfortable and persuasive speaking to teachers, administrators, and students, retired educators seemed the logical solution. They are familiar with navigating the school bureaucracy, understand how teachers and administrators think and are comfortable speaking to audiences large and small. This corps of dedicated former teachers and administrators has proved invaluable in doing staff training in schools and speaking to future teachers in colleges.

News of the Tool Kit is spreading. There have been many requests for the first draft from NAMI affiliates, county health departments, psychiatric health systems, parents and other mental illness education advocates nationwide. Peter Paetsch, who is using the information in the Tool Kit to design a BTS Power Point presentation for the Chicago Public Schools, exemplifies the enthusiastic response we often get from advocates. He says that the "Tool Kit is extremely thorough. It provides step-by-step tools to introduce and engage school systems – complete with talking points, references, and ideas. This program should be introduced and implemented by every elementary and secondary school in the world. As a business leader, I have shared the materials with my staff as an example of a quality program."

The final draft of the Tool Kit will be ready for distribution by the beginning of March.

It can be obtained by emailing btslessonplans@aol.com or downloading it from our website, www.btslessonplans.org. A limited number of lesson plan sets will also be available free of charge for advocates who order the Tool Kit to use in their own outreach and for training purposes.

The just published 4th edition of the upper elementary booklet includes a story about Jessica Lynch, Miss New York State for 2003, and her struggle with childhood depression along with role plays for cartoon brain puppets which reinforce the lessons learned from the story. The high school plans include stories of three extraordinary young people who have met the challenge of living with mental illness. Meera Popkin, who starred in Miss Saigon on the London stage a few years ago and is still auditioning for shows and getting parts despite her diagnosis of schizophrenia, is one of them. This booklet also features a lesson on brain chemistry and how it is affected by mental illness.

BTS has received orders from 43 states and as far away as Armenia, Ireland, Japan and the Virgin Islands. We welcome your becoming part of this major educational initiative. ■

Mental Health Court Continued from page 2

and those who are charged with assault, robbery, or burglary are considered on a case-by-case basis. Other violent felonies are presumed ineligible but may also be considered based on individual circumstances. Both Judge D'Emic and the Brooklyn District Attorney, represented by David Kelly, the 1st Deputy Bureau Chief for Alternative Programs, can exclude a defendant from participating in the court.

If a potential candidate is likely to be accepted into the program, the court's team begins to line up community-based services and, if needed, supported housing. While the staff is doing this, the candidates—most of whom are incarcerated--appear before Judge D'Emic, so he can find out how they are doing and update them on the team's efforts.

Lucille Jackson, CSW, the court's Clinical Director, said, "We are working on their [the participants'] behalf long before they are in the program. We have to because of the scarcity of resources. …especially supported housing. For some people, it will take one month or it could take six months."

Why it Works

On Tuesday, January 20, when I observed the court, I noticed several interesting things. Most of the defendants were doing very well. Compliance with medications appeared to be good, and no alcohol or substance abuse relapses were reported. However, several had medical problems, and Judge D'Emic inquired about their medical treatment.

Most participants left the court smiling and looking very pleased with themselves. And many had kind words for the judge and Ms. Jackson as they walked out.

Why is it so successful? One reason is the court's team. "We are very dedicated. We love the work and the clients," said Ms. Jackson. In fact, the staff is so dedicated that if a participant needs help with an urgent problem, a team member would even go to that individual's residence. For example, one participant was on the verge of being thrown out of his residence program because he had refused to comply with its personal hygiene rules. After one of the team's forensic coordinators went to his residence and persuaded him to follow the rules, he was allowed to stay.

Another reason for their success is their bond with Judge D'Emic. As they appear one at a time before him, it is quite evident that they like him. They trust him. When he praises them, their faces light up. For example, he said to one defendant, "Great report: Straight A's--you couldn't do better than that." And he told another, "Keep up the good work. You're the hardest working man in this program."

That Tuesday, Judge D'Emic was proudly smiling as he awarded certificates to several participants who had completed a particular phase of the program. After the individual approached the bench, Judge D'Emic would shake his or her hand and hold it while they spoke privately for a few minutes.

"Thanks Judge, thanks, Lucille," said one participant as he bounced out of the court smiling and holding his certificate.

"I'll need to get a bigger studio for all these certificates," joked another participant as he left with his certificate.

Judge D'Emic admitted that when Ms. Jackson approached him with the idea of awarding certificates, he wasn't sure of its merit: "Before we started [the program], I was skeptical of giving out the certificates. But every time I give one the person lights up. I've even had people ask me--when am I getting my certificate? It's a reinforcement. It's a pat on the back. It's an affirmation. It's everything that most of us are used to, but these people never had. ... We take it for granted that we get credited for things, but some people never had it in their life."

He continued, "Most of them have experienced a lot of hardship. They have a serious and persistent mental illness, and they struggle through life with that and add to that poverty and self-medication and you wonder how they are doing as well as they are doing."

Judge D'Emic tries to develop a personal rapport with the defendants: "In the very beginning, I found that these defendants could be engaged. I discovered that if I made an investment in them by engaging them in conversation and expressing an interest in their life that they would reciprocate … by making an investment in the court."

Judge D'Emic said that he even tries to do this with the participants who are doing poorly: "[For example], over Christmas, a 17-year-old woman really acted out and had to be put in jail. She was ill today, so I made a point of calling her and asking how she was doing. Since I had to ensure that she was in jail for a couple weeks as a sanction to correct her behavior, I wanted to make sure that she knew I also cared about her."

Reflecting on his overall experience in presiding over the court, Judge D'Emic said, "My philosophy is, basically, that these people have a serious and persistent mental illness that is somehow the root of their criminal behavior. If we can engage them in treatment and wipe out their criminal record, they can lead productive lives in society. I will do whatever it takes to make sure that happens short of jeopardizing public safety." ■

i This information was provided by Heather Barr, Attorney, Urban Justice Center, NY, NY.
ii Ibid.
iii Broner. N., et. al. "Arrested Adults Awaiting Arraignment: Mental Health Substance Abuse and Criminal Justice Characteristics and Needs." Fordham Urban Law Journal, 2003, Vol. 30, No. 2. pp. 663-721.

Judge D'Emic, several members of his staff, and other experts involved with the court will give a presentation on the Brooklyn Mental Health Court at the APA 2004 National Conventional on May 3 from 9:00 a.m. to 10:30 a.m. at the Javits Convention Center. For more information about the Brooklyn Mental Health Court, contact Carol Fisler, J.D., the Brooklyn Mental Health Court's Project Director. at (718) 643-5603. Here are some Web pages with information: <http://www.omh.state.ny.us/ omhweb/omhq/q1202/brooklyn.htm> or <http://www.courtinnovation.org/demo_mhealth.html>

Most, if not all, of the organizations working with TLC, cite Timothy's Law as their top priority for the 2004 legislative session and are focusing enormous advocacy resources on its passage this year. Likewise, NYSPA is committed to the enactment of Timothy's Law in 2004. To succeed in this endeavor will require TLC to demonstrate a powerful presence at the local level through a mounting groundswell of constituent support. In that regard, TLC is asking members to:

- Develop or join local coalition efforts to pass Timothy's Law;
- Write or call one's legislators in support of Timothy's Law (A.8301/S.5239); and
- Write a letter to the editor of one's local newspaper(s) in support of Timothy's Law.

For additional information regarding what NYSPA members can do to assist with Timothy's Law, please contact Richard Gallo at rjgallo@msn.com.

ECT

Last year's successful effort to defeat anti-ECT legislation culminating in the Governor's veto of the ECT reporting bill has slowed but not stopped the efforts of those who want to enact such laws. Hence, three of last year's Assembly sponsored bills are back again. They are: A.5943, A.5944, and A.5947. In addition to these three bills, which do not have companion bills as of yet in the Senate, we expect the proponents to again introduce an "ECT reporting bill" of some sort.

Meanwhile, based upon a directive in the Governor's veto message, which relied heavily on NYSPA comments, the State Department of Health and State Office of Mental Health have begun looking at ways to create an empirically useful pool of information about the utilization of ECT by combining certain disparate statistical reporting mechanisms in their respective agencies.

PDL

The 2004/05 Executive Budget recommends creating a Preferred Drug Program, also known as a "Preferred Drug List" under Medicaid and other state government sponsored health insurance programs, such as EPIC and CHP. Currently the Executive Budget recommendation, as well as similar initiatives by both houses of the Legislature calls for psychotropic medications to be exempt from any such programs. NYSPA will continue to closely monitor this issue.

Key Initiatives (State Operations)

Middletown Closure

The 2004/05 Executive Budget recommends that the Middletown Psychiatric Center be closed on April 1, 2005 and that necessary inpatient capacity be consolidated at the Rockland Psychiatric Center. This measure will achieve significant operating and capital construction savings ($27 million). Fifty percent of the facility closure savings achieved through the elimination of unnecessary administrative, support, and overhead costs will be reinvested to expand State-operated community services in Middletown's catchment area.

Blue Ribbon Commission

The Governor has proposed legislation to establish a bipartisan Blue Ribbon Commission for the Closure of State Psychiatric Centers. The Commission will be comprised of gubernatorial and legislative representatives and will offer facility closure recommendations based upon the overall OMH-projected need for inpatient beds.

Extension of the Community Reinvestment Act

This legislation will continue the Community Mental Health Support and Workforce Reinvestment Act through 2010 in an effort to ensure that the Governor's proposed policy of reinvesting one-half of any facility closure savings for State operated community services is continued for closures recommended by the Commission.

- Establishment of an Additional Provision in the Reinvestment Program

Legislation that proposes to reinvest fifty percent of the savings achieved through facility closures to expand State-operated community based services in the catchment areas of those facilities.

- Increased Funding for Community Programs for Children and Adults

The Executive Budget proposal seeks to redirect savings from maximizing Federal reimbursement for programs previously funded by Reinvestment and other sources, to provide more than $9 million in funding increases for the continued operation of 8,600 community residential beds for adults and children.

Expanding Services for Forensic Populations

An appropriation of $7 million in new funds will be provided to expand the mental health treatment capacity and clinical staffing for prisoners with serious and persistent mental illness. The funds are earmarked to support a range of new and expanded treatment services based upon a statewide review of the forensic program. The Office of Mental Health and the Department of Correctional Services (DOCS) will work in conjunction to establish a new Behavioral Health Unit program model that seeks to triple the number of beds for the Special Treatment Program; expand current bed capacity for the Intermediate Care Program; and increase access to clinical staff for mental health services.

Key Initiatives (Aid to Localities)

Rate Methodology

Authorize the Commissioner of the Office of Mental Health to review and retroactively certify the rate methodology for dually licensed mental health outpatient programs.

Extension of the Community Reinvestment Act

This legislation will continue the Community Mental Health Support and Workforce Reinvestment Act through 2010.

Community Bed Development Increases

The Executive Budget continues to provide operational and capital funding for local programs to maintain the existing residential system, consisting of 26,700 beds, and continue the development of previously authorized community beds, which will result in an additional "1,300 new beds that are expected to open by the end of 2004/05, and another 3,100 beds that are in various stages of planning and development."

"Included within these numbers, under the Community Mental Health Support and Workforce Reinvestment Program, the Executive Budget authorizes 600 new supported housing beds for adults by redirecting savings ($7 million annually) from 100 adult non-geriatric State psychiatric center bed closures in 2004/05."

Assisted Outpatient Treatment Program

The 2004/05 Executive Budget includes appropriations of $32 million for the Assisted Outpatient Treatment Program (Kendra's Law). The appropriations cover case management and, psychiatric medication.

Adult Homes

In addition to the allocation of $10 million, the Executive Budget proposal seeks to implement a series of recommendations made by the Adult Homes. Workgroup comprising of mental health advocates and adult home providers that include:

- Conducting resident assessments;
- Providing enhanced medication assistance;
- Implementing independent case management services and peer educator services;
- Improving wellness, social, and recreational activities; and
- Providing competitive grants to adult homes to implement new quality of life initiatives as approved by resident councils.

The Executive proposal also recommends that individuals requiring placement outside of the adult home system will be able to access OMH's community-based residential system that currently consists of an estimated 26,700 beds, in addition to the several thousand new beds that are in the pipeline over the next several years. However, this is not a prioritized eligibility.

ARMS

The Executive Budget seeks to achieve $800,000 in savings with the elimination of the Alternative Rate Methodology. The proposed elimination will primarily impact Erie County Medical Center, which receives more than 40 percent of the $3.1 million in total Medical support spent on ARMS. The other nine hospitals still receiving the ARMS supplement are; United Health, Women's Christian Hospital, St. James Mercy Hospital, Cortland Memorial Hospital, St. Mary's Hospital Amsterdam, Queens Hospital, Cabrini Hospital, Eastern Long Island, and Montefiore Medical Center.

Cuts Aid to Localities by $7 Million

The 2004/05 Executive Budget also seeks to yield savings of $7.7 million by reducing Local Assistance contracts for "less critical spending activities." "While the severe fiscal restraints facing New York require efficiencies in all areas of government, this action will exclude reductions to core services for persons with serious and persistent mental illnesses including case management, residential programs and licensed outpatient programs."

Medicaid/HCRA Initiatives

It is estimated that at its current growth rate, left unchecked, total Medicaid spending will reach $44 billion in 2004/05. The Executive budget recommendations related to Medicaid seek to slow the rate of growth and save the State an estimated $801 million in 2004/05. These recommendations include:

- Eliminating numerous services to adults such as: podiatry services, dentistry services (private practice), and other services presently provided by nurses, audiologists, and psychologists.
- Transferring children from Medicaid to Child Health Plus who meet specified criteria such as: they are between the ages of 6 to 19 and their families have an income between 100 and 133 percent of the Federal Poverty Limit.
- Establishing a utilization and case management system for Medicaid recipients that access substance abuse, mental health, and developmental disability services. The system will be established in conjunction with the counties.
- Encouraging dually eligible Medicaid recipients and individuals who receive SSI benefits to participate in Medicaid Managed Care.
- Re-establishing a 0.7 percent non-reimbursable assessment on hospital revenues.
- Extending the 2003/04 provision that sought to reduce the reimbursement to local governments for the local share of services provided to certain OMH, OMRDD recipients.
- Modifying the Medicaid cycle provider payments whereby the last payment of 2004/05 will be delayed by a period of two days.
- Using Graduate Medical Education (GME) funds to maximize federal Medicaid matching funds in an effort to generate savings to the state and additional funding of approximately $30 million for GME.
- Continuing workforce recruitment and retention funding enacted in 2002
- Additional funding to promote the purchase of long-term care insurance

Other items of interest

Family Health Plus (FHP) program:

- Initiating co-payments on pharmaceuticals, doctor visits, and hospitalizations;
- Eliminating vision and dental services; and
- Closing eligibility loopholes

Initiatives regarding the Early Intervention Program:

- Requiring county approval when a child is in need of five or more services per week, and State approval when services are required that will exceed seven services per week.
- Establishing a provider registration fee.
- Allowing the counties to negotiate directly with the provider for lower rates or using the established State rate.
- Increasing the health insurance reimbursement of medical services provided through Early Intervention. ■

AREA II TRUSTEE'S REPORT by Ann M. Sullivan, M.D.

Ann Sullivan, M.D.

The APA is moving forward in 2004! We have a balanced budget, and even a surplus to help replenish our reserves and offer revenue sharing to some district branches that need it. The vision for a Mental Health System is being refined with very specific goals to advocate for our patients and our profession. The battles against psychologist prescribing continue, as well as the war for quality care and access for all our patients. Membership has stopped declining, so thanks to all of you who are beginning to attract more members! So far, the year looks promising!

Highlights of the December Board Meeting include:

Advocacy:

• APA has taken a major role in advocating for a responsible and effective Prospective Payment System for Inpatient Psychiatry. As you may know, CMS (the Medicare Payment System) will no longer be an exempt per diem rate, which has existed since the 1970's. As of July 2004, a new payment for inpatient Medicare services will be adopted. It is critical that this not disadvantage inpatient psychiatry, since as we all know beds are already in short supply and under financed. APA has become a major player, with THEORI, a research branch of the Greater New York Hospital Association, in designing a payment and reporting system that will keep inpatient psychiatry solvent. This has been critical and hopefully effective advocacy, in which APA has taken the lead as a major player!

• Efforts to defeat Psychologists Prescribing continue. Since New Mexico, all other efforts have been successfully blocked. Funds were allocated for a meeting with the AMA to focus on State issues for psychologist prescribing for the 10 states at risk. As you know, New York State Law has been successful in prohibiting prescribing by psychologists. A real victory for us!

• The vision for a Mental Health System is being refined and specific goals developed and prioritized for the next few years. This plan will need dollars and the efforts of all members to make it a reality!

• The Board supported the American Association of Geriatric Society in advocating for an NIMH official specifically designated to develop and coordinate research for the aging mentally ill.

• The APA will continue to advocate for universal access to quality care. Again, in tune with the vision for a Mental Health System, the Board has asked the appropriate councils and components to review and develop an action plan that focuses on the ways and means to finance such universal access, ensure its quality, and how to work at the state and national level to accomplish this critical goal.

Budget:

A balanced budget was approved, with a surplus of approximately $300,000 for the reserves. This definitely improves the overall financial picture of the APA and it has not been necessary this year to borrow funds to meet expenses. Also, $280,000 was set-aside in the 2003 budget (which may be increased) for revenue sharing with District Branch/State Associations. Priority will be given to small District Branches, which are State Associations with so small a member number that an infrastructure could not be supported e.g. Montana with less than 50 members! A committee made up of Assembly, Board and general members will make recommendations as to how to allocate the funds going forward. Some are in favor of all District Branches/State Associations receiving a fixed amount across the board, while others favor a formula based on size, membership, etc. What do you think? It is clear that revenue sharing, while there is a surplus, is critical. However, just remember, the reserves have to be replenished too!

Membership:

• A meeting was held with the Texas and Washington Psychiatric Societies focused on increasing membership recruitment and financial issues for these State Associations. You'll recall these Associations requested a category of membership in the State Society that would not require national membership. Such a split in membership could be devastating for national advocacy efforts! The President, Medical Director, and Assembly leadership are working closely with these State Associations on an alternative plan of action that would not split members up!

• A vote on having an Annual Meeting in Las Vegas was once again postponed for further study.

• The Association Management System (Information System) was approved as technically capable of meeting national and District Branch needs. A final look at financials will be completed by the March Board Meeting.

• The Board voted against a proposal by the membership committee to limit benefits, e.g. a discount at the annual meeting, for members who had not paid dues by April 1st. This was thought to be too "punitive" rather than helpful to the membership!

• The Board also approved a new conflict of interest procedure, where at the beginning of each Board meeting, all Board members, in addition to their formal filling of conflict of interest statements, will verbally again announce any current conflicts of interest for the awareness of all members of the Board present.

Finally, the Board approved a position statement on HIV and Adolescents and established an Awards Oversite Committee to review the establishment of any new APA Awards.

Hopefully 2004 will be an active and successful year for the APA. Membership has stopped declining, and we look forward to a robust increase! Once again, let me know your thoughts, ideas, and suggestions! ■

Fifth Annual Legislative Brunch Continued from page 1

Government Reform Committee, and the Joint Economic Committee. She also was named the Ranking Member of the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Financial Services Committee.

Congresswoman Maloney offered specific information about the recently enacted Medicare prescription drug law: "There are more problems than benefits under this bill. I believe that it is truly an effort to destroy Medicare as we know it.

"They started out saying it's a prescription drug benefit, but they basically went in and totally restructured Medicare: forcing Medicare into competition with private drug companies, creating a costly means test for Part B that will hurt many middle class seniors in the district I represent, causing over two million retirees to lose their current prescription drug coverage (200,000 of them live in NYC), adopting an asset test for low income seniors, weakening drug cost containment, and leaving a huge gap where patients have absolutely no coverage.

"[Regarding the latter], between $2,250 and $5,044 of drug expenditures, seniors will pay 100 percent of their drug expenses while continuing to pay monthly premiums," she said.

She continued, "The most serious attack on Medicare comes with so-called premium support. In [pilot programs in] certain municipalities in the country starting in 2006, HMOs will be given incentives to compete with traditional Medicare. HMOs usually cherry-pick the healthiest seniors, so they will be leaving the sickest and most expensive seniors in traditional Medicare. Unfortunately, there is a real risk that NYC could be chosen as one of the six pilot programs."

Another potential problem concerns means (income) testing. Congresswoman Maloney said, "One of the most serious flaws in this law is that it opens the way for means testing Medicare. For over 117,080 middle and upper income seniors from New York, means testing will result in a hefty premium hike for Part B, but for all seniors it will be an administrative nightmare. The Centers for Medicare & Medicaid will have to start asking all seniors to provide financial information, so they can determine who should pay more."

Congresswoman Maloney also was concerned that the government will not be allowed to negotiate for lower medication prices: "One aspect of the bill that truly mystified me is that it expressly stated that HHS [Department of Health & Human Services] and the federal government can not negotiate with the pharmaceuticals for lower prices for the drugs. Now the Veteran's Administration can do that and others can do that, but it expressly stated that the government could not negotiate for better prices," she said.

She also explained how the Medicare law will affect EPIC (Elderly Pharmaceutical Insurance Coverage Program): "Low income seniors in New York have EPIC, which provides significantly better prescription drug coverage than this new law. There are real concerns that this law will encourage the state to eliminate drug coverage for seniors under EPIC. Some experts are now saying that the law will prevent EPIC from negotiating with pharmaceutical companies for better prices."

Assembly Member Richard Gottfried

Congresswoman Maloney also mentioned a positive aspect of the Medicare law: "Some doctors are pleased that the law blocks the scheduled 4.5 percent reduction in 2004 in the amount physicians could be paid, which would have been followed by a projected 2005 cut of 1.7 percent. For psychiatry, this would have reduced allowed charges by $131 million over two years. Instead for 2004 and 2005, physicians will receive an increase of 1.5 percent."

She ended this part of her presentation by stating: "The bill was more of a poison pill than good medicine in my opinion and that is why I voted against it."

She also discussed the importance of passing full mental health parity legislation for New York State and for the United States. (Minna Elias, Congresswoman Maloney's Chief Staff, clarified this last point after the event: "There is a weak mental health parity bill [for the United States] that passed in 1996 and was recently extended. However there are huge loopholes that allow companies to limit mental health treatment.")

Senator Liz Krueger: Timothy's Law, Medicaid

Senator Liz Krueger

Senator Liz Krueger (Democrat, Working Families Party) represents the 26th District, which is part of New York County. She is the ranking Democratic member of the Senate Standing Committee on Housing, Construction and Community Development. She is also a member of seven other committees: Banks, Children and Families, Cities, Consumer Protection, Ethics, Rules, and Social Services.

Senator Krueger offered detailed information about Timothy's Law. She said that 33 out of 38 Republican Senators are sponsoring Timothy's Law. And based on her own sub-survey, 20 out of 24 Democratic senators would cosponsor this legislation if they were permitted. Democrats are not allowed to cosponsor bills that Republicans sponsor.

"This means that 53 of our 62 members of the New York Senate want to pass Timothy's Law. This law should be passed," said Senator Krueger. She urged psychiatrists to contact State Senate Majority Leader Joseph Bruno to bring this bill to the floor, so it can be debated.

She also spoke on Medicare. Senator Krueger said that Congresswoman Maloney did an excellent job of explaining why the Medicare bill is so bad. She added, "With the Medicare bill, we will face even decreased dual coverage between Medicare and Medicaid as the years go forward. I hope I am wrong but that is my prediction."

Regarding the New York State budget deficit, which is projected as being $6 billion dollars for the coming year, she said, "New York State is one of the only states left in the country that requires the localities to pick up half the cost of the state Medicaid bill. Therefore, local governments are up in arms because of their own deficits due to the costs of Medicaid."

She added, "The Governor, believing that the State Senate wasn't going to go far enough in proposing cuts to Medicaid this coming year, has created his own Medicaid Task Force … with an agenda of cost-cutting in the Medicaid Program."

Assembly Member Richard Gottfried: Medicaid, Medicare Law

Assembly Member Richard N. Gottfried (Democrat, Working Families Party) represents the 75th Assembly District in Manhattan. He is Chair of the Assembly Health Committee.

Assembly Member Gottfried offered detailed information about the state's $5 billion to $6 billion deficit for FY 2004-2005. He predicted that major cuts to education and mental health "will be put on the table." Assembly Member Gottfried said, "Certainly, in the Assembly, we are going to be determined … to do everything we can to restore these cuts.

"One glaring exception to our rejecting of the Governor's Medicaid cuts is the dual-eligible Medicare-Medicaid Crossover. … One of the major things we need to do in the coming session is not repeat that cut in this coming year's budget. That's going to take a lot of lobbying," he said.

Regarding the physician discipline process, Assembly Member Gottfried said, "We [advocates and Assembly Member Gottfried] have been trying to assemble a [legislative] package that is both useful and enactable."

Medicare Law

He also spoke about the recently passed Medicare law: "Carolyn Maloney gave you an excellent sense about the really bad things that are in this legislation."

Assembly Member Gottfried continued, "Thinking back over my entire lifetime … I don't think Congress has passed a worst piece of legislation than the Medicare bill. Beginning the dismantling of the Medicare program is about as horrible as they've done and that is what this bill does. Every core element of the Medicare program begins to be dismantled in this legislation."

He emphasized, "The fact that all of the elderly have been in the same boat probably has been the most crucial element that has kept the Medicare program as afloat as it is." According to Assembly Member Gottfried, the Medicare law will place Medicare recipients in different categories such as "poor," "middle income," and "rich."

He explained, "The minute you start putting the elderly into different boats and the disabled into different boats, it will be much easier for Congress to let those boats leak or fire torpedoes at them." On the other hand, he said, "it is really tough to sink a boat that has middle-income and rich passengers."

Assembly Member Jonathan Bing

Assembly Member Gottfried also explained how the Medicare law will affect dual- eligibles. He said that currently dual-eligibles receive their prescription drugs from fee-for-service medicaid even if they are in managed care. However, with the Medicare law, "dual-eligibles will be getting their prescription drugs … from the managed care plan they will have to sign up for in order to get their Medicare benefit," he said.

Because of this change, dual-eligibles will be required to pay co-payments. Assembly Member Gottfried predicts that as a result of this added cost, some people will stop purchasing their psychiatric medication. Additionally, if dual-eligibles want to go off the formulary, they will have to go through the managed care company's appeal process.

Assembly Member James Brennan: Timothy's Law, Supportive Housing

Assembly Member James Brennan (Democrat, Working Families Party) represents the 44th Assembly District in Brooklyn. Assembly Member Brennan serves as a member of four committees: Codes; Corporations, Authorities and Commissions; Education; and Real Property Taxation.

From 1995 through 2000, Assembly Member Brennan chaired the Assembly Standing Committee on Mental Health, Mental Retardation, and Developmental Disabilities.

Assembly Member Brennan spoke about the importance of passing Timothy's Law, which includes parity for alcohol and substance abuse services. For six years, Assembly Member Brennan sponsored mental health parity legislation that passed the NYS Assembly.

In discussing his support for Timothy's Law, Assembly Member Brennan pointed out that "virtually every other mandate on the insurance industry has gotten into law."

Supportive Housing

Assembly Member Brennan emphasized that the City of New York needs more supportive housing: "We now have 38,000 homeless people in the City of New York. Every mentally ill homeless person costs government $40,000 a year, including the direct cost of shelter, the cost of incarceration, the cost of hospitalization, and the cost of other kinds of services for that person.

"Studies have indicated that supportive housing … can save each individual's cost somewhere on the order of $16,000 to $17,000 a year within two years. And the cost of the housing itself is $16,000 to $17,000 a year, meaning that within two years that housing pays for itself.

"And when you get into years three, four, and five, and you have stabilized that individual so that individual is no longer in constant need of hospitalization or … [no longer] involved in minor crimes … and things like this, … then, ultimately, supportive housing with services means savings for government and for tax payers as well as better care for that person.

"We need to continue to talk about this in the legislature. Authorizing funds for supportive housing is a capital expense, meaning that it doesn't necessarily go upfront. … We spend money later down the road when the housing is built or renovated, but ultimately, that investment will come back to benefit all of us," Assembly Member Brennan concluded.

Assembly Member Jonathan Bing: Timothy's Law

Assembly Member Jonathan Bing, a Democrat represents the 73rd Assembly District, which consists of the western half of the Upper East Side and East Midtown. He serves as a member of five committees: Health, Housing, Judiciary, Social Services, and Tourism, Arts and Sports Development.

Assembly Member Bing said he is proud to be a sponsor of Timothy's Law and to stand with Assembly Member Paul D. Tonko, [D-Amsterdam] the author of Timothy's Law, at press conferences supporting the legislation.

"My having met the O'Clairs and talked to them about their son Timothy and what happened with him--that experience will be in my mind throughout my legislative career," said Assembly Member Bing.

Assembly Member James Brennan

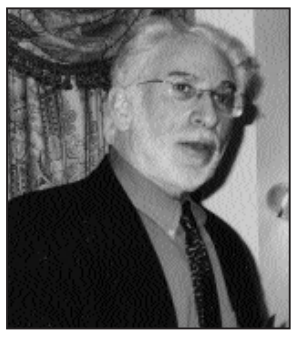
One of the key reasons he supports this law is that he said it would enable people to get mental health treatment at the early stages of their illness, thereby, decreasing the likelihood that they would require emergency services or hospitalization.

[See **Brunch** on next page]

Lloyd Sederer, M.D. Speaks at Legislative Brunch

By Liz Lipton, M.A.

Lloyd Sederer, M.D., the Executive Deputy Commissioner for Mental Hygiene in the New York City Department of Health and Mental Hygiene was a featured speaker at the Fifth Annual Josef Weissberg, M.D., Legislative Brunch held on December 7 at the Mark Hotel in the Upper East Side of Manhattan. Hosted by NYCDB in conjunction with the Brooklyn, Bronx, and Queens District Branches; the event is partially funded by NYSPA.



Lloyd Sederer, M.D.
Photo Credit: David S. Goldman, M.D.

Dr. Sederer spoke on five topics: the Medicaid Neutrality Cap, PROS (Personalized Recovery Oriented Services), homelessness, buprenorphine, and an instrument that measures and detects depression.

Dr. Sederer began his presentation by providing some background information: "My division is the mental hygiene side of the combined Department of Health and Mental Hygiene. We encompass all three disability areas: mental health, chemical dependency, and MRDD [mental retardation and developmental disabilities]. Our function as an agency is, principally, to plan, purchase, and monitor public mental hygiene services, especially in the ambulatory arena here in New York City. We do so with a budget of about 850 million dollars. We fund over 350 agencies with about 1,000 programs across the five boroughs. So we have reach. And we are determined to use that reach and that influence in the way that is being described here [at the legislative brunch]."

He continued, "On an actual citizen or resident basis, the services that we fund or otherwise influence touch the lives, we estimate, of 450,000 people in New York City every year--about 1-in-17 or 1-in-18 people."

Medicaid Neutrality Cap

Dr. Sederer said his department is opposed to the Medicaid Neutrality Cap: "We have, from the very start of this combined agency, said that the Medicaid Cap on mental health services in New York State, and here in New York City as a consequence, is discriminatory, and it is wrong. It denies access to people in need. And it … is discriminatory only against those people with mental illness. It is not a cap on people with chemical dependency problems, mental retardation, and certainly not [a cap on] people with asthma, diabetes, cancer, or anything like that."

To show how this regulation has affected the city's mental health services, Dr. Sederer's department developed a planning document that analyzed the need for children's mental health services in the Bronx. They found that there were profound gaps in these services. Dr. Sederer presented this document to the NYC Council and the New York State Office of Mental Health. To read it, visit <http://www.nyc.gov/html/doh/pdf/pub/na-cmh0803-bx.pdf>.

Dr. Sederer said, "With more resources we could do a similar study for adults, but this is just an example on our part to show that capacity expansion has to occur for specific services in this city, and that one of the biggest barriers to doing so is the Medicaid Neutrality Cap. We are determined to go about challenging that with the state. We are going to do that in many ways including by advancing applications to the New York State Office of Mental Health that do not meet the Medicaid Neutrality Clause."

PROS (Personalized Recovery Oriented Services)

Dr. Sederer also spoke about NYS OMH's implementation of PROS (Personalized Recovery Oriented Services).

Dr. Sederer said, "This [PROS] is a major systems change for mental health services in the community in NYC. It will affect as much as 150 to 180 programs. About 33 million dollars in direct funding and grant funding to services is going to become 'Medicaided.'

"We think in the end that this [PROS] is a good idea in terms of bringing federal dollars into community based recovery services. However, we believe that some of the way it is constructed puts in peril some key services in this city. We have been very forceful about asserting that there are certain conditions that have to exist before this city agency would get behind it [PROS] and also that its rolling out requires an evaluation because of the magnitude of the change and because of the numbers of people who are served."

Mr. Gallo also made a very important point regarding PROS and the Medicaid Neutrality Cap:

"What's interesting about PROS is that it will suspend the requirement for Medicaid Neutrality so that the PROS programs can be licensed. And that will probably be, ultimately, the beginning of the end for the Neutrality Process. Because if they are going to do it for one type of program, it will be problematic for them not to do so for other programs."

The Homeless

Dr. Sederer said, "From the very start of our combined agency, we asserted that nobody with a mental illness, or a chemical dependency … can recover unless they are housed. And we have made housing a part of our advocacy agenda because unless a person is housed, too much money will be wasted on services. … [And we will end up] spending money on delivering services to people who wind up in the streets, on Rikers Island, or in shelters."

He explained that Mayor Michael Bloomberg, in conjunction with Linda Gibbs, NYC's Commissioner of the Department of Homeless Services, has developed a mayoral initiative to end chronic homelessness by having NYC focus on housing and prevention rather than shelters.

Dr. Sederer said, "Over the past 10 years, most of the budget for homeless people has gone into building and maintaining shelters. And now the general wisdom, finally, is that this is not a good way to spend the money. Now, the money will be redirected to supportive housing, transitional housing, and to prevent people who are on the edge of homelessness from reaching homelessness, and we as an agency are a cooperating partner in that plan.

"We are also prepared to put our money where our mouth is. We're prepared to direct some of the unspent reinvestment dollars which we have towards … supportive housing."

Heroin Addiction: Buprenorphine

Dr. Sederer said, "In the chemical dependency area, New York City has about 200,000 … regular heroin users. NYC is the heroin capital of the western world.

"For the first time since methadone, we have a new pharmacological treatment called buprenorphine. It is a partial opioid agonist, and it represents a very different agent both in terms of its pharmacology and in terms of its distribution through doctors and pharmacies rather than through methadone clinics."

Dr. Sederer said that this is an opportunity to help people get treatment and prevent them from ending up in jail or hospitals or ill with HIV/AIDS and hepatitis.

To help educate the public and professionals about buprenorphine and to advance a plan for NYC, Dr. Sederer's agency has posted a fact sheet and white paper on its Web site. Here are the links:

Fact Sheet:
<http://www.nyc.gov/html/doh/html/bureau/buprenorphine-fact.html>

White Paper:
<http://www.nyc.gov/html/doh/html/bureau/buprenorphine.html>

A Detection and Measurement Instrument for Depression

Most people with mental illness have depression or anxiety disorders--not schizophrenia or bipolar disorder. Within this population of people suffering from depression or anxiety disorders, more than half receive their psychiatric care from primary care physicians, Dr. Sederer said.

Recognizing this, Dr. Sederer's division is involved in an initiative to develop a detection and measurement instrument for depression. The NYC Health and Hospitals Corporation (HHC) and Ann Sullivan, M.D., are also involved. Dr. Sullivan is the New York County District Branch's Legislative Representative and NYSPA's Area II Trustee.

Dr. Sederer explained, "Primary care physicians manage to a number: What's the blood pressure? What's the lipid level? If the blood pressure is 150 over 100, they know they're not done with that patient until it is 130 over 85. And they can't escape that clinically or from a medico-legal responsibility.

"We don't have a counterpart in psychiatry. This is an effort to introduce a depression 'number,' so that if someone has a 22 on this scale that doctor is not done with that patient until that number is 9."

He added, "This is work that I began in the APA [as their Director of Clinical Services] that we were able to import here to NYC."

Dr. Sederer concluded, "We will see, perhaps, an opportunity to change the landscape of how one of our high prevalence, and high burden, psychiatric disorders is managed." ■

Fifth Annual Legislative Brunch

Continued from page 6

In closing, Assembly Member Bing emphasized, as did several of the other legislators, that it is important for psychiatrists to attend lobbying trips and to personally contact legislators. "The personal contact you make with your legislators makes a difference," he said.

City Council Member David Weprin

City Council Member David Weprin: Timothy's Law

City Council Member David Weprin (Democrat) represents the 23rd District in northeast Queens. He is Chair of the Finance Committee. Council Member Weprin said that Jeffrey Borenstein, M.D., is his mentor on mental health issues. Dr. Borenstein, who is the Editor-in-Chief of *The Bulletin*, is CEO of Holliswood Hospital, a psychiatric hospital in Council Member Weprin's district.

Council Member Weprin explained, "He [Dr. Borenstein] brought to my attention the status of Timothy's Law, and I thought that we at the City Council could do something about it. We introduced a resolution [which calls upon the State Senate to join with the State Assembly in passing Timothy's Law] and held a press conference on the steps of City Hall."

Attendees of the November 5th press conference included Council Member Weprin, Council Member Margarita Lopez; Chair of the Mental Health, Retardation, Alcoholism, Drug Abuse & Disability Committee; Tom and Donna O'Clair, parents of Timothy; Jessica Lynch, Miss New York State and Mental Health Advocate; Barry Perlman, M.D., NYSPA's President, Glenn Martin, M.D.; NYSPA's Secretary; Dr. Borenstein; Richard Gallo, NYSPA's Government Relations Advocate; representatives from major mental health groups, and other elected officials.

Mayor Bloomberg walked by the press conference, and Council Member Weprin, Miss Lynch, Dr. Perlman, Dr. Borenstein and Mr. Gallo were able to speak with him about the importance of passing Timothy's Law.

A hearing will be held on this resolution. Then the council will evaluate the testimony and vote on the resolution.

"Hopefully, it [the hearing] will be good timing to really get some good press and put a little pressure on the State Senate in time for them to pass it in this coming session in Albany in 2004," said Council Member Weprin.

He concluded, "So I'll be there at the city level. Even though I can't directly affect Timothy's Law, I can certainly indirectly affect it through our public hearings, through our putting pressure, and through our putting together coalitions of legislators and other people in the community to support Timothy's Law."

Francine Cournos, M.D., NYS OMH

Francine Cournos, M.D., is the Acting Director of New York State Psychiatric Institute, which is operated by the NYS OMH. Dr. Cournos said, "Sharon Carpinello, RN, Ph.D., [Acting Commissioner] was sorry she could not make it, and she asked me to attend in her place. … The position of the state is to move more in the direction of community-based recovery focus programs. I think you have seen this in the form of the assisted outpatient treatment, the intensive case management, Project Liberty, and the ACT teams. All of these programs are moving things away from the hospital [and] out into the community."

She continued, "I would mention two projects that Sharon is personally involved in: One is a new data system that will really help us track … services people are accessing while protecting their confidentiality. …The other is introducing more evidence-based practices into the system. On the state side [this means] prescribing psychotropics, on the city side [this means] thinking of how to modify psycho-educational initiatives, so they are culturally appropriate." ■

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Revised New York Law Requires Subpoenas to be Accompanied by Written Patient Authorization

By Rachel A. Fernbach, Esq. and Seth P. Stein, Esq.

Effective September 1, 2003, New York law (CPLR §3122) provides that health care providers are no longer required to respond to subpoenas requesting medical records if the subpoena is not accompanied by a written patient authorization for the release of records requested. The purpose of the revised law is to prevent the issuance of a subpoena requesting medical records without proper notice to and permission from the individual who is the subject of the medical records.

If a psychiatrist receives a subpoena that does not include a written authorization from the patient, the psychiatrist is not required to respond, but may choose to respond in writing to the attorney who issued the subpoena, stating an objection because the patient authorization was not included. It is then incumbent on the attorney making the request to attempt to obtain the patient authorization. If the attorney is unable to do so because the patient refuses, the attorney may then bring a proceeding in court requesting a court order to compel the production of the record sought.

The written patient authorization accompanying the subpoena must be directed to the provider, must describe the records to be released and must contain the patient's signature. Psychiatrists who are covered by HIPAA may instead request that the attorney making the request provide a HIPAA-compliant authorization in order to comply with any applicable HIPAA requirements. In most cases, a HIPAA-compliant authorization will be sufficient to meet both the HIPAA and the New York law authorization requirements.

This new rule clearly applies to attorney-issued subpoenas. However, in a recent case in the Civil Court of the City of New York, Richmond County, the court also applied this rule to a "so-ordered" subpoena - where the attorney asks the court to add to the subpoena the court's direction to comply. This court held that such requests for so-ordered subpoenas must also be accompanied by the patient's authorization and declined to so-order the subpoena in that case because the patient's authorization was not submitted to the court.

In addition to the patient authorization, the subpoena must also state in conspicuous, bold-face type that the records requested shall not be provided unless the subpoena is accompanied by a written patient authorization. ■

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Bringing New York State Psychiatrists Together

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DEADLINE TO COMPLETE MANDATORY NEW YORK EXCESS MEDICAL MALPRACTICE INSURANCE RISK MANAGEMENT COURSE EXTENDED TO MAY 1, 2004

The NYS Superintendent of Insurance recently extended the deadline for completion of the mandatory excess medical malpractice risk management course to May 1, 2004. State regulations require all physicians who participate or plan to participate in an excess medical malpractice program to complete an excess coverage risk management program.

All programs are administered by individual carriers or independent contractors hired by the carrier. Qualifying programs must include a five-hour basic course taken in the first year and a three-hour follow-up course to be taken every year thereafter, in either a classroom format or an internet-based format. Both the basic course and the follow-up course also include a mandatory "project" that must be completed within 60 days after completion of the classroom or internet-based course. It is permissible to complete the project after May 1, 2004, as long as the basic course is completed by that date. The project is intended to demonstrate and reinforce the concepts taught in the course and may include, for example, critical review of case studies.

The Medical Society of the State of New York has been designated to oversee and review programs offered by different insurers to ensure compliance with subject matter requirements and consistency among programs. Insurers are not permitted to charge a fee or other assessment in connection with the risk management program.

For psychiatrists covered by the APA-sponsored medical malpractice insurance program, PRMS will be administering the risk management program on behalf of the insurance carrier, AIG. PRMS plans to conduct in-person lectures and internet-based courses in March in the New York City area and in April in Upstate New York. In order to indicate preferences regarding course format and scheduling, PRMS has asked that all participating members contact its automated hotline at (800) 245-3333, extension 310 or log on to <http://www.psychprogram. com/excess> www.psychprogram.com/excess no later than February 20, 2004. If you do not participate with AIG, please contact your individual carrier for more information.

Psychiatrists who complete the five-hour basic risk management course on or before May 1, 2004, will be deemed to have met the program requirement for excess medical malpractice coverage for the July 1, 2003-June 30, 2004 policy year as well as for the July 1, 2002-June 30, 2003 policy year.

Psychiatrists must take follow-up courses annually to continue to qualify for the excess coverage.

Special rules apply for psychiatrists already participating in a qualified risk management program through their malpractice carrier. Contact your carrier for more information regarding those specific rules.

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