I suspect that if I read the inaugural column of each incoming NYSAPA president there would be some reference to the dangers, opportunities, and challenges our organization and our members face. This column will be no exception. As a result of action taken by the APA Assembly, New York State had to cut its delegation to the national Assembly. For the first time each district branch in the state no longer has a representative in the Assembly. Two pairs of our district branches are “sharing” a representative on a rotating basis, and both New York County and Greater Long Island are sending one fewer delegate to the Assembly. This arrangement was agreed to by the NYSAPA council after a statewide cut was forced upon us by the Assembly in response to budget cuts imposed by the Board of Trustees. Despite these significant changes, but not for the worse, as hopefully, at the May annual meeting our delegation was collegial, cohesive, and represented in-person by committee members and on the Assembly floor. The three action papers introduced by our delegation passed enthusiastically. One called for the legal authority of prescribing physicians to cut out the middleman when appropriate. The second, an end to practices that compel prescribing 30 days supplies of medications where it is not available from the pharmacy or small problem can be solved by asking for APA support for nationwide polices to allow for psychiatrists to use CPT codes, chiefly 99213 & M codes when billing. [See President’s Message on page 6]

DEA Rule Paves the Way for Electronic Prescribing of Controlled Substances
By Rachel A. Fernbach, Esq.

This past March, the U.S. Drug Enforcement Administration (DEA) issued an interim final rule creating standards for the electronic prescription of controlled substances. This rule came into effect on June 1, 2010, and permits licensed practitioners who are registered with the DEA to transmit electronic prescriptions for controlled substances in response to prescriptions for controlled substances to participating pharmacies. An electronic prescription is generated by means of a software application and transmitted to the pharmacy in the form of an electronic data file. The most important change to announce is that the DEA is no longer requiring original prescriptions to be sent, the DEA must establish a process to confirm that a prescription for controlled substances is eligible. Similar to paper prescriptions, electronic prescriptions for controlled substances must contain the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and, if applicable, address and registration number of the prescribing practitioner. It is permissible for a staff person in the provider’s office to enter the required information into the electronic prescribing system, however, only the registered prescriber may review, “sign,” and authorize the electronic transmission of the prescription.

First Step
Once New York State updates its regulations, providers may begin the process for implementing electronic prescribing for controlled substances within their practices. First, physicians who engage in electronic prescribing use a computer software application that is either accessed via the internet or downloaded to their computer’s hard drive. In both instances, electronic prescribing applications must operate using an independent certification process. However, this process is not yet available because the DEA must first identify authorized independent certification organizations. Second, a national provider of free electronic prescribing software (see www.nationalrx.com), has reported that it expects the certification process to be underway sometime within the next six to five months.

Identity Proofing
Once an electronic prescribing application has received its independent certification, each provider using the system must complete identity proofing. [See DEA Rule on page 6]

Albany Report
By Richard Gallo, Barry B. Perlman, M.D. & Jamie Papapetros

Not Quite the End-Of-Session Report
Perhaps the most important thing to note about the proceedings of the 2010 “Regular” Session of the New York State Legislature is that it came to an end (sort of) on July 1. We say “sort of” because while the Assembly concluded its work just before midnight on the 1st – having passed all remaining Budget Bills before then – the Senate Majority could not muster the thirty-two votes necessary to pass the last final budget before them (the so-called “revenue bill”). Consequently, the Senate must return to Albany in the not too distant future to take up this remaining budget bill and perhaps some other bills that have already passed the Assembly. In addition, the budget feud between the Governor and the Legislature, which has hung over the entire legislative session like a toxic fog, is not yet over. Picture this. The Senate and Assembly are web-casting their “end-of-session” bill passing marathon on their respective web-sites, while over on the Governor’s web-site is a live feed of David Paterson web-casting his one by one vetoes of approximately 6000 legislative member items totaling $193 million. Hence, if legislators want to bring home the bounty for local non-for-profit programs and projects, both houses will have to return at some point to override the Governor’s vetoes one at a time, i.e. 6000 separate votes to prevail. NYSAPA’s Interests - Where Things Stand

Budget Issues
The Health and Mental Hygiene budgets for FY 2010-11 were enacted with cuts totaling $77.5 million and $151 million, respectively. Highlights of some items of interest to NYSAPA members are:

HEALTH
Eliminate 2010 Trend Factor. The remaining share of the calendar year 2010 trend factor (1.7 percent) would be eliminated for hospitals, nursing homes (excluding pediatric nursing homes) and home and personal care providers (2010-11 Savings: $99.1 million)
Reduce Indigent Care Reimbursement. Total payments for indigent care will be reduced (2010-11 Savings: $2 billion, 60.5%)
Limit Payments for Preventable Readmissions. State would establish readmission benchmarks for non-mental health care services and reduce reimbursements to hospitals that have a higher than expected level of preventable readmissions for the same condition. (2010-11 Savings: $10.0 million)
Eliminate Medicare Drug Wrap. Medicaid coverage for anti-depressants, atypical anti-psychotics, anti-retroviral and anti-rejection drugs for dual eligible enrollees is discontinued, as these drugs are already covered through Medicare. Wrap-around coverage will continue for drugs not covered by Medicare: Part D (e.g., barbiturates, benzodiazepines). (2010-11 Savings: $4.3 million)
Discontinue Exemptions under Preferred Drug Program. The Preferred Drug Program exemption for anti-depressants, atypical anti-psychotics, anti-retroviral and anti-rejection drugs will be discontinued in order to collect supplemental drug rebates

Mental Health
MH State Operations Efficiencies. Key actions include reducing non-critical staff via attrition, converting certain information technology consultant staff to less costly State employees, reducing overtime and the use of stand-by/on-call shifts, increasing the use of alternative work schedules, delaying the “unmet needs” study to October 2011, and eliminating all non-essential non-personal service spending. (2010-11 Savings: $43 million)
OMH Inpatient Restructuring. Eight psychiatric center wards will be closed at various facilities, reducing State-operated inpatient capacity by approximately five percent. The resources associated with closing six wards will be used to support less costly and more appropriate community programs, and two wards will be replaced with Transitional Placement Program beds, a less staff intensive outpatient model designed to support the transition of patients to community care. (2010-11 Savings: $9 million)
OMH Forensic/SOMDA Reforms. The census for civilly confined sexual offenders is projected not to exceed 230 individuals in SFY 2010-11. As a result, inpatient capacity for sexual offenders at Manhattan Psychiatric Center will no longer be required. The bill also reflects efforts to encourage courts to use video-conferencing to reduce transportation, overtime, and security costs. (2010-11 Savings: $11 million)

Other Bills of Interest
The Legislature did take up bills unrelated to the Budget and the New York State’s fiscal crisis. However, they didn’t do so in any meaningful manner until the beginning of June. Suddenly, all sorts of bills thought to be under wraps started to advance through the process. Among these were several bills proposing to establish or expand the scope of practice of allied health professionals. Although most of the bills were not new, there appeared to be a resurgence of interest in them on the part of the Legislature. Working with the Medical Society of the State of New York (MSNSY) and participating as a member of a newly formed New York Coalition of Specialty Care...
T his edition of the Bulletin focuses on the practice of psychiatry, both nationally and in New York State. The Area II Trustee’s Report reviews the results of a survey of our members concerning the relationship between psychiatrists and industry. We have also addressed potential liability exposure for psychiatrists who work at an institution which is closely connected to high-insolvency. We also have a report about electronic prescribing of controlled substances, the effects of changes in the APA Assembly and how this affects New York State. The Area II Trustee’s Report reviews the results of a survey of our members concerning the relationship between psychiatrists and industry. We have also addressed potential liability exposure for psychiatrists who work at an institution which is closely connected to high-insolvency. We also have a report about electronic prescribing of controlled substances, the effects of changes in the APA Assembly and how this affects New York State.

Area II Trustee’s Report by James Nininger, M.D.

I would like to share with you the results of an “e- survey,” conducted by the Area II Trustee’s Research Group on the Relationship between Psychiatrists and the Pharmaceutical and Medical Device Industries. The relationship between the APA and individual psychiatrists is intimate, and each is responsible for the content of their presentations. Payment for such activities should be proportional to the actual time and effort expended. Whenever possible, to isolate speakers from pressures from industry

The APA recommends that psychiatrists avoid participation in consulting arrange- ments in which they are unlikely to make substantive contributions. We believe that the APA can provide a forum in which the interests of a company with which a psychiatrist has a financial relationship can be protected.

The APA recommends that psychiatrists not permit the issues described above and the implications for patient care before deciding

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The APA recommends that psychiatrists not participate as research subjects in trials that are sponsored by third-party payers, and not accept payment unrelated to actual costs of research and preparation of the manuscript from pharmaceutical or device companies. The APA recommends that the same rules apply to gifts in general should be applied to food: that psychiatrists not permit pharmaceutical, device, and other commercial entities to supply free food and refreshments for educational or social functions or to hotels, clinics and offices, and that they not permit psychiatrists to display products with commercial logos.

Members Agree – 98; Disagree – 4; Neutral – 1

The APA recommends that psychiatrists limit the use of free samples to situations in which their use is clearly in the interests of patient care, and that psychiatrists be alert that the purpose of samples is to increase market share of a particular medication. Samples intended for use by psychiatrists and their families should be considered gifts and should be avoided per the recommendation on gifts above. Psychiatrists in group, clinic, or hospital settings should consider setting up mechanisms for centralized receipt and distribution of samples.

Members Agree – 92; Disagree – 25; Neutral – 3

The APA recommends that psychiatrists participate in educational sessions sponsored by pharmaceutical, device, and other commercial entities, only if they are ACCME-accredited or are of high quality, and have in place procedures to ensure that speakers are fully responsible for the content of their presentations. Payment for travel and lodging to attend ACCME-sponsored sessions should be paid, and should be declined in compliance with the recommendations for gifts above.

Members Agree – 87; Disagree – 38; Neutral – 0

The APA recommends that involvement with program planners or speakers for industry-supported presentations should be limited to programs that are ACCME-accredit- ed or otherwise have in place procedures to ensure that speakers are fully responsible for the content of their presentations. Payment for such activities should be proportional to the actual time and effort expended. Whenever possible, to isolate speakers from pressures from industry.

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Members Agree – 93; Disagree – 23; Neutral – 10

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The Potential Liability Exposure of Employed Psychiatrists Should Their Institution Become Insolvent

By Barry B. Perlman, M.D.

In the case of bankruptcy, the self-insur- 
an fund becomes an asset to be dis- 
tribution in the case of a speaker presentation is OK. 

I think that attendance at an educational event where pharmaceutical, etc. entities supply food/renewal should be permitted 
od not do harm to a physician's ability to apply discrimination regarding the infor- 
mation presented. I think this goes beyond the pale of limiting so-called "influence." 

Samples are very helpful in the introduc- 
and is the need to fill what may be a costly prescription is obviated. Further, not infrequently a patient may, for one reason or another, have run out of or lost his medication and the insurance company 

The trust is used to cover potential liability for events which 

An insurance product which includes a "nose," covers potential liability for events which occurred prior to the purchase of the policy. Thus it differs from claims- 

The APA has agreed to the pos- 
certainty of offering policies which incor- 

In the case of bankruptcy, the self-insur- 

I would prefer the free-market to determine 

A complete set of comments will be 

For BC/BE Child Psychiatrist, registered 

Classifieds

C.J. Medical Services, P.C. is looking for full-time and/or part-time psychiatrists with and/or qualified to register with the New York State Board of Regents. C.J. Medical Services, P.C. offers a competitive compensation package allowing flexibility for part-time work. Contact Dr. Joseph Galli at 914-271-6868 or gallo.john@yahoo.com.
Physicians (NYCSCF), NYSPA added its voice to the crescendo of opposition to these bills and the actions taken to amend or defeat the bills. So far, the outcomes are more favorable than not large for organized medicine but the margin of victories are steadily eroding.

Our next Albany Report for the Bulletin will deal in greater depth with the encroachments on the practice of medicine by non-physician health care practitioners and where we think physicians stand with the Legislature on these matters. The below chart provides a bill status summary on scope of practice legislation opposed by NYSPA, MSSNY and a host of medical specialty societies. The summary also includes the status of a few other bills of interest.

### SCOPE OF PRACTICE BILLS – OPPOSED BY NYSPA

<table>
<thead>
<tr>
<th>SCOPES OF PRACTICE BILL</th>
<th>ASSEMBLY BILL NO. (SPONSOR)/ SENATE BILL NO. (SPONSOR)</th>
<th>STATUS</th>
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<tbody>
<tr>
<td>Optometry</td>
<td>A.3718 (Paulin)/S.2667 (Valesky)</td>
<td>IN COMMITTEE</td>
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<tr>
<td>Physical Therapy Scope of Practice</td>
<td>A.4302-A (Canestrari)/S.4631-A (Oppenheimer)</td>
<td>PASSED BOTH HOUSES</td>
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<tr>
<td>Dental Scope of Practice</td>
<td>A.4656-B (Morello)/S.8347 (Klein)</td>
<td>IN COMMITTEE/PASSED SENATE</td>
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<tr>
<td>Podiatry Scope of Practice</td>
<td>A.2518-B (Pretlow)/S.2992-B (Klein)</td>
<td>IN COMMITTEE/PASSED SENATE</td>
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<tr>
<td>Naturopathic Scope of Practice</td>
<td>A.1370 (Hoyt)/S.1930 (LaValle)</td>
<td>IN COMMITTEE</td>
</tr>
<tr>
<td>Midwifery Scope of Practice</td>
<td>A.8117-B (Gottfried)/S.5007-A (Duane)</td>
<td>PASSED BOTH HOUSES</td>
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<tr>
<td>Nurse Practitioner Reimbursement</td>
<td>A.6651-A (Gottfried)/S.4490-A (Duane)</td>
<td>PASSED ASSEMBLY /IN COMMITTEE</td>
</tr>
<tr>
<td>Nurse Practitioner DNR</td>
<td>A.1719-A (Gottfried)/S.2947-A (Hannon)</td>
<td>PASSED BOTH HOUSES</td>
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<tr>
<td>Nurse Practitioner Scope of Practice</td>
<td>A.765-B (Gottfried)/S.2948-B (Montgomery)</td>
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<tr>
<td>Pharmacy</td>
<td>A.6848-A (Canestrari)/S.3292-A (LaValle)</td>
<td>PASSED ASSEMBLY &amp; REPORTED TO SENATE FLOOR</td>
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<tr>
<td>Limited Medical Service Practices</td>
<td>A.10150 (Paulin)</td>
<td>IN COMMITTEE</td>
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<tr>
<td>Psychology Due Process Bill</td>
<td>A.1729 (Gottfried)/S.5002 (Duane)</td>
<td>PASSED BOTH HOUSES</td>
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<tr>
<td>Corporate Practice of Multiple Professions (Limited exemption)</td>
<td>S.3921-A (Stavisky)/A.8897-A (Pretlow)</td>
<td>Chapter 130 of Laws of 2010</td>
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### MALPRACTICE BILLS – OPPOSED BY NYSPA

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<thead>
<tr>
<th>MALPRACTICE BILL</th>
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<tr>
<td>Contingent Fees</td>
<td>S.2040 (DeFrancisco)</td>
<td>IN COMMITTEE</td>
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<tr>
<td>Medical Liability Statute of Limitations</td>
<td>A.4627-B (Weinstein)/S.1729-A (Schneiderman)</td>
<td>IN COMMITTEE</td>
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<tr>
<td>Damages in Wrongful Death Actions</td>
<td>A.2872 (Weinstein)/S.2391 (DeFrancisco)</td>
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<tr>
<td>Pre-Judgment Interest</td>
<td>A.6757 (Brennan)</td>
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<tr>
<td>Ex-Parte Interviews</td>
<td>A.1254-A (Lancman)/S.3203-A (Klein)</td>
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### OTHER BILLS – OPPOSED BY NYSPA

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<td>A.4301-B (Canestrari)/S.5204-A (Breslin)</td>
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<tr>
<td>Medical Liability Reform</td>
<td>A.6184 (Schimminger)/S.6799 (Hannon)</td>
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### NO POSITION TAKEN BY NYSPA

<table>
<thead>
<tr>
<th>NO POSITION TAKEN BILL</th>
<th>ASSEMBLY BILL NO./ SENATE BILL NO.</th>
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<tr>
<td>Medical Marijuana</td>
<td>A.9016 (Dinowitz &amp; Kellner)/S.4490 (Duane)</td>
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<tr>
<td>Ian’s Law</td>
<td>A.11565 (Gottfried)</td>
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<tr>
<td>S.6263-C (Schneiderman)/A.9243-B (O’Donnell)</td>
<td>Chapter 130 of Laws of 2010</td>
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<tr>
<td>S.2667 (Valesky)</td>
<td>Chapter 132 of Laws of 2010</td>
<td></td>
</tr>
</tbody>
</table>

### ANY OTHER NYS LEGISLATIVE MATTER PLEASE EMAIL richardgallo@galloassociates.org OR CALL NYSPA’S ALBANY OFFICE AT (518) 465-3545
On June 15, 2010, the NYSPA Early Career Psychiatrists (ECP) Committee hosted its first annual ECP Meet & Greet Event at Merchants East in New York City. The Meet & Greet is an opportunity for psychiatrists early in their career to network and socialize with peers and colleagues. The event was open to all APA members in their first seven years after residency as well as fourth-year residents.

Emily Stein, M.D., an organizer of the event, kicked off the evening by welcoming those present and noting many new faces in the crowd. She introduced NYSPA President Glenn Martin, M.D., who thanked everyone for coming and stated that NYSPA is proud to represent approximately 4,300 psychiatrists in New York State. He noted that ECPs represent the future of the organization and that NYSPA is committed to meeting the needs of its members. Dr. Martin also introduced two NYSPA Past Presidents who attended the event, C. Deborah Cross, M.D. and Barry Perlman, M.D.

The event was co-sponsored by PRMS, a professional liability carrier that provides malpractice insurance for psychiatrists. Joining the psychiatrists at the event were PRMS staff members Martin Tracy, President and CEO, Melanie Smith, Senior Vice President for Public Relations, and Rich Stagnato, Accounts Representative, who were available to speak with members and answer questions.

Dr. Stein concluded the presentation by introducing members of the ECP Committee, including Anna Skiandos, D.O., Rashmi Gupta, M.D., and Reba Bindra, M.D. She encouraged anyone interested to become a member of the ECP Committee, which is always looking for new individuals with energy and enthusiasm.

“Early career psychiatrists often have common goals and mutual interests, such as career advancement, paying off student loans and establishing a private practice,” noted Dr. Stein. “It is important for this segment of APA membership to connect and support each other during this vital period of their career.”

Dr. Skiandos added “It is incumbent upon early career psychiatrists to share their point of view on issues of importance for our patients and our profession. I see the voice of ECPs as a type of compass, assisting APA leadership in navigating the future of the organization. It is essential for ECPs to be actively involved in the APA so that we can feel empowered and be invested in shaping the APA’s future.”
President’s Message continued from page 1

One good thing to come out of this change to our delegation is that it compels a review of our own state organization structure. To that end we will be exploring some changes to our governing council. Personally I would like to make the council somewhat larger and better integrated with the district branch leadership. I am very mindful of the need for our council to preserve geographic diversity and representation both to reflect the differing needs of our members throughout the state and to maintain a real sense of involvement for our members. Additionally our committee structure could benefit from a review. Moribund committees with poor membership should be resuscitated or removed. Membership will be more involved in our committees, and better use of social networking, on-line conferencing, etc. should be incorporated. Additionally we may give some consideration to giving committee chairs greater voice in our governance structure.

The future of our district branch structure is also worthy of some soul searching. Our council is made up of representatives of the local organization and bring the most value to our members. To others they are an inefficiency that imposes extra administrative burden. Practically maintaining, especially in the absence of local expertise and support. Additionally, we need to think of alternate structures that may be more efficient and cheaper but still provide a local nexus for activities. It is our responsibility to be supportive of the members. For a DB that may wish to consolidate we need to provide legal and administrative expertise and support. Additionally, we need to think of alternate structures within NYSPA, such as a “chapter” that may be more efficient and cheaper but still provide a local sense of the need for our council to preserve geographic diversity and representation both to reflect the differing needs of our members throughout the state and to maintain a real sense of involvement for our members.

Identity proofing is an in-person interview process for confirming the identity of each prescribing practitioner. Again, the DEA is responsible to identify authorized credential service providers or certification authorities which will be responsible for this task. The final rule also provides for remote identity proofing to accommodate providers located in remote areas.

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DEA Rule continued from page 1

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Only those providers who have undergone identity proofing will be eligible to receive the identity proofing credentials necessary to transmit prescriptions for controlled substances electronically to a pharmacy. Providers should maintain guidance from their application service.

Two-Factor Authentication Credentials

Prescribers who have completed identity proofing will be provided with a two-factor authentication credential. The two-factor authentication credential is the mechanism by which prescribers will authorize and “sign” each electronic prescription for a controlled substance. Each two-factor authentication credential will be comprised of at least two of the following elements:

(i) something the prescriber knows (a password or response to a challenge question);
(ii) something the prescriber has (biometric data such as a fingerprint or iris scan); or
(iii) something the prescriber possesses (a hard token).

A hard token is a separate, tangible object such as a PDA, cell phone or one-time password device that contains a cryptographic key. Prescribers must maintain sole, physical possession of any hard tokens and should not share them with office staff or other persons. Instead of the two-factor authentication credential, some providers may opt to obtain a personalized digital certificate from a federally-approved certification authority. A digital certificate is a data record that contains a public key and a private key assigned specifically to the provider.

Provider Responsibilities

Providing who opt to send prescriptions for controlled substances electronically are subject to specific responsibilities and obligations. For example, if an electronic prescription for a controlled substance is not successfully delivered to the pharmacy, the prescriber must ensure that any manually signed replacement indicates that it is a replacement for an original electronic prescription that failed. Further, if a provider becomes aware of any unauthorized electronic prescriptions or any prescriptions that are not consistent with ones he or she authorized, the provider must notify the DEA and certain designated office staff, where applicable. NYSPA will provide members with any updated information regarding the status of electronic prescribing for controlled substances in New York State as soon as it becomes available.

For more information on electronic prescribing in general, please see the Electronic Prescribing tab in the Members Only section of the NYSPA website (www.nyspsa.org). For more information on the DEA final interim rule, please visit http://www.deadiversion.usdoj.gov/ecomm/e_rx/index.html.