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ALBANY REPORT FOR EXECUTIVE COMMITTEE MEETING TUESDAY, DECEMBER 15, 2020

GLENN MARTIN, M.D., CHAIR OF COMMITTEE ON LEGISLATION

Prepared by:
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I. 2020 ELECTION UPDATE

We have prepared a 6-page memo outlining the final election results of the 2020 cycle, which we have enclosed. We also have a more detailed breakdown of all Senate and Assembly races by district, which we will be sending out separately.

In summary, as a result of the elections, Senate Democrats have obtained a veto proof majority with 43 members. The Senate will have 13 new members (7 Democrats and 6 Republicans). Meanwhile, Assembly Democrats maintained their veto proof majority as well and will once again have 107 members in the 150-member body. The Assembly will have 20 new members (18 Democrats and 2 Republicans).

II. 2020 LEGISLATIVE SESSION UPDATE

Legislative Leaders, Senate Majority Leader Andrea Stewart-Cousins (D) and Assembly Speaker Carl Heastie (D), announced they are open to returning to session virtually before the end of the year to take up legislation to raise taxes and revenue. If they do return, the agenda would be extremely limited and agreed upon in advance. Governor Cuomo continues to maintain the State should wait to see if Congress and President Trump or the new incoming administration reaches an agreement to provide federal aid to state and local governments. As it stands, New York is facing a \$15 billion deficit. We will continue to monitor developments and report in real-time.

Session Statistics: For those who keep track of such things: Since January 1, 2019, the start of the 2-year term of the Legislature through Tuesday, October 20, 2020, 19,711 bills were introduced. Since January 1, 2020 through December 15, 2020, the Senate passed 796 bills, while the Assembly passed 581 bills. Of the 413 bills that passed both houses this year (to date): 320 have been signed into law, 22 have been vetoed, 63 are on the Governor's desk, and 9 have not yet been delivered to the Governor. As a comparison, taking into account the same time period, 935 bills passed both houses in 2019 compared to 641 in 2018, 606 in 2017, 618 in 2016, 718 bills in 2015, 658 in 2014, and 650 in 2013. The number of bills that passed both houses to date currently in 2020 is a historic low owing to the disruption of the Legislative Session by COVID-19.

III. STATUS UPDATE ON BILLS THAT PASSED BOTH HOUSES & ACTED ON BY GOVERNOR CUOMO SINCE AREA II MEETING

- **A8337-B (WALKER)/S6437-A (SEPULVEDA)** – Amends the Mental Hygiene Law and Public Health Law to authorize the NYC Board of Correction to access medical and psychiatric records of deceased inmates, which is similar to the authorization provided to the New York State Commission of Correction. *Governor Cuomo signed the bill into law, on December 2, 2020, as Chapter 312 of the Laws of 2020, with an approval message indicating an agreement has been reached with the Legislature to pass a chapter amendment. The chapter amendment will resolve a drafting/technical issue with bill to assure the Board's authority in statute is distinct from the New York State Commission of Correction.*
- **A9097 (GOTTFRIED)/S7524 (RIVERA)** – Requires the commissioner of health to appoint a work group to conduct a thorough review of the accessibility and fairness of the New York State Grant Gateway for individual applicants for

funds under the physician loan repayment and physician practice support programs. The work would consist of individuals recommended by associations representing physicians, general hospitals and other health care facilities, with the review to be completed by March 31, 2021. *The bill was delivered to Governor Cuomo on December 3, 2020.*

- **A10629-A (GUNTHER)/S8608-A (CARLUCCI)** – The bill would establish the Frontline Workers Trauma Informed Care Advisory Council within the OMH, consisting of certain commissioners or designees and twenty-one members, to assure the trauma-related behavioral health needs of essential workers during COVID-19 are addressed. This is an effort championed by among others the Mental Health Association in NYS. The advisory committee would be tasked with preparing and issuing a report with recommendations to the Legislature. *Governor Cuomo signed the bill into law on November 27, 2020 with an approval message indicating an agreement has been reached with the Legislature to pass a chapter amendment. According to the approval message the chapter amendment will address "... technical issues with the bill as written, including an unattainable timeframe for a final report to be given to the Legislature by December 1, 2020."*

IV. BILLS ON GOVERNOR'S DESK

Thirty-three bills were delivered to Governor Cuomo on Friday, December 11, 2020. Among the bills delivered:

- **A5240-A (O'DONNELL)/S6479-A (SALAZAR)** – Bill would require all publically accessible bathrooms, including those in public and private schools, restaurants, bars, mercantile establishments, factories or state-owned or operated buildings, to designate all single occupancy bathrooms as gender neutral. ***ACTION REQUESTED: Frank Dowling, M.D. previously inquired if NYSPA would submit a letter in support of the bill when it reached the Governor's desk. MSSNY has indicated it will not be commenting on the bill as it does not have an established policy position on the issue.***
- **A10500-C (GOTTFRIED)/S8450-C (RIVERA)** – Requires all contact tracing information be kept confidential and may not be disclosed except as necessary to carry out contact tracing.

V. BILL AUTHORIZING PHARMACISTS TO ADMINISTER INJECTABLES FOR MH/SUD AMENDED

The Assembly bill (A3830-A, McDonald), which would authorize pharmacists to administer injectable medications used in the care and treatment of mental health and substance use disorders pursuant to a prescription or order by provider authorized under Title VIII of State Education Law, was amended on December 4, 2020. The amended bill includes a number of changes addressing concerns NYSPA has raised and had with the bill in terms of additional communication with the prescriber, reassessment by prescriber and additional training for the pharmacist. Summary of changes:

- Regulations promulgated by Commissioner of State Education Department in consultation with Commissioner of Department of Health, Board of Pharmacy any other state agency as necessary.
- Prescription may be subject to reassessment at appropriate intervals, as determined by the licensed prescriber.
- Training accredited by Accreditation Council for Pharmacy Education or a similar authority or professional body that is satisfactory to the Commissioner of State Education Department and Department of Health. Training shall include but not be limited to "learning modules on techniques for administration by injections, indications, precautions, and contraindications in the use of agent or agents; record keeping and information; and handling emergencies, including anaphylaxis, needle-sticks and cardiopulmonary resuscitation."
- Maintaining continued competency regarding populations served and medications administered.
- Pre-administration patient consent and education.
- Patient privacy during administration of medication.
- Pharmacist record keeping and reporting of such administration by electronic transmission or facsimile to the patient's licensed prescriber, and, "to the extent practicable, make himself or herself available to discuss the outcome of such injection, including any adverse reactions, with the licensed prescriber."

The Senate bill (S.4848), sponsored by Senator Breslin, has not yet been amended. The bill remains in the Assembly Higher Education Committee, while the original Senate bill remains in the Senate Higher Education Committee.

VI. NYSPA VMH-PCTI

NYSPA's VMH-PCTI continues to be hard at work with planning and conducting virtual presentations.

Most recently, NYSPA partnered with MSSNY and NASW-NYS to host the virtual Veterans Mental Health Training Initiative Conference on Saturday, December 5, 2020, entitled, "The Veteran Experience in the Era of the COVID-19 Pandemic: Challenges & Successes," which was attended by over 100 including primary care specialists and community mental health professionals. The three hour program featured a keynote address from Joe Geraci, PhD, LMHC, Retired US Army Lieutenant Colonel, and two panel discussions comprised of expert panelists from each organization including Marianne Goodman, M.D., and Gretchen Foley, MD for NYSPA. We were pleased to host our partners from the Legislature including Senator David Carlucci, Chair of Senate Mental Health Committee, Senator John Brooks, Chair of Senate Veterans Committee, and Assemblymember Aileen Gunther, Chair of Assembly Mental Health Committee, who took part in the panel discussions. We wish to thank NYSPA President, Jeffrey Borenstein, MD, for joining to offer opening remarks alongside MSSNY's President, Bonnie Litvack, MD, and NASW-NYS Executive Director Samantha Fletcher, PhD, MSW.

In addition, NYSPA is in the midst of finalizing the recording of Dr. Geraci's military culture presentation (The Clinical Importance of Understanding Military Culture), which will be housed on the NYSPA website. NYSPA is working to schedule the recording of its women veterans' issues by the end of January 2021.

In 2021, NYSPA expects to host a robust number of virtual presentations of the VMH-PCTI tracks and resume in-person trainings when permissible once again in compliance with federal and state COVID-19 rules.

VII. COVID-19 Updates

As New York faces a surge in the number of cases as do many other states, Governor Cuomo announced he would begin holding briefings three times a week on Mondays, Wednesdays and Fridays. We will continue to monitor the briefings and provide summaries on a timely basis. New York is focused on three operations: (1) managing hospital capacity; (2) slowing the spread; and (3) distribution and administration of the COVID-19 vaccine.

On the vaccine front, New York is focused on three areas: Public Education, Outreach to all communities and Rapid distribution. The update from Governor Cuomo's briefing on Monday, December 14, 2020:

- 170,000 Pfizer doses
- 346,000 Moderna doses
- 90 distribution sites
- Phase I: High-risk hospital workers (Emergency room workers, ICU staff, pulmonary department staff), nursing home residents, nursing home staff followed by all long-term and congregate care residents and staff, EMS and other health care workers
- Phase II: Essential workers and members of the general population who are at highest risk
- NY expected to administer 10,000 vaccinations yesterday! (Governor Cuomo noted he believes the first person to be vaccinated in the U.S. was Sandra Lindsay, a critical care nurse and director of critical care services at one of Northwell's hospitals.)

In addition, Emergency Executive Order 202.82 issued on Sunday, December 13, 2020, provides for distribution and administration of COVID-19 vaccine. The order authorizes certain health care professionals otherwise licensed or certified in NYS (not otherwise permitted to administer vaccinations) to vaccinate for COVID-19 only under the extremely limited circumstances described in and for the duration of this Order and under supervision at points of distribution sites. This Executive Order includes among others pharmacists, EMTs, midwives, dentists, dental hygienists, and podiatrists. Text of Executive Order (attached): <https://www.governor.ny.gov/news/no-20282-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

New York's vaccine administration program, as drafted, can be accessed at:
https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_COVID_Vaccination_Program_Book_10.16.20_FIN_AL.pdf.

Federal Nursing Home Program with CVS & Walgreens

- NYS has opted into the federal program where CVS & Walgreens employees will vaccinate nursing home residents and their staff in the facilities, much like they do for the flu vaccine.
- Expect delivery for this program to begin arriving next week and the federal administration program to begin by 12/21.
- NYS is dedicating part of our initial allocation to this program, which NYS expects will be enough to cover all nursing home residents.
- NY will use part of the future allocations to ensure enough doses distributed to complete the program, including vaccination of all nursing home staff and residents.

COVID-19 Regulatory Updates

- DFS published notice on its website it will extend the emergency regulations waiving cost sharing for in-network telehealth services and COVID-19 testing for an additional 60 days through January 8, 2021.
- DFS is extending its emergency regulation requiring NY health insurers to waive out-of-pocket costs, including cost-sharing, deductibles, copays and coinsurance, for in-network mental health services for New York's frontline essential workers until January 26, 2021.

VIII. OTHER REGULATORY ISSUES

A. Revised Proposed Rule -- Behavior Health Services for Kids in Foster Kids in Congregate Facilities, Elimination of Room Isolation and Operation De-escalation Rooms with a 45 day public comment period expiring on January 2, 2021. The revised proposed rule (text attached) states in part, "Room isolation, mechanical restraints, and pharmacological restraints may never be used as a form of restraint for a child in foster care." NYSPA has forwarded to the revised proposed rule to Lenore Engel, MD, as chair of NYSPA's Child & Adolescent and will work with NYSPA's Executive Director and Deputy Director to prepare comments indicating a psychotropic medication prescribed to treat a diagnosed mental illness in a manner consistent with generally accepted practice does not constitute a pharmacologic restraint.

IX. TELEHEALTH (ENCLOSED)

NYSPA signed onto a letter with MSSNY and other medical specialty societies sent to Governor Cuomo and the Legislature outlining key guiding principles needed to reform the delivery of telehealth in the state including permitting audio-only and payment parity with in-office visits.

X. OMH TOWNHALL

OMH, led by Commissioner Ann Marie Sullivan, MD, held a virtual two-hour town hall on Tuesday, December 8, 2020. The 88-page slide presentation and recording are available at: <https://omh.ny.gov/omhweb/planning/507/>.

On the OMH "Winter Plan" to address COVID-19 surge, "OMH is working with DOH to ensure access and availability of the COVID-19 vaccine to priority populations, including those served and employed by OMH operated and regulated programs."

OMH outlined action areas for going forward:

- Suicide Prevention in a Global Pandemic
- Project Hope: Helpline, Crisis Counseling and wellness prevention of long term mental health problems due to COVID
- Training for Providers on Trauma, PTSD, complicated grief, etc.
- Reducing Disparities in Mental Health Conditions, Access, and Outcomes -- OMH announced it is developing a dashboard to compare disparities among individuals of different races, ethnicities, genders and sexual orientations.
- Children's Mental Health and the Impact of COVID-19
- Supporting Telemental Health in New York State
- Building New York's Crisis System of the Future

On OMH telemental health flexibility during COVID-19, OMH provided several updates. In terms of the numbers, telehealth claims from licensed OMH clinics increased from less than 1% in January, to 35% of claims in March 2020 to 90% of claims in April 2020. OMH Consumer Survey of 6,004 clients indicates: 85.6% found telehealth/telephonic easy and effective; and, 86.7% felt they were receiving enough support. In addition, OMH outlined a series of telehealth modernization concepts it is studying, which were outlined as follows:

- "Expand to include use of telemental health services for Article 9/Involuntary admissions.

- Following potential NYS Department of Health rulemaking. Expand the definition of telemental health to now include audio-only as an acceptable option when determined appropriate by the clinician and in accordance with OMH regulations.
- Expand the definition of Telemental Health Practitioner to mean a prescribing professional eligible to prescribe medications pursuant to federal regulations or staff approved by the Office, who are providing behavioral health services consistent with their scope of practice and as authorized pursuant to this Title and in accordance with guidance issued by the Office. Specified that practitioners must possess a current, valid license, permit or limited practice in New York State or has been designated or approved by the Office to provide telemental health. This will now allow for additional individuals to be eligible to deliver telemental health services.
- Remove the requirement that Mental Health Practitioners must deliver services from a site located within the State of New York. All Telemental Health Practitioners may now deliver services from anywhere within the United States.
- Remove PROS and ACT specific language from regulations. Program specific language will be in guidance.
- Remove the requirement of an in person initial assessment prior to the delivery of services via telemental health."

The Emotional Support Helpline initially launched at the direction of Governor Cuomo in response to the mental health needs of New Yorkers during the COVID-19 pandemic has now transitioned into NY Project Hope, which received \$106 million grant from FEMA. NY Project Hope is staffed by crisis counselors and has taken 37,000 calls since March 2020.

XI. OTHER NEWS

A. Board of Regents – On Monday, December 14, 2020, The Professional Practice Committee and Board of Regents voted to approve a resolution calling on the Federation of State Medical Board to support and advocate for change to the medical education curricula at accredited medical schools to formally integrate the care, treatment and management of patients with intellectual and developmental disabilities (IDD). The memo attached to the resolution states in part, "The resolution proposed for adoption by the Board of Regents would be presented to the FSMB for consideration and approval at their 2021 House of Delegates meeting, to be held from April 29 to May 1, 2021. As the preeminent national voice of the state and territorial medical boards, the FSMB has considerable influence with the LCME, the COCA, the Association of American Medical Colleges and the American Association of Colleges of Osteopathic Medicine and other influential organizations in the national House of Medicine." Adding this to the medical education curricula would result "...in a systemic and profound positive change for health care for persons with IDD." **Resolution:** <https://www.regents.nysed.gov/common/regents/files/1220ppcal.pdf> "NYS Office of Mental Health issues RFP to continue work of Project Teach" December 4, 2020

B. NYS Office of Mental Health issued an RFP to continue Project Teach, which provides primary care physicians caring for pediatric patients with mild-to-moderate mental health conditions with access to consultations with child and adolescent psychiatrists, education and training as well as referral resources. The RFP includes an expansion of Project Teach to include maternal mental health and provide maternal health professionals with access to consultation, training and assistance with referral and linkage around maternal health issues. The RFP provides for an award of up to \$17 million for a five-year contract beginning July 1, 2021 with OMH anticipating announcing the award by February 5, 2021. **Additional details at:** <https://www.wnypapers.com/news/article/current/2020/12/04/144395/nys-office-of-mental-health-issues-rfp-to-continue-work-of-project-teach>

XII. 2021 LEGISLATIVE SESSION UPDATE

As we prepare this memo, Senate Democrats and Assembly Democrats have gathered with their respective conferences to discuss budget issues as well as priorities for the coming 2021 Legislative Session, which officially commences on Wednesday, January 6, 2021. There are 60 scheduled session days, which are expected to be held virtually for the foreseeable future. The most pressing issue will be the state's budget and options for raising revenue amid a myriad of issues. Since it's the start of a new legislative term, bills will have to be re-introduced and assigned new numbers. We are also awaiting announcement of Senate and Assembly committee chairs as retirements and turnover have created some vacant chairmanships in both houses.

From Washington to Albany:

2020 Election Results

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The COVID-19 pandemic has impacted every facet of life, including the 2020 elections nationally and on the state level as many opted to vote early or by mail to avoid the risk of voting in person on Election Day. New York saw approximately 2.5 million people vote in person during the state's nine-day early voting period. Overall, nearly 2 million New Yorkers voted by absentee ballots, accounting for more than 20 percent of total 5.2 million votes cast. While many races had a clear victor, it took more than a month after Election Day for the elections to be certified in New York State, which confirms Senate Democrats and Assembly Democrats will have veto-proof majorities in the coming Legislative Session. The impact of this dynamic remains to be seen as Governor Cuomo and Legislature confront a multi-billion dollar budget deficit in the current year and a wave of new COVID-19 cases across the State threatening to overwhelm hospitals and health care system at large. Governor Cuomo and lawmakers are gearing up for a 2021 session that will occur on a virtual basis as the Capitol remains closed without any indication of reopening anytime soon.

There will be more to say in the days ahead but we are pleased to update our preliminary election results report with the final results.

President

Vice President Joe Biden and Senator Kamala Harris won New York with 5,230,985 votes to President Trump's 3,244,798. Overall, Vice President Joe Biden won more than 80 million votes in the popular vote and 306 votes in the Electoral College. States across the nation are now working to certify their final tallies. They must do so by December 8th to lock in their Electors. Such Electors, which are proportionally representative to the number of congressional and senate seats in a state, will then cast their votes, in most cases, for the candidate who won the most votes in the state by December 14th. In any other presidential election year, the electors would travel to Albany to cast their vote, however, Governor Cuomo and Melissa DeRosa, Secretary to the Governor, have indicated they are studying the process and coming up with contingency plan given the rising number of COVID-19 cases and the continued closure of the Capitol to the public.

Congressional Results

Republicans flipped one Congressional seat this cycle as Democrats battled to retain control of the U.S. House of Representatives. As of December 7, 2020, there is only one congressional race in New York that has not been decided in the 22nd Congressional district, which is now tied up in court (See below).

1st Congressional District (Suffolk County) – ***Republicans Maintain*** – Incumbent U.S. Representative Lee Zeldin (R) held onto his seat by a comfortable margin over Democratic challenger Nancy Goroff.

2nd Congressional District (open seat; Nassau/Suffolk) – ***Republicans Maintain*** – Republican Andrew Garbarino has been declared the victor over his Democratic challenger Jackie Gordon.

3rd Congressional District (Nassau/Suffolk/Queens) – Democrat U.S. Representative Tom Suozzi has overcome a 4,000 vote Election Day deficit to secure a third term in Washington against Republican challenger George Santos.

11th Congressional District (Staten Island & South Brooklyn) – ***Republicans Flip*** – Incumbent U.S. Representative Max Rose (D) conceded his seat to Republican challenger Nicole Malliotakis (R).

18th Congressional District (Hudson Valley) – ***Democrats Maintain*** – Incumbent U.S. Representative Sean Patrick Maloney (D) leads his Republican challenger Chele Farely with 51.4 percent of the vote. Absentee ballots were accepted until November 10th and still being counted.

19th Congressional District (Upper Hudson Valley/Catskills) – ***Democrats Maintain*** – Incumbent U.S. Representative Antonio Delgado appears to have held his seat for a second term as he leads his Republican challenger, Kyle Van Water, by over 16,000 votes.

22nd Congressional District (Oneida, Herkimer, Cortlandt & Madison) – ***Undecided, in court*** – The race was 2018 rematch as U.S. Representative Anthony Brindisi (D) vied to keep the seat he won from his Republican challenger Claudia Tenney. The vote tally has gone back and forth since election night and is now in the midst of a fierce court battle that will decide the size of the majority of Democrats in the U.S. House of Representatives. The latest court ruling in the race by NYS Supreme Court Justice Scott DelConte orders the eight counties comprising the congressional district “to fix their canvassing errors and when impossible, to recanvass those ballots” according to WBNG reporter Josh Rosenblatt. WBNG reporter Josh Rosenblatt’s add this means there are 1,700 ballots not counted the first time that will be counted, while the Judge denied a motion by Tenney to be certified as the winner by 12 votes. Stay tuned for further updates. You can monitor the reporter’s updates at:

<https://twitter.com/JRosenblattTV>.

24th Congressional District (Cayuga, Onondaga, Oswego, Wayne) – ***Republicans Maintain*** – Incumbent U.S. Representative John Katko (R) has fended off his 2018 Democratic challenger, Dana Balter.

Senate Results

Senate Democrats headed into the 2020 election cycle with control of 40 of the 63 seats in the chamber with an eye toward picking up two more seats to obtain a veto proof majority. Sixteen Senators ran unopposed (see listing below). Given the record number of votes cast by mail, calling many races based on Election Day tallies proved impossible. The election night tallies had many Republican challengers leading which evaporated after the counting of the absentee ballots and certification of the results on December 3, 2020. The Senate Democratic Conference will consist of the 43 members in the 63 member body with Senate Republicans consisting of a delegation of 20. Senate Majority Leader Andrea Stewart-Cousins (D-Yonkers) has been elected to serve as Majority Leader and Temporary President once again. Senator Rob Ortt (R-North Tonawanda) has been elected to serve as Minority Leader. Senate committee assignments have not yet been announced, but we will continue to monitor and provide an update in real-time.

Here are the results of the key races that ultimately decided control of the chamber:

- **3rd Senate District (Suffolk) – *Republicans flip*** – Republican challenger Alexis Weik defeated freshman incumbent Senator Monica Martinez (D) by more than 5,000 votes.
- **5th Senate District (Nassau/Suffolk) – *Democrats Maintain*** – Freshman incumbent Senator James Gaughran (D) trailed his Republican challenger, Ed Smyth, on election night by 13,844 votes. However, after counting all of the absentee ballots, Senator Gaughran secured a second term, finishing with 84,374 votes to Smyth's 81,239.
- **6th Senate District (Nassau) – *Democrats Maintain*** – Although Freshman incumbent Senator Kevin Thomas (D) trailed his Republican challenger Dennis Dunne on election night, the counting of absentee ballots has Senator Thomas over the top receiving 76,588 votes to Dunne's 73,630.
- **22nd Senate District (Kings) – *Democrats Maintain*** – While Freshman incumbent Senator Andrew Gounardes (D) trailed his Republican challenger, Vito Bruno, on election night by more than 5,000 votes, the counting of absentee ballots resulted in Senator Gounardes securing a second term with 51,565 votes to Bruno's 47,830.
- **38th Senate District (open seat; Rockland/Westchester) – *Democrats Maintain*** – Although the Republican challenger William Weber led in the vote count on Election night, Democrat Elijah Reichlin-Melnick prevailed with 70,809 votes to Weber's 60,955 after counting of the absentee ballots.
- **40th Senate District (Westchester/Dutchess) – *Democrats Maintain*** – Freshman incumbent Senator Pete Harckham (D) trailed Republican Rob Astorino, former Westchester County Executive and 2014 Republican nominee for Governor, by about 7,400 votes on Election night, however that lead did not stand after the counting of the absentee ballots with Senator Harckham receiving 83,817 votes to Astorino's 77,688.
- **42nd Senate District (Delaware, Orange, Sullivan, Ulster) – *Republicans Flip*** – Freshman incumbent Senator Jen Metzger (D) was down by approximately 8,000 votes against Republican Mike Martucci with 20,000 absentee ballots to be counted. Republican Mike Martucci prevailed with 67,745 votes to Metzger's 66,376, a difference of 1,369 votes.
- **46th Senate District (open seat; Albany, Greene, Montgomery, Schenectady, Ulster) – *Democrats Flip*** – Democrat Michelle Hinchey (D) trailed Republican Richard Amedure by 5,800 votes on Election night, however, the counting of the absentee ballots put Hinchey over the top with 78,102 votes to Amedure's 75,034.
- **50th Senate District (open seat; Cayuga, Onondaga) – *Democrats Flip*** – In one of the picks up the cycle upstate for Democrats who have not held this seat in decades, Democrat John Mannion defeated squared Republican Angi Renna with 82,955 votes to Renna's 74,873.
- **51st Senate District (open seat; Cayuga, Chenango, Cortland, Delaware, Herkimer, Otsego, Schoharie, Tompkins, Ulster) – *Republicans Maintain*** – Republican Peter Oberacker, a business owner and Otsego County Legislator, prevailed over Democrat Jim Barber with 72,997 votes to Barber's 58,685.
- **53rd Senate District (Madison, Oneida, Onondaga) – *Democrats Maintain*** – Although Freshman incumbent Senator Rachel May (D) ended election night with only 136 vote lead over her Republican challenger Sam Rogers, the counting of absentee ballots put her over the top as she finished with 66,643 votes to Rogers' 53,734.
- **55th Senate District (open seat; Monroe/Ontario) – *Democrats Flip*** – In the second pick up of the cycle upstate for Senate Democrats, Democrat Samra Brouk prevailed over her Republican challenger Christopher Missick with 90,435 to Missick's 67,122.
- **56th Senate District (open seat; Monroe) – *Democrats Flip*** – In the third pick up of the cycle upstate for Senate Democrats, Democrat Jeremy Cooney's small lead on election night grew with the counting of absentee ballots finishing with 69,951 votes to Republican challenger's 55,355.
- **60th Senate District (open seat; Erie) – *Democrats Flip*** – Democrats have flipped this seat as Democrat Sean Ryan defeated Republican challenger Republican Joshua Mertzluft with 91,008 votes to Mertzluft's 58,817.
- **61st Senate District (open seat; Erie, Genesee, Monroe) – *Republicans Maintain*** – Republican Ed Rath defeated Democrat Jacqui Berger with 79,454 votes to Berger's 68,224 votes.

District where candidates ran unopposed (16): 8th – Sen. Brooks; 10th – Sen. Sanders; 12th – Sen. Gianaris; 14th – Sen. Comrie; 16th – Sen. Stavisky; 17th – Sen. Felder; 19th – Sen. Persaud; 21st – Sen. Parker; 24th – Sen. Lanza; 25th Jabari Brisport; 27th – Sen. Hoylman; 35th Sen. Majority Leader Stewart-Cousins; 47th Sen. Griffo; 48th – Sen. Ritchie; 62 – Sen. Ortt; and, 63rd – Sen. Kennedy.

The results of the 2020 elections will bring 13 new Senators to the Senate as follows:

- Anthony Palumbo (REP, CON), Senate District 1 (Suffolk County)
(formerly held by Sen. LaValle)
- Mario Mattera (REP, CON, IND, Safe Neighborhoods), Senate District 2 (Suffolk County)
(formerly held by Sen. Flanagan)
- Alexis Weik (REP, CON), Senate District 3 (Suffolk County)
(formerly held by Sen. Martinez)
- Jabari Brisport (DEM, WOR), Senate District 25 (Kings County)
(formerly held by Sen. Montgomery)
- Elijah Reichlin-Melnick (DEM, WOR), Senate District 38 (Rockland & Westchester Counties)
(formerly held by Sen. Carlucci)
- Dan Stec (REP, CON, IND), Senate District 45 (Clinton, Essex, Franklin,
St. Lawrence, Warren & Washington Counties)
(formerly held by Sen. Little)
- Michelle Hinchey (DEM, WOR), Senate District 46 (Albany, Greene, Montgomery, Schenectady, & Ulster
Counties)
(formerly held by Sen. Amedore)
- John Mannion (DEM, WOR), Senate District 50 (Cayuga & Onondaga Counties)
(formerly held by Sen. Antonnaci)
- Peter Oberacker (REP, CON, IND), Senate District 51
(Cayuga, Chenango, Cortland, Delaware, Herkimer, Otsego, Schoharie, Tompkins & Ulster Counties)
(formerly held by Sen. Seward)
- Samra Brouk (DEM, WOR), Senate District 55 (Monroe & Ontario Counties)
(formerly held by Sen. Funke)
- Jeremy Cooney (DEM, WOR), Senate District 56 (Monroe County)
(formerly held by Sen. Robach)
- Sean Ryan (DEM, WOR, IND), Senate District 60 (Erie County)
(formerly held by Sen. Jacobs)
- Edward Rath (REP, CON, IND, SAM), Senate District 61 (Erie, Genesee & Monroe Counties)
(formerly held by Sen. Ranzenhofer)

A profile of these new Senators will be sent out in January.

Assembly Results

While election night deficits had many Assembly Democrats trailing their Republican challengers, the counting of the absentee ballots reversed the election night trend in most races. The Assembly will consist of twenty new members. After certification of all of the race results, Assembly Democrats will head into 2021 with another supermajority with 107 members in the 150-member body. The Assembly Republican conference will consist of 43 members. Assembly Speaker Heastie has been elected to serve as Assembly Speaker, while Assembly Minority Leader William Barclay has been re-elected to serve as Minority Leader. Assembly committee assignments have not yet been announced, but we will continue to monitor and provide an update in real-time.

Here is an update on the final outcome of races that were undecided on election night:

- **4th Assembly District (Suffolk) – Democrats Maintain** – While Assemblymember Steve Englebright (D) trailed his Republican Michael Ross by 5% on Election night, the longtime incumbent finished with 33,610 votes to Ross 26,913.

- **10th Assembly District (Suffolk) – Democrats Maintain** – While Assemblymember Steve Stern (D) is trailed Republican Jamie Silvestri on election night by a slight margin, the finally tally put the incumbent over with 36,983 votes to Silvestri's 28,609.
- **16th Assembly District (open seat; Nassau) – Democrats Maintain** – While Republican Ragini Srivastava led Democrat Gina Sillitti on election night by over 4,000 votes, Democrat Gina Sillitti pulled ahead finishing with 35,455 votes to Srivastava's 30,263.
- **21st Assembly District (Nassau) – Democrats Maintain** – While freshman Assemblymember Judy Griffin (D) appeared headed for defeat on election night to Republican Patricia Canzoneri-Fitzpatrick, the counting of absentee ballots put the incumbent over the top with 36,373 votes to Canzoneri-Fitzpatrick's 31,656.
- **26th Assembly District (Queens) – Democrats Maintain** – Assemblymember Ed Braunstein (D) trailed his Republican challenger John-Alexander Sakelos on election night, but overcame the deficit to finish with the counting of the absentee ballots finishing with 28,683 votes to Sakelos' 23,603.
- **46th Assembly District (Kings) – Democrats Maintain** – Assemblymember Mathylde Frontus (D) trailed Republican Mark Szuszkiewicz but after counting of the absentee ballots secured a second term by edging out her challenger by 838 votes, 21,993 votes to Szuszkiewicz's 21,155.
- **63rd Assembly District (Richmond) – Democrats Maintain** – Although Assemblymember Mike Cusick (D) trailed Republican Anthony DeGuerre on election night the counting of absentee ballot put the incumbent over the top finishing with 28,776 votes to DeGuerre's 25,740.
- **97th Assembly District (Rockland) – Republicans flip** -- Republican Michael Lawler defeated longtime incumbent Assemblymember Ellen Jaffee (D), finishing with 29,936 votes to Jaffee's 27,359.
- **127th Assembly District (Onondaga) – Democrats Maintain** -- Longtime Assemblymember Al Stirpe (D) is trailing Republican Mark Venesky on election night 51% to 49%, however, prevailed after counting of the absentee ballots finishing with 42,183 votes to Venesky's 35,090.
- **135th Assembly District (Monroe) – Democrat Flip** – Longtime Assemblymember Mark Johns (R) was defeated by Democratic challenger Jen Lunsford who finished with 41,564 to Johns' 40,833, a 731 vote difference.
- **143rd Assembly District (Erie) – Democrats Maintain** – Assemblymember Monica Piga Wallace (D) overcame an election night deficit to defeat Republican Frank Smierciak finishing with 35,201 votes to Smierciak's 31,895.
- **146th Assembly District (Erie/Niagara) – Democrats Maintain** – Assemblymember Karen McMahon (D) overcame an election night deficit to defeat Republican Robin Wolfgang finishing with 38,085 votes to Wolfgang's 30,143.

District where candidates ran unopposed (47): 24th – Asm. Weprin; 25th – Asm. Rozic; 27th – Asm. Rosenthal, D; 29th – Asm. Hyndman; 30th – Asm. Barnwell; 32nd – Asm. Cook; 33rd – Asm. Vanel; 36th -- Zohran Kwame Mamdani; 37th – Asm. Nolan; 39th – Asm. Cruz; 42nd – Asm. Bichotte; 45th – Asm. Cymbrowitz; 48th – Asm. Eichenstein; 49th – Asm. Abbate; 50th – Emily Gallagher; 51st – Marcela Mitaynes; 52nd – Asm. Simon; 53rd – Asm. Davila; 56th – Stefani Zinerman; 58th – Asm. Perry; 59th – Asm. Williams; 60th – Asm. Barron; 62 – Asm. Reilly; 65th – Asm. Niou; 67th – Asm. Rosenthal, L.; 69th – Asm. O'Donnell; 71st – Asm. Taylor; 72nd – Asm. De La Rosa; 74th – Asm. Epstein; 75th – Asm. Gottfried; 88th – Asm. Paulin; 89th – Asm. Pretlow; 90th – Asm. Sayegh; 91st – Asm. Otis; 92nd – Asm. Abinanti; 96th – Asm. Zebrowski; 98th – Asm. Brabenec; 100th – Asm. Gunther; 115th – Asm. Billy Jones; 117th – Asm. Blankenbush; 118th – Asm. Smullen; 123rd – Asm. Lupardo; 132nd – Asm. Palmesano; 137th – Demond Meeks; 144th – Asm. Norris; 145th – Asm. Morinello; and 147th – Asm. DiPietro.

The results of the 2020 elections will bring 20 new Assemblymembers to the Assembly as follows:

- Jodi Giglio (REP, CON, IND), Assembly District 2 (Suffolk County) (formerly held by Asm. Palumbo who was elected to Senate)
- Gina Sillitti (DEM, WOR), Assembly District 16 (Nassau County) (formerly held by Asm. D'Urso)
- Khaleel Anderson (DEM, WOR), Assembly District 31 (Queens County) (formerly held by Asm. Titus)
- Jessica Gonzalez-Rojas (DEM, WOR), Assembly District 34 (Queens County) (formerly held by Asm. DenDekker)
- Zohran Kwame Mamdani (DEM), Assembly District 36 (Queens County)

- (formerly held by Asm. Simotas)
- Jenifer Kajkumar (DEM), Assembly District 38 (Queens County)
(formerly held by Asm. Miller)
- Emily Gallagher (DEM), Assembly District 50 (Kings County)
(formerly held by Asm. Lentol)
- Marcela Mitaynes (DEM, WOR), Assembly District 51 (Kings County)
(formerly held by Asm. Ortiz)
- Stefani Zinerman (DEM), Assembly District 56 (Kings County)
(formerly held by Asm. Wright)
- Phara Souffrant Forrest (DEM), Assembly District 57 (Kings County)
(formerly held by Asm. Mosley)
- Chantel Jackson (DEM), Assembly District 79 (Bronx County)
(formerly held by Asm. Blake)
- Amanda Septimo (DEM), Assembly District 84 (Bronx County)
(formerly held by Asm. Arroyo)
- Kenneth Burgos (DEM), Assembly District 85 (Bronx County)
(formerly held by Asm. Crespo)
- Chris Burdick (DEM, WOR, IND), Assembly District 93 (Westchester County)
(formerly held by Asm. Buchwald)
- Michael V. Lawler (REP, CON, IND, SAM), Assembly District 97 (Rockland County)
(formerly held by Asm. Jaffee)
- Anna Kelles (DEM, WOR), Assembly District 125 (Cortland & Tompkins Counties)
(formerly held by Asm. Lifton)
- Sarah Clark (DEM, WOR), Assembly District 136 (Monroe County)
(formerly held by Asm. Johns)
- Demond Meeks (DEM, WOR), Assembly District 137 (Monroe County)
(formerly held by Asm. Gantt)
- William Conrad (DEM, WOR, IND), Assembly District 140 (Erie & Niagara Counties)
(formerly held by Asm. Schimminger)
- Jonathan Rivera (DEM, WOR, IND), Assembly District 149 (Erie County)
(formerly held by Asm. Ryan who was elected to Senate)

A profile of these new Assemblymembers will be sent out in January.

Resources/Links

NYS Board of Elections – Certified Election Results:
<https://www.elections.ny.gov/2020ElectionResults.html>

American College of Obstetricians and Gynecologists (ACOG), District II
Medical Society of the State of New York
New York Chapter American College of Physicians
New York State Academy of Family Physicians
New York State American Academy of Pediatrics, Chapters 1, 2 & 3
New York State Chapter American College of Cardiology
New York State Neurological Society (NYSNS)
New York State Ophthalmological Society
New York State Psychiatric Association
New York State Radiologic Society
New York State Society of Anesthesiologists, Inc.
New York State Society of Orthopaedic Surgeons, Inc.
New York State Society of Otolaryngology – Head and Neck Surgery
New York State Society of Plastic Surgery, Inc.
The New York Occupational and Environmental Medical Association (NYOEMA)

As the leading physician organizations in the state, we write to underscore the need for more robust telehealth policies in the wake of the COVID-19 pandemic. The pandemic put into sharp focus the shortcomings within our health system, emphasized the continued disparities in access to care and health outcomes, and exposed the limitations of current telehealth policies. Swift action is needed to ensure telehealth services are available to all New Yorkers who need it, based on a physician directive and shared patient/physician decision making, and is reimbursed at a level that ensures physicians can sustain the practice in the long-term.

The first wave of the COVID-19 pandemic forced many health care practices to operationalize telemedicine in a way that had not previously been done to meet patient care needs safely. The Department of Financial Services (DFS) and the Department of Health (DOH) instituted very important emergency rules that offered more flexible policies to ensure patients could access telehealth services. As we enter into a new surge of COVID-19 infections across the state, and importantly, a new paradigm in providing patient-centered care, these policies must be made permanent to ensure patient access to services in the future and that we continue to have a robust physician workforce able to meet the demand in their communities.

To better guide discussions on telehealth policy recommendations, we have collaborated to outline key guiding principles needed to reform the delivery of telehealth in the state:

1. Payment Parity to Facilitate Equitable Access

a. Reimburse telehealth services equal to office visits

In order to more fully ensure that physicians and other healthcare providers can meet patient demand and institute operational requirements necessary to integrate telehealth into their practices, it is important that care delivered via telehealth is valued and reimbursed equal to in-person office visits. Many other states have required this. Misconceptions about the delivery of telehealth suggest that this care is not as robust or effective as in-person visits. In fact, patients report a high level of satisfaction with the

care delivered via telehealth, and often achieve more thorough visits and face time with their physician via telehealth.^{1,2,3}

The use of telehealth in physician offices also does not obviate the need for brick and mortar operations for most providers. The overwhelming majority of practices will need to have systems in place to provide both telehealth and in-person visits. In order to support the ability of practices to continue to deliver the highest level of evidence-based care for both services, it is necessary for the care to be reimbursed equally.

For all practical purposes, reimbursing physician practices at a substantially lower rate than traditional office visits, may very well put telehealth services out of reach for countless patients. Unfortunately, this will negatively impact communities that often benefit most from the flexibility of telehealth including low income patients, and those with transportation or child care challenges.

b. Require Payment Parity Across All Payers

In order to achieve true equity in health care access, New York must require that payment parity is also ensured in Medicaid Fee for Service and Medicaid Managed Care. Without this parity across all systems, Medicaid providers may not have the financial abilities to provide telehealth services and thus enrollees would not have this access point as readily available as it is in commercial insurance. A bifurcated system where only some patients can access telehealth services is problematic to our shared goal of promoting high quality care and equitable access.

c. Ensure Uniform Coverage and Reimbursement for “Audio-only” Telehealth Services

During the height of the first wave of the COVID-19 pandemic, DFS and DOH took important steps to ensure coverage of audio only telehealth services. Since then, legislation has been enacted to ensure long-term Medicaid payment for audio only telehealth services. Across specialties, providers report that during the pandemic, audio only communication was often the difference between providing care and leaving patients with unmet health needs. This has highlighted the need to ensure physicians can meet patients where they are, including those without computers or reliable internet access so as to not further exacerbate health care disparities based on race, ethnicity, age and socioeconomic status thereby inhibiting access to care. We recommend that audio only services be reimbursed across all payers and reimbursed on par with other telehealth services.

¹ Andrews E, Berghofer K, Long J, Prescott A, Caboral-Stevens M. Satisfaction with the use of telehealth during COVID-19: An integrative review. *Int J Nurs Stud Adv*. 2020;2:100008. doi:10.1016/j.ijnsa.2020.100008

² Ramaswamy A, Yu M, Drangsholt S, et al. Patient Satisfaction With Telemedicine During the COVID-19 Pandemic: Retrospective Cohort Study. *J Med Internet Res*. 2020;22(9):e20786. Published 2020 Sep 9. doi:10.2196/20786

³ Heath, Sara. Patient Satisfaction with Telehealth High Following COVID-19. *Patient Engagement HIT*. October 7, 2020. <https://patientengagementhit.com/news/patient-satisfaction-with-telehealth-high-following-covid-19> Accessed December 8, 2020.

2. Permanently Adopt Flexibilities in Telehealth Services Implemented During the Pandemic

Physician practices across the state highly valued their ability to more effectively deliver services during the pandemic due to the emergency waivers of telehealth modality and place of service requirements. This flexibility was highly effective in demonstrating the myriad of ways practices could implement robust telehealth systems without outdated or impractical requirements on the location of the patient or physician or on the modality used to offer the service. The future of telehealth needs to reflect the technological advancements and the new model for providing seamless telehealth experiences.

3. Expand Access to Remote Patient Monitoring

We urge both public and private payers to allow health care practitioners to utilize remote patient monitoring, where appropriate. Remote patient monitoring is an effective tool in tracking a patient's health status for a variety of conditions and can limit the number of in-person visits a patient needs. In addition, durable medical equipment (DME) needed to facilitate remote patient monitoring must be appropriately reimbursed.

4. Protect the Physician-Patient Relationship in Telehealth

As the organizations representing the front line physician workforce meeting the many challenges of the pandemic, we wish to remind policymakers of the need to protect the clinical judgment of physicians and the relationship that they have with their patients. Physicians should be the ultimate arbiter of which services are appropriate for telehealth and which require in-person consultation. Through shared decision making, physicians, in partnership with their patients, are in the best position to decide when telehealth services are appropriate based on the specific and individual needs of the patient. Patient-centered, individualized care is essential to ensure telehealth services are equitable to all New Yorkers.

5. Ensure Seamless Extension of Telehealth Provisions After Pandemic

We urge policymakers to ensure that the telehealth policies implemented during the pandemic are continued until comprehensive, permanent policy changes are enacted as set forth above. This is vitally important to ensure continuity of care for patients already availing themselves of telehealth services, particularly for patients with chronic health conditions trying to minimize their contacts with others to minimize risk of COVID-19 transmission.

Thank you for your consideration and we look forward to working with you on this important issue.