

New York State Psychiatric Association, Inc.

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AREA II COUNCIL SPRING MEETING LAGUARDIA PLAZA HOTEL EAST ELMHURST, NEW YORK

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LEGISLATIVE REPORT

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I. UPDATE ON PROACTIVE LEGISLATIVE PRIORITIES

A. MH/SUD PARITY REPORT ACT (A.3694-C, GUNTHER/S.1156-C, ORTT) ENACTED, CHAPTER 455 OF LAWS OF 2018

In a major victory for NYSPA and update since the October 2018 Area II Council Meeting, Governor Cuomo signed the Mental Health/Substance Use Disorder (MH/SUD) Parity Report Act (A.3694-C) into law, as Chapter 455 of the Laws of 2018, on December 21, 2018, an especially symbolic date as it occurred on the eve of the 12th anniversary of the enactment of Timothy's Law, New York's mental health parity mandate. Governor Cuomo signed the MH/SUD Parity Report Act into law based on an agreement with the Legislature and stakeholders to pass what is referred to as a chapter amendment, which will make a couple of changes to Chapter 455, as embodied in S.4356/A.6186-A (see enclosed document), sponsored by Senator Rob Ortt (R-North Tonawanda) and Assemblymember Aileen Gunther (D-Forestburgh), who sponsored the original law as well.

In summary, the MH/SUD Parity Report Act, adds a new section to New York State Insurance Law, Section 343, governing the submission of key data and information from insurers and health plans to allow the Department of Financial Services to complete an evaluation and analysis of compliance with the federal and state MH/SUD parity laws with the results to be published in a report on the department's website. The key data and information to be analyzed for the parity reports, includes among others the points that are crucial for verifying the equitable treatment of MH/SUD as compared to medical/surgical benefits as required by the federal and state MH/SUD parity laws, such as rates of utilization review, prior or concurrent authorization, adverse determinations, percentage of claims paid on an in-network and out-of-network basis, network adequacy and in-network and out-of-network reimbursement. The data collection is to commence on July 1, 2019, with first report to be published on or before October 1, 2019 and every two years thereafter.

The enactment of the chapter amendment is already under way as the Senate passed the bill (S.4356) by a vote of 61-0 on Tuesday, March 12, 2019, and the bill (A.6186-A) is moving through the Assembly committee process with a vote expected very soon.

The enactment of the MH/SUD Parity Report is a tremendous victory for NYSPA, a multi-year effort initiated by Barry Perlman, M.D., and prioritized by NYSPA's Committee on Legislation and Area II Council. The victory is a collective one as NYSPA partnered with MSSNY, medical specialty societies as well as the broader MH/SUD community to achieve the enactment of the MH/SUD Parity Report Act. The enactment of the MH/SUD Parity Report Act is critical to establishing a mechanism for providing much needed transparency and disclosure on insurers and health plans compliance

with the federal and state MH/SUD parity laws, which are vital to maintaining as well as enhancing access to care for those with MH/SUD. We thank all those who took the time to call, write and/or tweet Governor Cuomo as well as their Senator and Assemblymember – efforts that no doubt played a critical role in the enactment of the law.

B. LEGISLATION ENACTED PROHIBITING SO-CALLED “CONVERSION THERAPY” FOR MINORS

On Friday, January 25, 2019, Governor Cuomo enacted one NYSPA’s major pro-active priorities, S.1046/A.576 sponsored by Senator Brad Hoylman (D-Manhattan) and Assemblymember Deborah Glick (D-Manhattan) respectively, which prohibits licensed mental health professionals from engaging in efforts to change a minor’s sexual orientation, gender identity or gender expression (so-called “conversion therapy”) and defines such efforts as professional misconduct. The law took effect immediately. The bill signing took place in New York City and was attended by NYSPA members Frank Dowling, M.D., Jack Drescher, M.D., and Barry Perlman, M.D. and Jamie Papapetros from the NYSPA Government Relations office.

The success of this landmark legislation represents a collaborative effort as NYSPA partnered with the Medical Society of the State of New York (MSSNY), the NYS Psychological Association, the National Association of Social Workers – New York State and New York City, the New York Society for Clinical Social Work, LGBTQ advocacy organizations, medical specialty societies and a broad array of MH/SUD consumer and provider organizations.

NYSPA issued an E-Bulletin announcing the enactment of the law and pictures from the bill signing, which can be accessed from NYSPA’s website: <https://www.nyspsych.org/>.

II. 2019 LEGISLATIVE SESSION

The 2019 Legislative Session commenced on Wednesday, January 9, 2019. The Legislative Session started on a historical note as Senator Andrea Stewart-Cousins (D-Yonkers) was elected Senate Majority Leader and Temporary President, marking the first time a female has held the top leadership position in the Senate. The election of Senator Stewart-Cousins as Majority Leader and Temporary President follows the outcome of November 2018 general election resulting in the 63-member Senate consisting of 39 Democrats, 23 Republicans and Senator Simcha Felder (D-Borough Park). In total, the Senate has 17 new members, including 15 new Democrats and 2 new Republicans.

Over in the Assembly, Assembly Democrats unanimously elected Assemblymember Carl Heastie (D-Bronx) to continue serving as Assembly Speaker, a position he has held since February 2015. Meanwhile, Assembly Speaker Heastie appointed Assemblymember Peoples-Stokes (D-Buffalo) as Assembly Majority Leader, a position that oversees the day-to-day operation of the Assembly. As a result of the November 2018 general election, the Assembly has 23 new members, 13 new Democrats and 9 new Republicans.

NYSPA once again has a multi-faceted pro-active legislative agenda for 2019, some which has already been accomplished as indicated above with the enactment of the law to prohibit licensed mental health professionals from engaging in efforts to change a minor’s sexual orientation, gender identity, or gender expression, so-called “conversion therapy.” A major priority for NYSPA includes the enactment of Governor Cuomo’s Behavioral Health Insurance Parity Reforms as detailed in this report and the implementation of the MH/SUD Parity Report Act. NYSPA will support and join the MSSNY on a number of issues of common interest pertaining to the practice of medicine and the environment in which physicians practice, making it imperative for NYSPA members to remain engaged and involved in the process.

During the post-budget months of the Legislative Session, NYSPA expects to once again face perennial legislation to expand the scopes of practice of non-physicians, including psychologists seeking the authority to prescribe, as well as continued efforts to alter the prohibition on the corporate practice of medicine to allow non-physicians to co-own a practice with physicians.

III. GOVERNOR’S 2019-20 EXECUTIVE BUDGET PROPOSAL

A. STATE FISCAL PICTURE

On January 15, 2019, Governor Cuomo proposed a \$175.2 billion budget (all funds) for 2019-20, an overall increase of 2.0 percent, while also addressing a multi-billion dollar budget deficit which has since worsened due to weaker personal

income tax collections in December 2018 and January 2019. The reduction in tax collections is attributed in part by Governor Cuomo to the 2017 federal tax law and the provision eliminating the deduction of state and local taxes (SALT) from federal income taxes. As we prepare this report, the Senate and Assembly have staked out their respective budget priorities, including accepting, not including or rejecting elements of the Governor's executive budget thereby setting the stage for negotiations as the Governor and Legislature work to adopt a budget ahead of the April 1 deadline.

B. BEHAVIORAL HEALTH INSURANCE PARITY REFORM IN GOVERNOR'S 2019-20 BUDGET

The item we want to focus on and where most of our energy has been spent is Section BB of S.1507-A/A.2007-A of Governor Cuomo's 2019-20 budget proposal for health and mental hygiene, entitled "Behavioral Health Insurance Parity Reforms" (BHIPR). The BHIPR is a comprehensive overhaul of New York State's Insurance Law aimed at eliminating health insurance/health plan practices that restrict New Yorkers, suffering from Mental Health Conditions (MHCs), Substance Use Disorders (SUDs) and Autism Spectrum Disorders (ASDs), from accessing their health insurance benefits for care and treatment.

The BHIPR codifies and broadens NYS' existing mandates requiring health insurance coverage for MHCs, SUDs and ASDs and establishes more uniformity among the current diverse provisions of the insurance law related to such coverage. The BHIPR mandates parity coverage for MHCs, SUDs, and ASDs, as each is defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the most recent edition of another generally recognized independent standard of current medical practice such as the International Classification of Diseases (ICD).

The BHIPR is applicable to all health insurance/ health benefit plans, individual and group, that are issued for delivery in New York State (NYS). The BHIPR sets the landmark federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) as a floor and surpasses it in scope and effect -- prohibiting financial requirements or quantitative and non-quantitative treatment limitations for MHCs, SUDs, and ASDs that are more restrictive, "than the predominant financial requirements and treatment limitations applied to substantially all medical and surgical benefits under the policy [or contract]."

The Governor's budget would also codify a definition of treatment limitations:

"limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment and includes non-quantitative treatment limitations such as: medical management standards limiting or excluding benefits based on medical necessity, or based on whether the treatment is experimental or investigational; formulary design for prescription drugs; network tier design; standards for provider admission to participate in a network, including reimbursement rates; methods for determining usual, customary, and reasonable charges; fail-first or step therapy protocols; exclusions based on failure to complete a course of treatment; and restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the policy."

Further, medical necessity criteria with respect to benefits for MHCs/SUDs and ASDs shall be made available to the insured, prospective insured, or in-network provider upon request. Clinical review criteria used by utilization review agents must be approved by the Commissioner of the Office of Mental Health or designated by the Commissioner of Office of Alcoholism and Substance Abuse Services. In addition, there are new restrictions placed on insurers with respect to prior authorization requirements and concurrent reviews for inpatient treatment, as well as a prohibition against taking any adverse action in retaliation for a provider filing a complaint, making a report, or commenting to a government body regarding policies and practice that violate this statute.

Furthermore, the BHIPR initiative provides funding for additional staffing at the Department of Financial Services and Department of Health to handle oversight and enforcement of parity.

The Assembly did not include the behavioral health insurance parity reforms in its one-house budget, which is not indicative of its position on the reforms, but rather its effort to remove the policy and programmatic issues proposed by the Governor from the budget that do not have a fiscal implication. Meanwhile, the Senate accepted the parity reforms with some modifications regarding the length of inpatient and outpatient treatment for substance use disorders before concurrent review can occur. This sets the stage for important advocacy over the next two weeks to urge the Governor,

Senate and Assembly to include these important reforms and protections in the final budget for 2019-20. Stay tuned for NYSPA E-Bulletins requesting action!

C. COMPARISON OF OTHER MENTAL HYGIENE & HEALTH PROVISIONS OF MOST INTEREST

NYSPA has been actively engaged in the budget process, focusing on the following outlined in the chart below, which also identifies the position taken by the Executive, Senate and Assembly.

GOVERNOR’S BUDGET	SENATE	ASSEMBLY
Behavioral Health Insurance Parity Reforms	Included with modifications	Not Included
\$3 million for loan forgiveness for psychiatrists, who are licensed to practice in NYS and who agree to work for a period of at least five years in one or more hospitals or outpatient programs operated by OMH or deemed to be in one or more underserved areas.	Accepted	Accepted
Repeal of Prescriber Prevails in Medicaid Fee-for-Service and Medicaid Managed Care	Rejected	Not Included
One Year Extension of Physician Excess Medical Malpractice Program	Accepted	Accepted
Limits on payments for Medicare/ Medicaid dual eligibles, including Part B Deductible	Rejected	Not Included
\$1.5 million appropriation for OASAS/OMH Ombudsman	Accepted	Accepted
Adding Nurse Practitioners, Social Workers & Other Providers to Workers’ Compensation Program	Accepted	Not Included
Justice Center Oversight Elimination of the Justice Center’s jurisdiction over inpatient psychiatric units of a general hospital (Article 28) hospitals and “services provided in the unit of a hospital” (per section 2801 of the Public Health Law) that are licensed or certified OMH or OASAS.	Rejected	Not Included
Codification of the Affordable Care Act	Accepted with Modifications – Rejected language providing deference to DFS Superintendent to interpret Insurance Law & empowering DFS Superintendent to promulgate regulations to fulfill intent of section.	Accepted with Modifications – Rejected language providing deference to DFS Superintendent to interpret Insurance Law & empowering DFS Superintendent to promulgate regulations to fulfill intent of section.
Codification of NY State of Health (NY’s marketplace under Affordable Care Act)	Accepted	Accepted with Modifications -- Require legislative appointments to advisory board

GOVERNOR'S BUDGET	SENATE	ASSEMBLY
Commission to Examine Universal Access to Health Care	Rejected	Not Included
Regulation of Adult-Use Cannabis	Supports Continued Discussion and Modifications as follows: -Continue to require DOH involvement in medical marijuana -Senate approval of Executive appointments to regulating body of adult-use program -Increase local share of taxes to be collected -Support for pilot program to develop saliva test -Revenues must support communities disproportionately impacted by prior marijuana policies	Not Included – Supports Continued Discussion
Deferral of 2.9% cost of living adjustment for human services agencies and non-profits funded by OMH, OASAS and OPWDD.	Rejected	Rejected

NYSPA, MSSNY and NASW-NYS are also advocating for an appropriation in the FY2019-20 budget to support the continuation and expansion of the Veterans Mental Health Training Initiative.

IV. MEDICAL AID IN DYING

Senator Diane Savino (D-Staten Island/Brooklyn) and Assemblymember Amy Paulin (D-Scarsdale) have re-introduced legislation (S.3947/A.2694) to authorize medical aid in dying, which would allow terminally ill individuals with the capacity to make informed decisions to request self-administered medication that would result in death while outlining the requirements and conditions to be followed. Compared to previous versions, the 2019 bill removes physician assistants as one of the category of mental health professionals who would be authorized to perform the evaluation to determine if a patient has the capacity to make informed decisions. At this time, the bills are pending in the Senate and Assembly Health Committees.

To date, NYSPA has not taken a position on issue or the above legislation. NYSPA's Committee on Legislation and Psychiatry and Law Committee will be reviewing the legislation and potentially advancing a recommendation on a position for the Area II Council to consider.

V. NYSPA'S VETERANS MENTAL HEALTH – PRIMARY CARE TRAINING INITIATIVE

NYSPA is in the midst of preparing a robust schedule of presentations of the VMH-PCTI for the year as well as refining the curriculum of the VMH-PCTI through the curriculum faculty advisory committee to include additional information on women veterans and military culture. NYSPA's VMH-PCTI is funded by a grant from the New York State Legislature and administered by the Office of Mental Health.

Last week, NYSPA presented the VMH-PCTI presentation on veteran suicide and suicide prevention at Orange Regional Medical Center with nearly fifty attendees. Currently, we are in the process of scheduling a presentation at Albany Medical Center and a webinar presentation primary care network for Capital District Physicians' Health Plan's (CDPHP), which is one of the largest insurers in the Albany area.

Action Requested: We encourage and ask district branches to consider coordinating with NYSPA Central Office on a presentation of the VMH-PCTI in their area/region either at a hospital as part of grand rounds or special presentation or at an off-campus venue. NYSPA can cover the cost of room rental for the presentations and has speakers who have completed a train-the-trainer and are available.