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UPDATE ON 2017 LEGISLATIVE SESSION

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I. 2017 LEGISLATIVE SESSION UPDATE

The Senate and Assembly adjourned just before midnight on Wednesday, June 21, 2017, despite being unable to reach an agreement with the Governor on several outstanding issues, including an extension of mayoral control of New York City schools (scheduled to expire on June 30, 2017), approval for hundreds of municipalities to extend local sales tax provisions (scheduled to expire December 31, 2017) and renewal of New York City Personal Income Tax. As a result, the Legislature is expected to return at some point before the end of the year to handle these time-sensitive matters.

Session Statistics: For those who keep track of such things: Since January 1, 2017, through Wednesday, June 21, 2017, 15,332 bills were introduced, of which 1,895 passed the Senate and 989 passed the Assembly. The number of bills that have passed both Houses since January 1, 2017: 602 (or 3.9% of the bills introduced) of which 45 have been signed into law, 4 have been vetoed, 14 are in the Governor's office awaiting action, and 541 have yet to be delivered to the Governor. As a comparison, taking into account the same time period, 618 bills passed both houses in 2016, compared to 718 bills in 2015, 658 in 2014, and 650 in 2013. For further context, of the 602 bills passed this year, 72 bills passed between January 1, 2017 and May 31, 2017, while 530 bills passed between June 1 and June 21, 2017.

In terms of NYSPA's proactive legislative priorities, the session was a success for the most part, including the enactment of legislation to raise the age of criminal responsibility in New York State from 16 to 18 years of age, which was adopted as part of the 2017-18 State budget. NYSPA also made significant progress in advancing and building support for action next year on its two other pro-active priorities including: (1) legislation to prohibit so-called "conversion therapy" for minors; and (2) legislation that would require the publication of a Mental Health and Substance Use Disorder Parity Report as part of the annual Consumer Guide issued by the Department of Financial Services, in consultation with the Department of Health.

In terms of encroachments, NYSPA was successful in once again thwarting legislation that would have dramatically expanded the scopes of practice of a number of non-physician providers, including among others psychologists seeking the authority to prescribe and mental health practitioners pursuing the authority to diagnose mental illness, while also once again defeating proposals to allow for-profit retail clinics and non-physicians to co-own a medical practice with a physician.

A progress report on the items of most interest for psychiatry follows.

II. FURTHER UPDATES ON NYSPA'S PROACTIVE PRIORITIES

- **Legislation to prohibit so-called "conversion therapy" for minors (A.3977, Glick/S.263, Hoylman)** – While the bill passed the Assembly earlier this year, it remained in committee in the Senate as the Legislative Session came to a close. NYSPA raised the profile of this issue with a joint advocacy day and press conference in April with the statewide associations of psychology and social work, while also conducting a series of legislative visits with Senate leadership

and individual members. In the end, NYSPA's efforts resulted in 19 organizations issuing memos in support and over 40 organizations signing on in support of the legislation, providing a strong platform for further advocacy on the issue.

- **Mental Health and Substance Use Disorder Parity Report (S.1156-A, Ortt/A.3694-A, Gunther)** – NYSPA laid a strong foundation for pursuing the enactment of legislation requiring that the annual Consumer Guide to Health Insurers issued by Department of Financial Services, in consultation with the Department of Health, include discrete reports related to the manner in which health insurers and health plans are complying with Federal and New York State's mental health and substance use disorder (MH/SUD) parity laws. NYSPA engaged a number of our fellow coalition partners and former members of the Timothy's Law Campaign to build support for the legislation compiling more than half a dozen memos in support and raising awareness among legislators on the need to have this type of information available, an outcome that provides a strong placeholder for going forward while we work to refine some of the elements of the bill.

III. SCOPE OF PRACTICE BILLS

Once again, there were a number of bills seeking to expand the scopes of practices of non-physician health care professionals, including psychologists, nurse practitioners and mental health practitioners, which NYSPA opposed along with MSSNY and the other statewide medical specialties. The bills of most concern for NYSPA **remained in committee** as follows:

- **A.2851 (MCDONALD)/S.4498 (LANZA)** – Authorizes psychologists to prescribe. (NYSPA Opposed)
- **A.2664 (DENDEKKER)/S.3766 (ROBACH)** – Expands scope of practice of mental health practitioners, licensed pursuant to Article 163 of the State Education Law, to include diagnosis of mental illness. (NYSPA Opposed)
- **A.3895 (ORTIZ)/S.5163 (PARKER)** – Authorizes a nurse practitioner to admit a patient to an inpatient mental health unit on a voluntary basis. (NYSPA Opposed)

IV. CORPORATE PRACTICE BILLS

The bills of most concern for NYSPA **remained in committee** as follows:

- **A.958 (PAULIN)/NO SAME AS** – Bill would authorize the establishment of for-profit limited services clinics (i.e. retail clinics). (NYSPA Opposed)
- **A.1943 (PEOPLES-STOKES)/S.4125 (LAVALLE)** – Omnibus legislation that would authorize a number of non-physician health care professionals to form multidisciplinary partnerships, limited liability companies, and professional service corporations with physicians. (NYSPA Opposed)
- **A.4432 (PRETLOW)/S.5715 (FUNKE)** – Bill authorizes licensed clinical social workers, psychologists and psychiatrists to form a single corporate structure. (NYSPA Opposed)
- **A.5580 (WEPRIN)/NO SAME AS** – Bill authorizes psychologists and non-psychiatrist physicians to form limited liability companies, professional corporations and partnerships with one another. (NYSPA Opposed)

V. UPDATE ON BILLS WITH IMPACT FOR MEDICINE/PRACTICE

- **NEW YORK'S ASSISTED OUTPATIENT TREATMENT LAW (KENDRA'S LAW)** – The Senate and Assembly passed legislation (A.7688, Gunther/S.6726, Young) providing a five year extender of the law through June 30, 2022.
- **REGRESSIVE MEDICAL LIABILITY BILLS** – NYSPA joined MSSNY and more than a dozen other medical specialty societies, hospital associations and others in opposing an avalanche of regressive medical liability bills ranging from extending the statute of limitations (date of discovery), repealing the law on attorney contingency fees and expanding awards for noneconomic damages. Ultimately, in the final hours of the Legislative Session the Senate and Assembly passed an amended version of the date of discovery bill (S.6800, DeFrancisco/A.8516, Weinstein) with the intent of extending the statute of limitations only in cases where there is "...failure to diagnose a malignant tumor or cancer." While the exposure and risk for psychiatry is minimal, we remain concerned that language in the bill does not align with the intent as suggested by the proponents. We will continue to engage and support our fellow colleagues.

- **DUTY TO PROTECT FOR MENTAL HEALTH PRACTITIONERS (A.6849, STECK/S.775-A, CARLUCCI)** – This legislation amends the Mental Hygiene Law to authorize, *but not require*, mental health practitioners, including physicians, psychologists, nurse practitioners and social workers, working in private practice to take timely and reasonable efforts to reduce or eliminate the risk of harm when a patient who is currently receiving treatment “directly communicates a threat of serious, imminent harm to self or against a readily identifiable person or persons, and the threat includes both a serious intent to act and the ability to carry out the threat.” In the absence of a statute, there has not been litigation against private practitioners in New York State in the thirty years since the California Tarasoff decision and therefore NYSPA remains concerned that any legislation would pose unnecessary exposure to liability. **STATUS: The bills remained in the Assembly and Senate Mental Health Committees.** (NYSPA Opposed)
- **PHYSICIAN COLLECTIVE NEGOTIATION (A.4472, GOTTFRIED; S.3663, HANNON)** – The bill would permit some collective negotiations by independent health care providers with health insurance plans under a system where the State would closely supervise negotiations. **STATUS: The Assembly bill (A.4472) advanced to the Assembly Ways & Means Committee, while the Senate bill (S.3663) advanced to the Senate Finance Committee.** (NYSPA Supported)
- **LEGISLATION REGARDING NEW YORK’S MEDICAL MARIHUANA LAW:**
 - **A.7006, GOTTFRIED/S.5629, SAVINO** – Bill would add post-traumatic stress disorder to the list of conditions that could be treated with medical marihuana in New York. **STATUS: The Assembly and Senate passed the bill (A.7006).** (No position)
 - **A.2882, PEOPLES-STOKES/S.5627, SAVINO** – Bill would require the Department of Health to post on its website the names and contact information of the practitioners registered with the Department to certify individuals to receive medical marihuana. The bill provides that a practitioner may opt-out of having their information listed if he or she provides a written request to the Department. **STATUS: The Senate and Assembly passed the bill (S.5627).** (No position)
 - **Additional Background:** Under New York’s medical marihuana law, currently an individual is eligible to be certified by a physician or nurse practitioner, who has completed course approved by the Commissioner of Health, if he or she has been diagnosed with “one or more of the following severe debilitating or life threatening conditions: cancer, HIV infection or AIDS, amyotrophic lateral sclerosis (ALS), Parkinson’s disease, multiple sclerosis, spinal cord injury with spasticity, epilepsy, inflammatory bowel disease, neuropathy, Huntington’s disease or chronic pain (as defined by 10 NYCRR §1004.2(a)(8)(xi)).”
- **MEDICAL AID IN DYING (A.2383, PAULIN/S.3151, SAVINO)** – The bill would allow terminally ill individuals to request self-administered medication that would result in death while outlining the requirements and conditions to be followed. **STATUS: The bills remained in the Assembly and Senate Health Committees.** (No position)

VI. MEDICAID REIMBURSEMENT/INSURANCE-RELATED BILLS

- **A.1890-A (HARRIS)/S.3981-A (SAVINO)** – Bill would require Medicaid to cover the services provided by mental health practitioners licensed pursuant to Article 163 of the State Education Law. NYSPA opposed the bill along with MSSNY and the National Association of Social Workers – New York City and New York State Chapters and New York State Society for Clinical Social Work given the education and training mental health practitioners obtain in order to be licensed as compared to licensed clinical social workers who have two to three times more supervised experience as compared to the four types of mental health practitioners and are not authorized to obtain Medicaid reimbursement with the exception for a very limited number of services. **STATUS: The bill (S.3981-A) passed the Senate and advanced to the Assembly calendar but was not taken up before the Assembly adjourned.** (NYSPA Opposed)
- **A.2163 (BRONSON)/S.3952 (YOUNG)** – Bill would require commercial insurers that provide coverage for outpatient care provided by a psychiatrist or psychologist to cover mental health practitioners licensed pursuant to Article 163 of the State Education Law. **STATUS: The Assembly bill (A.2163) advanced to the calendar but was not taken up before**

the Assembly adjourned and the Senate bill (S.3952) remained in the Senate Insurance Committee. (NYSPA Opposed)

- **A.7979-A (QUART)/S.6674 (AMEDORE)** – Bill would amend provisions of State Insurance Law to prohibit insurers from requiring prior authorization for the initial and renewal prescriptions for buprenorphine and long acting injectable naltrexone for the treatment of substance use disorders. *STATUS: The bill (A.7979-A) passed the Assembly, but the Senate bill (S.6674) remained in the Senate Rules Committee.* (NYSPA Supported)

VII. OTHER MENTAL HEALTH RELATED BILLS

- **MENTAL ILLNESS ANTI-STIGMA LICENSE PLATES (A.6216-B, GUNTHER/S.1210-C, ORTT)** – The legislation amends New York State Vehicle and Traffic Law to establish the mental illness anti-stigma license plate, which New York residents could obtain through an application and \$25 annual service charge. The fee assessed for such license plate would be deposited into the mental illness anti-stigma fund, which is used to provide grants to organizations working to eliminate the stigma attached to mental illness and those with mental health needs. *STATUS: The Senate and Assembly passed the bill (S.1210-C).* (NYSPA Supported)
- **WESTERN NEW YORK CHILDREN PSYCHIATRIC CENTER (A.6505, KEARNS/S.4630, GALLIVAN)** – The bill prohibits the Western New York Children Psychiatric Center from being merged or co-located with any other facility. *STATUS: The Senate and Assembly passed the bill (S.4630).* (No position)
- **MATERNAL DEPRESSION (A.8308, RICHARDSON/S.4000, KRUEGER)** – The bill would require the Commissioner of Health, in collaboration with the Office of Mental Health, establish a list of mental health professionals, not-for-profit corporations and community resources who treat or provide support for maternal depression. The list would be posted on the Department of Health’s website and searchable by zip code with the list to be updated “as necessary.” *STATUS: The Senate and Assembly passed the bill (S.4000).*
- **SHIFTING COST OF PSYCHIATRIC EXAMINATION FROM COUNTY TO STATE (A.7694, GUNTHER/S.1154, ORTT)** – The bill would require the State to pay for the cost of the psychiatric examination conducted pursuant to Criminal Procedure Law (Section 730.2) to determine the defendant’s mental fitness to proceed to trial. Currently, the cost is borne by the counties where the individual is tried. *STATUS: The bill (S.1154) passed the Senate, while the Assembly bill (A.7694) remained in the Assembly Codes Committee.* (No position)

VIII. JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS

The Senate confirmed Denise Miranda to serve as Executive Director of the Justice Center. Ms. Miranda, an attorney, has been serving as the Acting Director of the Justice Center since the beginning of the year. Previously, Ms. Miranda served as the Managing Director of the Safety Net Project at the Urban Justice Center. Ms. Miranda’s experience also includes serving as the Assistant District Attorney in the Bronx County District Attorney Office. Ms. Miranda is graduate of New York University and received her JD from St. John’s School of Law.

IX. RECAP OF SUCCESSES FROM 2017-18 NYS BUDGET

While the above points out the results and progress made in the latter half of the Legislative Session, we wanted to recap the some of the positive results achieved as part of the 2017-18 budget, notably:

- As noted previously, a plan to raise the age of criminal responsibility in New York State from 16 years of age to 18 years of age in phases: first to 17 on October 1, 2018, and to 18 on October 1, 2019. A detailed summary of the provisions is available at: http://raisetheagency.com/wp-content/uploads/2017/06/rta.billsummary.final_June-2017.pdf.
- Additional \$1.5 million, for a total of \$3 million, for the purposes of making physician loan repayment awards to psychiatrists who are licensed to practice in New York 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 by OMH to be in an underserved area.
- \$150,000 re-appropriation for NYSPA’s Veterans Mental Health Primary – Care Training Initiative
- Extension of the Physician Excess Medical Malpractice Program at historic funding levels

All in all, NYSPA once again achieved a number of victories for its members in what was another challenging year for organized medicine facing a number of perennial threats as well as new and emerging ones. We extend our deepest appreciation for the members who took the time to call or write their legislator when asked. Your voice made a difference!