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

**SATURDAY, MARCH 24, 2018**

### **LEGISLATIVE REPORT**

*BARRY PERLMAN, M.D., CHAIR OF COMMITTEE ON LEGISLATION*

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#### **I. 2018 LEGISLATIVE SESSION UPDATE**

The 2018 Legislative Session commenced on Wednesday, January 3, 2018, with the Governor's eighth State of the State address. The Governor's address focused in large part on plans for responding to the federal tax law changes, the potential federal cuts to health care programs, while also putting forth a series of proposals addressing healthcare, homelessness, criminal justice, sexual harassment and ethics. Many of the proposals were included in the Governor's Executive budget proposal, thereby providing a roadmap of what the Governor hopes to accomplish this Legislative Session as he and every New York State legislator, who wishes to continue, prepare to run for re-election this fall.

The Legislature is scheduled to be in session sixty days, expecting to adjourn on Wednesday, June 20, 2018. As we prepare this report, the adoption of a state budget for fiscal years 2018-19 is the sole policy and programmatic focus in the Capitol right now with the Governor and Legislature working to achieve an agreement on a final budget ahead of the April 1 deadline, potentially a few days early because of the upcoming religious holidays.

NYSPA once again has a multi-faceted legislative agenda for 2018. Proactively, NYSPA is focused on: (1) passage of legislation aimed at enhancing the transparency on insurers and health plans compliance with federal and state parity laws through the publication of an annual Mental Health and Substance Use Disorder Parity Report; and, (2) passage of legislation prohibiting licensed mental health professionals from engaging in efforts to change a minor's sexual orientation, so-called "conversion therapy."

In addition, NYSPA is once again facing perennial scope of practice battles in the post-budget months of the Legislative Session, 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. NYSPA will support and join the Medical Society 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.

## II. 2018-19 STATE BUDGET

Governor Cuomo proposes a \$168.2 billion budget for fiscal years 2018-19, an increase of 1.9 percent, while providing for a 3 percent increase in education aid and 3.2 percent increase in State Medicaid spending pursuant to the Medicaid Global Spending Cap. Meanwhile, the Executive budget proposal also includes a plan to close the \$4.4 billion budget deficit through \$2.7 billion in spending changes, \$0.7 billion in resource changes, and \$1 billion in revenue raisers (i.e. new taxes and fees).

With respect to the mental hygiene agencies, which includes the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OWPDD), Office of Alcoholism and Substance Abuse Services (OASAS), the Developmental Disabilities Planning Council (DDPC), and Justice Center for the Protection of People with Special Needs, the Executive Budget proposes **\$7.2 billion in funding, an annual spending growth of \$254 million or 3.7 percent.**

Earlier this month, the Governor and Legislature agreed the State will have an additional \$650 million to \$750 million in revenue for the coming fiscal year than originally projected. Last week, the Senate and Assembly adopted their one house budget resolutions, a process whereby each House outlines their priorities in response to the Executive budget proposal, thus laying the ground work for the start of budget negotiations.

NYSPA has been actively engaged in the budget process, focusing on the following proposals in particular:

**1. Preserving Prescriber Prevails** – Executive Budget proposes the elimination of prescriber prevails in Medicaid Fee-for-Service and Medicaid Managed Care with no exception for mental health medications. ***Both the Senate and Assembly rejected the elimination of prescriber prevails.***

**2. Funding for NYSPA’s Veterans Mental Health – Primary Care Training Initiative** – Senate one-house budget includes a new \$150,000 appropriation NYSPA’s Veterans Mental Health – Primary Care Training Initiative, which provides education and training to primary care physicians and specialists as well as psychiatrists and psychiatric residents on combat-related mental health disorders, including post-traumatic stress disorder, traumatic brain injury, substance use disorders, suicide and suicide prevention while also enhancing military cultural competency. ***NYSPA is advocating this appropriation is included in the enacted budget.***

**3. Loan Forgiveness for Psychiatrists** – Executive proposes doubling the funding for 2018-19 to \$3 million for OMH to transfer to DOH’s Doctors Across New York Program for the sole purpose of providing physician loan repayment awards to psychiatrists. In order to be eligible, psychiatrists must be licensed to practice in New York State and 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 as determined by the OMH Commissioner. ***Both the Senate and Assembly accepted.***

**4. Funding for New York’s Raise the Age Law** – Executive budget proposes \$100 million for implementation of New York’s raise the age law, enacted in 2017. ***Both the Senate and Assembly accepted the proposed appropriation, while also ensuring all counties would be eligible to obtain reimbursement for costs associated with the law. The Senate also proposed removing some of the additional restrictions placed on counties in order to be eligible for reimbursement as part of the 2017 law, namely remaining under the tax cap and requiring those counties not subject to the tax cap having to demonstrate financial hardship.***

**5. Physician Excess Medical Malpractice Program** – Executive proposes one year extension of the program at historic funding levels with no programmatic or eligibility changes. ***Both the Senate and Assembly accepted.***

**6. Retail Clinics** – Executive budget includes proposal to authorize for-profit corporately-owned retail clinics in big box stores and retail spaces, which could provide a range of health care services related to acute and episodic illnesses as well as “limited screening and referral for behavioral health conditions.” ***The Senate included its own proposal for authorizing retail clinics, while the Assembly rejected the Governor’s proposal.***

**7. Comprehensive Medication Management** – Proposal authorizes pharmacists to adjust drug strength, the frequency or route of administration, the discontinuation of a medication as well as the authority to initiate medication which differs from that initially prescribed by that individual’s physician or nurse practitioner pursuant to written medication management protocol with the physician or nurse practitioner. *Both the Senate and Assembly rejected proposal.*

**8. Certified Nurse Anesthetists (CRNAs)** – Proposal to allow certified nurse anesthetists to practice independently without physician-anesthesiologist supervision, including unrestricted prescriptive authority. *Both the Senate and Assembly rejected the proposal.*

**9. Jail-Based Restoration to Competency Program** – The Executive budget includes a proposal for OMH to establish jail-based restoration-to-competency programs within locally-operated jails and State prisons operated by the Department of Corrections and Community Supervision. Restoration to competency would be authorized in mental health units at such facilities with the budget appropriating \$850,000 to OMH to provide grants to county jails to assist with infrastructure improvements. Under current law, defendants deemed incompetent to stand trial are treated at OMH inpatient psychiatric units. *Both the Senate and Assembly rejected the proposal.*

**10. OMH Reinvestment into Community-Based Services** – Providing for \$11 million for reinvestment into community-based services as part of the potential closure of 100 inpatient hospital beds. *The Senate rejected the closure of additional inpatients beds. The Assembly would limit the number of beds that can be reduced while also prohibiting reductions where there are waiting lists at hospitals in the region as well adding specifications regarding the amount of time and notice that must be provided prior to undertaking significant service reductions.*

**11. DOH’s Regulatory Modernization Initiative** – Executive included several recommendations:

- Integration of Primary Care/Mental Health/SUD Services – Providers already licensed or certified by DOH, OMH or OASAS would not have to obtain a separate license from the respective state agency to add such integrated primary care and MH/SUD services. The Commissioners of DOH, OMH and OASAS would promulgate regulations that address obtaining approval to provide integrated services. *Both the Senate and Assembly accepted this proposal.*
- Expanding Telehealth Coverage Under Medicaid – Expands the definition of originating site (where the patient is) to include patient’s home or any other location patient is located and expands the list of authorized providers of telehealth. *The Assembly modified the proposal to align Medicaid coverage of telehealth with the requirements under New York Law for coverage of telehealth by commercial insurers and health plans. The Senate also modified the proposal to expand the definition of locations the patient can be to include residential health care facilities, certified and non-certified day and residential programs, while also concurring with the Assembly to align Medicaid coverage with commercial insurance coverage. The Senate also calls on DOH, OMH, OPWDD, and OASAS to coordinate with each other on streamlining the rules, regulations, policies each agency has for telehealth in order to provide greater “uniformity” and “reduce barriers and facilitate the use of telehealth.”*

**12. Social Work/Psychology/Mental Health Practitioner Licensure Exemption** – The Executive Budget would permit individuals exempt from New York’s social work, psychology and mental health practitioner licensure laws as a result of working in an agency or program that is operated, funded, licensed or regulated by OMH, OPWDD, OASAS, OCFS, OTDA, DOCCS, SOFA and local mental hygiene or social service districts to continue to engage in activities which otherwise require a license. The proposal requires any person employed after July 1, 2020 to meet the requirements for licensure. *The Senate and Assembly modified the Governor’s proposal regarding the timeline for the expiration of the exemption and the list of tasks an unlicensed person can provide while also maintaining that only licensed professionals are authorized to “...approve and oversee implementation of such treatment plan and who must directly observe each patient either in person or by electronic means, prior to the rendering of a diagnosis.”*

**13. Physician Misconduct** – Executive budget includes a proposal regarding physician misconduct to: (1) authorize the DOH Commissioner to order a physician who has been charged with a felony related to their medical practice to immediately stop practicing; (2) empowers the DOH Commissioner to obtain a warrant based on probable cause from a court to search a physician’s apartment, vehicles, place of work as well as seize documents and computers; and (3) shorten the timeframe for responding to Commissioner’s request for information from 30 days to 10 days. *The Senate rejected the proposal, while the Assembly rejected the provisions to expand the powers for search and seizure and the shortened timeframe for responses. The Assembly further modified the proposal to only authorize a summary suspension when the licensee is charged with a felony and the “...alleged conduct constitutes an imminent danger to health of the people.”*

**14. Children’s Behavioral Health** – Executive budget proposes a two-year delay in implementing an expanded list of Medicaid services for children previously approved by CMS through a State Plan Amendment that is scheduled to take effect July 1, 2018. The services approved and for which many agencies and providers have been gearing up for include crisis intervention, community psychiatric support and treatment, psychosocial rehabilitation services, family peer support services, youth peer training and support services, and services from other licensed practitioners. *The Senate did not reject the delay, but proposed allocating \$7.5 million to defray the cost of the delay, while the Assembly rejected the delay and allocated \$15 million to fund the expansion of services.*

**15. Raises for OMH/OPWDD/OASAS Direct Care Workers & Clinical Staff** – Executive budget includes funds to cover the 6.5 percent salary increase for direct care professionals and 3.25 percent clinical staff, which was enacted as part of last year’s budget. *The Senate one-house budget includes language to provide annual 3.25 percent increases each year for the next four years (through April 1, 2022) for direct care staff and clinical staff. The Assembly one-house did not include such language. Advocates are encouraging the language be included in the final budget.*

**16. Behavioral Health Ombudsman/Ombudsman for SUD Insurance Coverage** – While not proposed by the Governor, the Senate and Assembly one-house budgets both included proposals for an ombudsman. While the proposals differ, the ombudsman would focus on helping consumers understand their benefits for MH/SUD as well as investigate and/or resolve consumer complaints. The proposal is supported by a number of substance use disorders providers and advocates, including the Legal Action Center. *The Assembly allocated \$1.5 million for an office of the ombudsman, while the Senate included it as part of its multi-faceted package addressing opioids. (see #17)*

**17. Opioids** – The Executive includes a proposal to require a treatment plan and patient-prescriber agreement when opioids are prescribed for pain that has lasted longer than three months or past the time of normal tissue healing. The Assembly modified the proposal to have it apply to individuals covered under Medicaid and those under commercial insurance, while the Senate introduced a package of its own regarding opioids.

The Senate’s proposals include: (1) limiting initial prescriptions for opioids to three days (current limit is seven days); (2) parental consent when prescribing to minor; (3) detailed treatment plan when opioids are used for a period of longer than 30 days, which is not consistent with the CDC treatment guidelines.

**18. Crisis Intervention Training for Law Enforcement** – Senate proposes an additional \$500,000, while the Assembly proposes an additional \$1 million to for training additional law enforcement agencies on interacting and responding to individuals in a mental health crisis.

### **19. Other budgetary Issues**

- 2 cents-per-milligram tax on opioid manufacturers to raise \$127 million in revenue. *The Senate rejected and the Assembly modified to increase the tax to 2.5 cents and provide an exemption from the tax for hospice facilities, pharmacies and drugs approved by the FDA for the purpose of treating a substance use disorder (e.g. methadone, naltrexone).*

- Recouping the windfall health insurance companies received as a result of the federal tax plan through a 14 percent surcharge. ***Both the Senate and Assembly accepted rejected this proposal.***
- Revenue for a Healthcare Shortfall Fund that would be funded in part from the pending sale or mergers of several not-for-profit healthcare insurance companies to for-profit entities, such as for-profit Centene's purchase of Fidelis Care. ***Senate rejected proposal, while the Assembly modified it placing stipulations on how the money in the fund could be spent, namely on "health, health care and health coverage purposes."***
- In response to the federal tax law and limitations on State and local tax deductions, the Governor included proposals to (1) shift the State's income tax system from an employee paid system to an employer paid system through a new voluntary payroll tax system; (2) establish two new State-operated Charitable Contribution Funds New York taxpayers could donate to; and, (3) decoupling the State tax code from the federal tax code to allow New Yorkers to utilize deductions that were permitted prior to 2017. ***The Senate and Assembly rejected the first two parts of this proposal, while agreeing to the third component.***

### III. UPDATE ON NYSPA'S PRO-ACTIVE PRIORITIES FOR 2018

**A. Mental Health and Substance Use Disorder Parity Report (S.1156-A, Ortt/A.3694-A, Gunther)** – Recent studies by Milliman and others provide evidence insurers and health plans are continuing disparate and unequal treatment for mental health and substance use disorders as compared to physical health. In that regard, NYSPA continues to build support for legislation that would require the Department of Financial Services to publish an annual report as part of the Consumer Guide the department publishes that measures insurers and health plans compliance with the parity laws. The bill is in the process of being amended and will be a top priority for the latter half of the Legislative Session with NYSPA continuing to work with partners from psychology and social work as well as engaging a broad array of mental health and consumer advocacy organizations that were part of the movement in New York to pass the State's parity law (Timothy's Law). ***STATUS: The bills are in the process of being amended and remain the Senate and Assembly Mental Health Committees.***

**B. Legislation to prohibit so-called "conversion therapy" for minors (S.263, Hoylman/A.3977, Glick)** – NYSPA is continuing to advocate for legislation that would prohibit licensed mental health professionals from engaging in efforts to change a minor's sexual orientation and defining such efforts as professional misconduct. The legislation is also a priority of the New York State Psychological Association, New York Society for Clinical Social Work, and New York State and New York City Chapters of the National Association of Social Workers. NYSPA has built additional support for the legislation from a broad array of medical, mental health and provider organizations as well as consumer advocacy groups. ***STATUS: The Assembly bill is on the calendar and could pass at anytime, while the Senate bill remains in the Senate Higher Education Committee.***

Meanwhile, there is also news at the local level on this issue:

- New York City: New York City adopted a law will prohibiting persons from offering or providing services to change a person's sexual orientation or gender identity in exchange for a fee, which carries civil penalties ranging from \$1,000 for the first offense, \$5,000 for a second offense, and \$10,000 for each subsequent offense. The law applies to both adults and children. The bill takes effect June 30, 2018.
- Erie County: The Erie County Legislature unanimously passed a local law to prohibit so-called "conversion therapy" for minors within the geographic boundaries of Erie County, which the Erie County Executive Mark Poloncarz signed into law on March 5, 2018. A violation of the law is punishable by a fine of up to \$1,000 or one year in jail.
- Albany County: A law to prohibit any person from offering or providing "conversion therapy" to minors in exchange for a fee has been introduced in the Albany County Legislature. The proposed law would carry the following penalties: \$1,000 for first offense, \$2,500 for second violation and \$5,000 for each subsequent violation.

#### IV. UPDATE ON SCOPE OF PRACTICE LEGISLATION

While we have enclosed a list of non-budget related bills NYSPA is tracking and/or advocating on, we wanted to highlight the one of most concern:

S.4498, Lanza/A. 2851, McDonald (Psychology Prescribing) – Legislation authorizes psychologists to “prescribe, administer, discontinue and/or distribute without charge, drugs or controlled substances recognized in or customarily used in the diagnosis, treatment, and management of individuals with psychiatric, mental, cognitive, nervous, emotional or behavioral disorders.” Under this legislation, a psychologist could write a prescription for “an order for a drug, laboratory test, or any medicine, device or treatment, including controlled substances.” The bill was first introduced in 2014 and has since been re-introduced each Legislative Session and remained in the Higher Education Committees in the Senate and Assembly. NYSPA continues to be unalterably opposed to the legislation on the grounds it is unsafe and psychologists do not have proper education and training. NYSPA will continue to convey its opposition. ***STATUS: The bills are in the Senate and Assembly Higher Education Committees.***

#### V. UPDATE ON OTHER LEGISLATION

S.775-A, Carlucci/A.6849, Steck (“Duty to Protect”) – Supported by organized psychology to close a gap they perceive in New York State law in the aftermath of the California Tarasoff decision, the legislation intends to authorize the breach of confidential patient information when a mental health practitioner in private practice is treating an individual and there is a threat of serious harm to self or other identifiable persons along with the means to act on the threat. However, NYSPA is opposed as the bill language establishes additional exposure to liability and avenues for litigation where none currently exists. ***STATUS: The bills are currently in the Senate and Assembly Mental Health Committees.***

S.7872, Hannon/A.9588, Gottfried, (Prior Authorization Reform) – The legislation contains a number of provisions to reform prior authorizations and utilization reviews based on principles supported by a number of national medical organizations, including among others the American Medical Association, the American Academy of Family Physicians, and American Hospital Association. Among the provisions: reducing the amount of time utilization reviewers have to make a determination from 3 business days to 48 hours and within 24 hours if for policyholder whose medical condition places him or her in “...serious jeopardy without the health care services recommended by the enrollee’s health care professional.” Bill also would establish certain restrictions on insurers and health plans with respect to formulary changes that do not occur at time of enrollment. The legislation is supported by MSSNY and the medical specialty societies. ***STATUS: The Senate bill is in the Senate Health Committee and the Assembly bill is in the Assembly Insurance Committee.***

#### VI. OTHER NEWS

On February 23, 2018, Jason Helgerson announced his plan to resign as New York’s Medicaid Director effective April 6, 2018. Last week, the Commissioner of Health Howard Zucker, M.D., J.D., announced Ms. Donna Frescatore will serve as Medicaid Director once Jason Helgerson leaves in early April. Ms. Frescatore will continue to also serve as the Executive Director of New York State of Health (New York’s exchange under the Affordable Care Act). The Commissioner of Health and Ms. Frescatore expect to lead a search for a new Medicaid Director in 2019.