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ALBANY REPORT:
END OF SESSION REPORT
(JUNE 28, 2024)

I. LEGISLATURE CONCLUDES WORK & HEADS HOME FOR PRIMARY/GENERAL ELECTIONS WITH POTENTIAL RETURN TO ADDRESS MTA BUDGET/CONGESTION PRICING

The 2024 Legislative Session is in the books. The end of the Legislative Session came with the typical frenzy and last-minute negotiations between the Governor, legislators and staff working to achieve agreement on priorities where possible before time ran out. For context, between January 1 and May 29, 2024, 235 bills had passed both houses; but, characteristic of the end of session 489 bills passed both houses in the final week of the session. The late passage of the state budget this year and the scheduled end for the session, a mere six weeks, did not leave a lot of time to consider a range of non-fiscal issues leaving many on the table to be taken up next year.

Governor Hochul made a strong push in the final weeks of the session to protect youth from the harms of social media with The Stop Addictive Feeds Exploitation (SAFE) for Kids and The New York Child Data Protection Act, which the Legislature passed and subsequently signed into law on June 20, 2024. Other more controversial bills such as medical aid in dying, several environmental initiatives, health care and scope of practice bills did not advance despite fervent pushing in the final hours of the session. Legislators now head home to campaign for re-election ahead of the primary and general election cycle. Though the legislature will likely return at some point over the summer to address the gaping $1 billion budget hole left in the MTA's budget when the Governor announced the congestion pricing initiative would not take effect on June 30, 2024 as planned, but instead be put on pause.

In terms of the NYSPA's legislative priorities for the Legislative Session, the session was a tremendous success. As part of the 2024-25 state budget, NYSPA led the effort along with MSSNY to secure a two-year extension of New York's telehealth payment parity law extended through April 1, 2026, which was a significant win given the Governor had only proposed a one-year extension. Other successful efforts as part of the budget included the following: (1) preserving prescriber prevails under Medicaid Fee for Service and Medicaid Managed Care; (2) $100,000 in new funding for NYSPA's Veterans Mental Health – Primary Care Training Initiative; (3) MSSNY's Committee for Physician Health restored and fully funded; (4) Excess Medical Malpractice Program extended for another year without the provision to shift 50% of the cost onto physicians; and, (5) Rate Parity Included - Requires reimbursement rates for covered outpatient treatment at in-network OMH and OASAS licensed mental health and addiction services providers to be paid at no less than the Medicaid rates in effect for such services.

In terms of scope of practice encroachments, NYSPA once again defeated efforts by psychologists to obtain prescription privileges with an amended bill that would allow psychologists to prescribe by having a doctorate and completing a one-to-two-year master's degree in psychopharmacology and a clinical practicum of only 80 hours (2 weeks) as well as "passing score" on examination developed by an undefined "nationally recognized body." The campaign NYSPA launched last fall was instrumental in thwarting the momentum for the legislation through efforts to engage DB members to meet with their legislators and public relations efforts with op-eds and letters to the editor. As we have reported before, this fight is not going away anytime soon and will require sustained engagement from members and resources.

A progress report on our efforts and on the items of most interest follows. We wish to thank all the NYSPA members who took time to call and write their legislators during the session as your voices helped NYSPA and our patients achieve important public policy victories!

Session Statistics: For those who keep track of such things: Since January 1, 2023, the start of the 2-year term of the Legislature through Saturday, June 8, 2024, 19,734 bills were introduced. Since January 1, 2024, through June 8, 2024, the Senate passed 1,679 bills, while the Assembly passed 960 bills. Of the 805 bills that passed both houses this year: 117 have been signed into law, two have been vetoed, and 688 have not yet been delivered to the Governor. As a comparison, taking into account the same time period, 1,007 bills passed both houses in 2022, compared to 892 in 2021, 414 in 2020, 935 in 2019, 641 in 2018, 606 in 2017, 618 in 2016, 718 bills in 2015, 658 in 2014, and 650 in 2013.

II. SCOPE OF PRACTICE

- S66-A (Harckham)/A1262-A (McDonald) – Authorizes psychologists to prescribe. ***STATUS: The bills remained in Higher Education Committees. NOTE: We thank all the DBs and members who took time to meet with their legislators in person or virtually and in engage in grassroots advocacy through sending letters and authoring op-eds and letters to the editor.***
- S8765-A (Bailey)/A8464-A Establishes a new, supervised, entry level position of Qualified Mental Health Associate with the Office of Mental Health establishing minimum qualifications. ***STATUS: The bill passed the Senate but remained in committee in the Assembly.***
- S9038-A (May)/A8379-A (Paulin) – The bill does not grant independent practice to physician assistants (PA). The bill increases the maximum number of physician assistants a supervising physician may supervise in private practice from four to six and from six to eight under the Department of Corrections and Community Supervision. The bill authorizes PAs to prescribe and order a non-patient specific regimen to a registered nurse pursuant to regulations to be promulgated by DOH including administering immunization, the emergency treatment of anaphylaxis, administering certain tests, to detect or screen for tuberculosis infections, the urgent or emergency treatment of opioid related overdose or suspected opioid related overdose, screening of persons at increased risk of certain conditions, and administering tests and intravenous lines to persons that meet severe sepsis and septic shock criteria, ***STATUS: The bill (S9038A) passed both houses and is pending delivery to Governor.***
- S5581-A (Scarcella-Spanton)/A715-A (Peoples-Stokes) – Authorizes a number of non-physician health care professionals to form multidisciplinary partnerships, limited liability companies, and professional service corporations with physicians. ***STATUS: The bill is in the Senate Corporations, Authorities and Commissions Committee and the Assembly Higher Education Committee***.

III. HEALTH

- S2445-C (Hoylman-Sigal)/A995-C (Paulin) – Known as the Medical Aid in Dying Act, the legislation sets forth the request process by which a terminally ill patient may request medication for the purpose of ending their life and requirements for an attending physician, consulting physician, and mental health professional when referral is made. The bill was amended this session to include additional safeguards including explicit prohibition on health insurance company denying care because an individual has or has not chosen to request or use medication, expand list of individuals who cannot serve as witnesses to request, and extend immunity protections. ***STATUS: The bills are in the Senate and Assembly Health Committees.***
- S9214 (Stavisky)/A10009 (Stirpe) – Amidst demonstrable and growing confusion among patients, potential patients, and the general public about the licensure, education, and training of individuals who provide them care, this legislation seeks to update and establish uniform rules for health care practitioners when conveying such information in advertisements and during patient encounters. This legislation includes provisions to capture not only traditional forms of advertising but also social media (ie Facebook, X, TikTok). ***STATUS: The bill advanced from the Senate Higher Education Committee to the Senate Finance Committee and remained in the Assembly Higher Education Committee.***
- S9039-A (Brouk)/A9414-A (Gonzalez-Rojas) – The legislation would amend sections of the Public Health Law, County Law, Executive Law, and State Finance Law to prohibit the use of the term "excited delirium" as a diagnosis, label, or cause of death on death certificates, autopsy reports, police reports or any report, policy or procedure by a public agency or contractor. ***STATUS: The bill advanced from the Assembly Health Committee to the Assembly Rules Committee but was not considered before the end of session. The Senate bill remained in the Senate Health Committee.***
- S466 (Sepulveda)/A7467 (Paulin) – This legislation would amend the Public Health Law to establish an enhanced standard of informed consent for the prescribing and use of psychotropic medications in nursing homes. ***STATUS: The bill remained in the Senate Aging Committee and advanced to the Assembly calendar but was not taken up before the end of the session.***

IV. INSURANCE-RELATED BILLS

- S8485-B (Hoylman-Sigal)/A9232-B (Weinstein) – The Legislature once again passed the wrongful death legislation (Grieving Families Act), which is slightly modified from last year's vetoed version including a shortened statute of limitations to three years, provides greater clarity regarding which additional family members could bring these lawsuits and limits retroactivity. MSSNY and medical specialty societies continue to oppose given the exponential increase projected in malpractice premiums and payouts and urge letters to be sent to the Governor. Letters can be sent to the Governor urging a veto via MSSNY's GAC. ***STATUS: The bill (A9232-B) passed both houses and is pending delivery to Governor.***
- S2124 (Rivera)/A7725 (Paulin) – Authorizes physician assistants to serve as primary care practitioners for the purposes of Medicaid managed care plans. ***STATUS: The bill (S2124) passed both houses and is pending delivery to Governor.***
- S7076 (Scarcella-Spanton)/A7590 (Lavine) – Amends Insurance Law to change the look back window for insurance companies to seek to recover an overpayment to three months instead of twenty-four months. ***STATUS: The bills remained in the Senate and Assembly Insurance Committees.***
- A8576 (McDonald)/No Same As – Prohibits the imposition of a charge or deduction from a payment due to a health care provider because such payment is made through electronic or paper means. ***STATUS: The bill remained in committee in the Assembly.***
- S1267-A (Breslin)/A901-A (McDonald) – Requires a utilization review agent to follow certain rules when establishing a step therapy protocol. ***STATUS: The bill (S1267-A) passed both houses and is pending delivery to Governor.***
- S6688-*A* (Breslin)/A7522 (Gunther*)* – Prohibits the application of fail-first or step therapy protocols to coverage for the diagnosis and treatment of serious mental health conditions. ***STATUS: The bill passed the Senate but remained in the Assembly Insurance Committee.***
- S1208 (Persaud)/A7451 (Solages) – Requires genetic testing results only be received by patients and health care providers providing direct care while health insurance companies only receive a record that the genetic testing was performed; provides insurers cannot require access to genetic testing results and cannot take adverse action against someone for not providing genetic testing results. ***STATUS: The bill passed the Senate by a vote of 49-10, but remained in the Assembly Governmental Operations Committee.***
- S2680-A (Breslin) /A859-A (McDonald) – Requires insurers and health plans to grant automatic preauthorization approvals to eligible health care professionals under certain circumstances when they have previously been approved 90% of the time for a particular health care service. The legislation includes provisions for presumptive medical necessity of and guaranteed payment for services performed that are covered by the Gold Card automatic preauthorization approval. ***STATUS: The bills were amended to take into account implementation challenges and issues in other states with similar laws. The bills remained in the Senate and Assembly Insurance Committee. This legislation and broader issue of prior authorization reform will continue to be of priority.***
- S3400 (Breslin)/A7268 (Weprin) – Requires that health plan utilization review criteria be evidence-based and peer reviewed; reduces the insurer timeframe for reviewing prior authorization requests (from 3 business days to 72 hours and 24 hours in emergency); and limits when an insurer can withdraw or repeat a previously granted prior authorization. The provisions in the bill are based on recommendations made by several respected health care advocacy organizations to improve patient care. ***STATUS: The bill advanced from the Assembly Insurance Committee for the first time to the Assembly Rules Committee and from the Senate Insurance Committee to Senate Finance Committee. This sets the stage for further advocacy on prior authorization reform next year.***
- S2237-A (Rivera)/A3020-A (Gonzalez-Rojas) – Referred to as "Coverage for All," the bill directs the Commissioner of Health to modify the 1332 waiver program request to seek coverage for certain undocumented individuals that are residents of New York State through the Essential Plan. These individuals otherwise meet enrollment criteria but are precluded from participating based on their immigration status. The U.S. Department of Health and Human Services confirmed in a letter addressed to Senator Rivera, the Senate sponsor and chair of the Senate Health Committee, that 1332 pass-through funds could be used stating, "there is no prohibition on using section 1332 waiver pass-through funding to fund state affordability programs (such as state subsidies) under the waiver plan for health insurance coverage for individuals not lawfully present, so long as the waiver plan meets the section 1332 statutory guardrails." The accompanying sponsor's memo projects a savings in excess of $400 million that is otherwise spent by emergency Medicaid. The bill has garnered the support of broad array of stakeholders of unions, health plans and community organizations including Greater New Yorker Hospital Association, The Business Council of New York State, New York Health Plan Association, SEIU 1199 and other unions. ***STATUS: The bill was passed by the Senate and advanced to the Assembly Ways & Means Committee.***

- S5329-E (Harckham)/A6813-C (Paulin) – The bill provides due process protections to health care providers and recipients in the medical assistance program when under scrutiny by the Office of the Medicaid Inspector General. ***STATUS: The bill passed the Senate but remained in the Assembly Ways & Means Committee.***
- S7590 (Rivera)/A7897 (Paulin) – The New York Health Act (single payer bill). ***STATUS: The bills remain the Senate and Assembly Health Committees.***

V. PRACTICE

- S3472 (Rivera)/A7214 (McDonald) **–** Adds information required to appear on the NYS Physician Profile to include health care plan participation which would not be the responsibility of the physician but the DOH. The legislation also authorizes a physician to appoint a designee who meets certain requirements to register, transmit, enter or update information on their behalf. The physician maintains ultimate responsibility of the accuracy of the information. DOH is authorized to promulgate regulations to provide for appointment of designees. ***STATUS: The bill (S3472) passed both houses and is pending delivery to Governor.***

VI. MENTAL HEALTH/SUBSTANCE USE

- A6563-A (Clark)/S1865-B (Brouk) – Requires institutions of higher education to establish an education campaign to educate campus communities about the 9-8-8 suicide and crisis lifeline and the crisis text line. ***STATUS: The bill (A6563-A) passed both houses and is pending delivery to Governor.***
- A6799-B (Paulin)/S8965-A (Rivera) – Requires the DOH to establish a drug-induced movement disorder screening and awareness program within the department under the health care and wellness education and outreach program. The program will: promote education and awareness of drug-induced movement disorders and screening of these disorders; develop and disseminate educational materials for health care providers regarding best practices for screening and treatment of these disorders informed by the American Psychiatric Association and other professional society practice guidelines. ***STATUS: The bill (A6799-B) passed both houses and is pending delivery to Governor.***
- A7395 (Darling)/S9787 (Brouk) – Codifies definitions mental health peer, family peer advocate, youth peer advocate, New York State certified peer specialist, credentialed family peer advocate, credentialed youth peer advocate and requires the Office of Mental Health to establish peer service qualification programs. ***STATUS: The bill (A7395) passed both houses and is pending delivery to Governor.***
- S3587-*A* (Helming)/A7188 (Gunther) – Establishes the rural suicide prevention council to identify barriers to mental health and substance use treatment and prevention services and other policies, practices, resources, services, and potential legislation that aim to reduce death by suicide and suicide attempts and acknowledge the demographic and cultural differences in rural communities. ***STATUS: The bill (S3587A) passed both houses and is pending delivery to Governor.***
- A5984-B (McDonald)/S7177-B (Fernandez) – Authorizes a practitioner in a hospital without a full-time pharmacy to dispense to a patient in a hospital emergency room for use off the premises a 24-hour supply of certain drugs, unless the FDA has authorized a longer time period for the purpose of initiating maintenance treatment, detoxification treatment, or both. This bill will require the New York State Bureau of Narcotic Enforcement to change its regulations to permit 3 days of medication to be dispensed (at least for buprenorphine and methadone). ***STATUS: The bill (A5984-B) passed both houses and is pending delivery to Governor.***
- S3112A (Mannion)/A1588-A (Buttenschon) – Requires public institutions and buildings to be equipped with opioid antagonists. The bill directs the Commissioner of the Office of General Services (OGS), in coordination with DOH, to promulgate regulations to address the appropriate number of opioid antagonists for such buildings based on the size or occupancy of the buildings, the training of personnel and use of opioid antagonists, and any other matter deemed necessary. ***STATUS: The bill (S3112A) passed both houses and is pending delivery to Governor.***
- A8075-D (Steck)/S8991-A (Harckham) – Amends provisions of the Mental Hygiene Law and Public Health Law to provide access to all formulations and doses of opioid reversal agents approved by the FDA. ***STATUS: The bill passed the Assembly by a vote of 146-1. The Senate bill remained in the Senate Alcoholism and Substance Use Disorders Committee.***
- A5004 (Hyndman)/S4393 (Martinez) – Requires fentanyl test strips, as well as an informational card about fentanyl test strips and their uses, to be included in opioid antagonist distribution within opioid overdose prevention programs through the DOH. ***STATUS: The bill (S4393) passed both houses and is pending delivery to Governor.***

VII. HOSPITALS

- S4909-B (Sepulveda)/A474-C (Cruz) – Requires general hospitals to establish violence prevention programs consistent with CMS Conditions of Participation and standards of accrediting organizations that are comparable with those of The Joint Commission. The program would include the establishment of security personnel in hospital emergency departments to protect from violence and verbal and physical abuse of doctors, nurses and staff who provide critical medical care in such emergency departments. ***STATUS: The bill passed the Senate but remained in the Assembly Health Committee.***
- S8907-A (Gonzalez)/A9819 (Wallace) – Directs DOH to produce a report examining the impact of the closure of general hospitals and hospital networks on access to health care. ***STATUS: The bill passed the Senate but was not reconciled with the Assembly bill which remained in the Assembly Health Committee.***
- S8843-*A* (Rivera)/A1633-B (Simon) –Adds requirements that general hospitals seeking to close or to close a unit must submit an application that requires review of the Public Health and Health Planning Council including a health equity statement. The legislation includes requirements for community public forum. ***STATUS: The bill (S8843-A) passed both houses and is pending delivery to Governor.***
- S8666-A (Mannion)/A8650-A (Burdick) – Requires hospitals to ask patients if they have a disability that requires accommodation under The Americans with Disabilities Act on patient intake forms and what reasonable accommodations are required. ***STATUS: The bill (A8650-A) passed both houses and is pending delivery to Governor.***

VIII. CHILD WELFARE

- S7694-A (By Sen. Gounardes)/A8148-A (Rozic) – Stop Addictive Feeds Exploitation (SAFE) for Kids Act – The Stop Addictive Feeds Exploitation (SAFE) for Kids Act would prohibit social media platforms from providing access for minors without parental consent to "addictive feeds," which refers to social media where content is recommended to users based on their personal data. The bill requires social media platforms to use commercially reasonable methods to verify users' ages, and it prohibits platforms from sending notifications about addictive feeds to minors between midnight and 6 AM without parental consent. The legislation grants the New York State Attorney General authority to promulgate regulations and enforce the provisions of the law. ***STATUS: The bill (S7694-A) passed both houses and was signed into law on June 20, 2024, as Chapter 120 of the laws of 2024. (NYSPA issued memo in support)***
- S7695-B (By Sen. Gounardes)/A8149-A (Rozic) – The New York Child Data Protection Act –Seeks to establish safer digital spaces for youth by restricting digital services from collecting or using the personal data of users they know are under the age of 18 without parental consent and restricting the sale or disclosure of the personal data of youth. Collectively, these bills will establish nation leading protections address the impact social media has on the mental health and well-being of our youth. ***STATUS: The bill (S7695-B) passed both houses and was signed into law on June 20, 2024, as Chapter 121 of the laws of 2024. (NYSPA issued memo in support)***

IX. LGBTQ

- A1273 (Kelles)/S5532 (May) – Establishes the LGBTQ+ advisory board to make recommendations, conduct research, and more regarding the LGBTQ+ community in New York state. ***STATUS: The bill (A1273) passed both houses and is pending delivery to Governor.***
- S7506-A (Hoylman-Sigal)/A7687-A (Bronson) – The legislation builds on New York's shield law enacted in June of 2023 by strengthening protections for health care providers, children, and their families and makes New York a safe haven for gender-affirming care. Such provisions include:
    - Prohibiting the removal of children from their guardian on the basis of gender-affirming care
    - Extending emergency jurisdiction to children present in the state of New York that have been unable to obtain gender-affirming care.
    - Preventing extradition of gender-affirming care providers, seekers, guardians, and helpers
    - Incorporating gender-affirming care, provided in-person or by means of telehealth, as a legally protected health activity
    - Disallowing the following for practitioners involved in gender affirming care: professional misconduct charges against health care practitioners, loss of professional liability insurance, and arrest based on their involvement of providing reproductive health services or gender-affirming care.

STATUS: The bill passed the Senate but remained in the Assembly Judiciary Committee.

X. OTHER

- S2451 (Comrie)/A10458 (Bichotte Hermelyn) – Makes not-for-profits in New York State that are licensed by the Office for People with Developmental Disabilities, the Office of Mental Health, or the DOH as an approved provider and receive more than $1 million in government funding or 75% or more of its annual gross revenue from government funding subject to Freedom of Information laws. ***STATUS: The bill advanced to the Senate calendar but was not taken up before the end of the session. The Assembly bill remained in the Assembly Corporations, Authorities and Commissions Committee.***

XI. 2024 ELECTION CYCLE/RETIREMENTS

The end of session also marks the end of the era for thirteen legislators retiring/not running for re-election including:

- Senator Neil Breslin (D), Chair of Senate Insurance Committee
- Senator John Mannion (D) – Running for Congress
- Senator Kevin Thomas (D)
- Senator Tim Kennedy (D) – Elected to Congress in April 30th special election
- Assemblymember Jeffrion Aubry (D), Assembly Speaker ProTempore
- Assemblymember Aileen Gunther (D), Chair of Mental Health Committee
- Assemblymember Helene Weinstein (D), Chair of Ways & Means Committee
- Assemblymember Danny O'Donnell (D)
- Assemblymember Fred Thiele (D)
- Assemblymember Kenneth Zebrowski (D)
- Assemblymember Andy Goodell (R)
- Assemblymember Marjorie Byrnes (R)
- Assemblymember Joseph Giglio (R)