

New York State Psychiatric Association, Inc.
Area II Council of the American Psychiatric Association
400 Garden City Plaza, Garden City, N.Y. 11530 • (516) 542-0077

Government Relations Office
Karin Carreau - Spencer/Carreau Consulting

AREA II COUNCIL SPRING MEETING

SATURDAY, MARCH 25, 2023

LA GUARDIA PLAZA HOTEL
104-04 DITMARS BOULEVARD, EAST ELMHURST, NY 11369

LEGISLATIVE REPORT

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

Prepared by:
Karin Carreau - Spencer
Jamie Papapetros

I. 2023 LEGISLATIVE SESSION

The 2023 Legislative Session commenced on Wednesday, January 4, 2023, with the Capitol open again to the public ushering in frenzied days of lobbying and in person meetings not seen since before the COVID-19 public health emergency. While the Governor's State of the State customarily starts the Legislative Session, Governor Hochul delayed her address until Tuesday, January 10, 2023, which laid out a plan with 147 proposals to "... make New York more affordable, more livable, and safer." Compared to previous State of State addresses when mental health was not even mentioned, Governor Hochul's plan in this area was a major element in her remarks and in the written State of the State Book. Governor Hochul laid out a \$1 billion plan to bring about "...the most significant change since the deinstitutionalization era of the 1970s" recognizing "...insufficient levels of inpatient psychiatric beds and outpatient services." Our comprehensive report on the State of the State can be found online at: NYSPA's website under the [advocacy tab](#).

As the Legislative Session started, it was marked by a level of change both in terms of the numbers of new members (38 between the Senate and Assembly) and new committee chairs. Of particular interest for NYSPA:

Senate	Assembly
<ul style="list-style-type: none">• Alcoholism and Substance Use Disorders – Senator Nathalia Fernandez (D-Bronx) is the new chair as Sen. Hackham, (D-Dutchess, Putnam/Westchester/Hudson Valley) takes over the Environmental Conservation Committee.• Disabilities – Senator John Mannion (D- Onondaga) remains chair• Higher Education – Senator Toby Ann Stavisky (D-Queens) remains chair• Health – Senator Gustavo Rivera (D-Bronx) remains chair• Mental Health – Senator Samra Brouk (D-Rochester) remains chair	<ul style="list-style-type: none">• Alcoholism & Drug Abuse – Asm. Phil Steck (D-Colonie) remains chair• Health – Asm. Amy Paulin (D-Scarsdale) is the new chair replacing Asm. Gottfried who retired.• Higher Education – Asm. Pat Fahy (D-Albany) is the new chair replacing Asm. Glick (D-Manhattan) who has become chair of the Assembly Environmental Conservation Committee.• Insurance – Asm. David Weprin (D-Queens) is the new chair replacing Asm. Cahill who lost re-election.

<ul style="list-style-type: none"> • Insurance – Senator Neil Breslin (D-Albany) remains chair • Veterans, Homeland Security & Military Affairs – Sen. Jessica Scarcella-Spanton (D-Statens Island/Brooklyn) is new chair as Sen. Brooks lost re-election. 	<ul style="list-style-type: none"> • Veterans Affairs – Asm. Kimberly Jean-Pierre (D-North Babylon) is the new chair replacing Asm. Didi Barrett who now chairs Committee on Energy.
--	---

II. EXECUTIVE BUDGET PROPOSAL & UPDATES

Between January and April 1st, the passage of the state budget is the preeminent focus of the Executive and Legislature. On February 1, 2023, Governor Hochul released her \$227 billion executive budget proposal. The executive budget includes major investments in education, health care, mental health, housing, public safety, and the environment. The \$227 billion budget (all funds) consists of \$125.2 billion of state operating funds, which reflects an increase of \$2.5 billion or 2 percent from the FY 2023 and includes historic investments in education and Medicaid. Education aid would increase by 10% to \$34.4 billion. The state Medicaid share would grow to \$27.8 billion, which is a 7.7% increase. Enclosed in the materials for today is our comprehensive report on the Governor’s Executive budget.

As we prepare this report, the Senate and Assembly have completed thirteen joint budget hearings examining the major programmatic areas of the budget including, among others education, higher education, health care, transportation, environmental conservation, human services, mental hygiene and public protection. On March 1, 2023, the Division of Budget, Senate and Assembly held the revenue forecast conference and released a report that states in part, “The revenue estimates from all parties for FY 2023 and projections for FY 2024 exhibited significant variance, but participants reached consensus on a two-year revenue that is \$800 million above the Executive Budget estimates.” The report also notes, “All parties agree that there are multiple and elevated risks to the economic outlook for the national and State economies, including a nationwide recession and geopolitical conflicts. A weaker or more volatile equity market could trigger additional layoffs that would slow the employment and wage recovery. Likewise, uncertainty caused by the debt limit discussions in Congress and sustained inflationary pressures could hinder economic recovery. Risks to both the national and the New York forecasts also stem from monetary and fiscal policy actions.”¹

NYSPA issued a memo to the Legislature with respect to the Executive budget related to its areas of major focus. The memo outlines NYSPA’s strong support for the provision to expand access to care for those with mental health and substance use disorders (MH-SUD), establish important network adequacy standards for MH/SUD, and a private right of action. The memo also highlighted support for the record \$1 billion investment to increase inpatient capacity by 1,000 beds including reopening the 850 beds closed by hospitals in anticipation of surge of patients with COVID-19 and 150 new beds in state psychiatric centers as well as support for the proposed investments in the workforce. NYSPA’s budget memo also highlighted its advocacy with Medical Society of the State of New York and National Association of Social Workers – New York State for additional funding for the Veterans Mental Health Training Initiative. Regarding areas of concern, NYSPA is once again opposing the repeal of prescriber prevails under Medicaid Fee for Service and Medicaid Managed Care, the scope of practice proposals including independent practice for physician assistants, and highlighted concerns with provisions regarding proposal to require Department of Health oversight and approval of material transactions/private equity involving health care entities.

The next phase in the budget process came on March 14, 2023, when the Senate and Assembly released their one-house budgets, which lays out their respective priorities as well as areas of agreement and disagreement with the executive budget proposal. Upon the release of the one-house budgets, the joint budget conference committee have begun to meet to work on areas where an agreement has yet to be reached.

¹ <https://www.budget.ny.gov/pubs/supporting/forecast/fy24/fy24-consensus-report.pdf>

The chart below provides comparison between the Executive, Senate and Assembly budgets and note of action NYSPA has taken heretofore recognizing efforts will continue.

Executive	Senate	Assembly	Action Taken
Mental Health Coverage & Parity Provisions including network adequacy provisions and private right of action (Part II)	Accepted	Not Included	-Memo in support circulated to the Legislature -Action Alert to NYSPA members to call and write their legislators -Coordinating a sign on letter in support for MSSNY and medical specialty societies
Penalties for Mental Hygiene Law Violations (Part JJ) <ul style="list-style-type: none"> Enhances authority of OMH Commissioner to impose penalties on providers for violating terms of operating certificate or applicable law. Revised the maximum sanction amount to \$2,000 per violation and further specifies penalties "...may be considered at the individual bed level for beds closed without authorization at inpatient settings." 	<p>Modifies Executive provisions by limiting ability to impose penalties on providers for violating terms of operating certificate in relation to inpatient bed levels (Executive proposed including violation of any other applicable statute, rule or regulation).</p> <p>The language also outlines sanctions must account for mitigating factors including: "(i) any officially declared national, state, or municipal emergency; (ii) any unforeseen disaster or other catastrophic event that immediately affects or increases the need for health care services; (iii) the frequency and nature of non-compliance; and (iv) any other mitigating factors established through regulation."</p> <p>In determining whether violation has occurred, the language states, "it shall not be a defense that the operator was unable to secure proper</p>	Not included	-See Above

	staff or other necessary resources if the lack of staff or other resources was foreseeable and could be prudently planned for or involved routine staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the operator for vacation, holidays, sick leave, and personal leave.”		
Elimination of Prescriber Prevails Under Medicaid Fee for Service and Medicaid Managed Care (Part D)	Not Included	Not Included	-Coordinated a memo of opposition cosigned by 12 medical specialty societies including MSSNY.
Extend Excess Medical Malpractice Program (Part F) Provides one year extension of the Physician Excess Medical Malpractice Program through June 30, 2024.	Accepted	Accepted	-Joined MSSNY in supporting one year extension.
CON Reforms/Oversight of Material Transactions (Physician Practices/Private Equity) – (Part M)	Modifies by accepting increased construction fees for hospitals, nursing homes, and diagnostic and treatment centers construction applications and exempting core public health services from home care licensure when provided by a local health department. Rejects provisions regarding private equity.	Not Included	-Highlighted concerns in NYSPA memo distributed to the Legislature
Transfers of Licensed Healthcare Professions from the State Education Department to Department of Health – (Part CC)	Not Included	Not Included	Discussed with pertinent committee chairs
Allows Certain Health Care Providers to Expand their Scopes of Practice (Physician Assistants, Pharmacists, Interstate Compact) – (Part W)	Not Included	Not Included	-Joined MSSNY and medical specialty societies in opposing

Creation of a Qualified Mental Health Associate Credentialing – (Part GG)	Not Included	Not Included	-Highlighted concerns in NYSPA memo distributed to the Legislature
Establish Joint Licensure between OMH and OASAS for Certified Community Behavioral Health Clinics and to establish an Indigent Care Program – (Part HH)	Included	Included	-Monitoring
Provides a 2.5% cost of living adjustment (COLA) for eligible human services programs within OMH, OPWDD, OASAS, OTDA, OCFS, NYSOFA from April 1, 2023 to March 31, 2024 – (Part DD)	Modified by including 8.5% COLA	Modified by including 8.5% COLA	-Supported increase of 8.5% in NYSPA memo distributed to the Legislature

Other one-house provisions:

- Senate – Senate one-house budget included \$300,000 appropriation for NYSPA/MSSNY/NASW-NYS VMHTI (\$100,000 per organization). We are working to assure this makes into the enacted budget.
- Senate – Adds \$10 million to establish a Daniel's Law Pilot Program. Per the budget document, “The Pilot Program would support new and existing programs that respond to the needs of individuals involved in a mental health crisis. Funding would be used to establish the utilization of best practices, create reporting requirements, and incentivize local governments to improve services related to mental health crisis awareness and response.”
- Assembly – The Assembly proposal includes legislation to guarantee that Federally Qualified Health Centers (FQHCs) are paid their full Medicaid reimbursement rate for telehealth services regardless of the location of the patient or the provider or the modality of the service.
- Assembly – The Assembly adds a proposal that would establish a task force to provide recommendations that aim to remove barriers for aging residents in mental health housing programs to receive both medical and mental health care.

III. UPDATE ON OTHER LEGISLATION & LEGISLATIVE ISSUES

NYSPA has also been working on the following:

- S6385-B (Hoylman)/A2375-C (Dinowitz) – The legislation authorizes courts to appoint a forensic evaluator to evaluate and investigate the parties and a child or children in relation to child custody and visitation provided the evaluator is a psychiatrist, psychologist or social worker who has received certification of completing training program. ***STATUS: The bill was signed into law on December 23, 2022, as Chapter 740 of the Laws of 2022, upon agreement with Legislature to pass technical amendments. The technical amendments (S860/A632) passed and signed into law include:***
 - Allows remote evaluations to be conducted by a trained evaluator when a child lives out of state.
 - Requires the Office for the Prevention of Domestic Violence, as well as an organization designated by the Federal Department of Health and Human Services, to mutually develop and provide training. The organization designated by the Federal Department of Health and Human Services replaces references to the New York State Coalition Against Domestic Violence.
 - Postpones effective date from 180 days to one year to ensure there is time for the training to be developed and administered.
- S4870-B (Breslin)/A3040-B (McDonald) – The legislation amends Education Law to 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. The legislation further provides the medications would be administered into the deltoid muscle. ***STATUS: The bill was signed into law on December 28, 2022, as Chapter 802 of the Laws of 2022, upon agreement with Legislature to pass amendments in 2023 session including provisions to establish State Education Department as the appropriate regulatory entity "... as well as to clarify that only medications approved by the U.S. Food and Drug Administration may be administered." The chapter amendment (S853/A860) has been passed and signed into law. NYSPA is working with the sponsors to introduce new legislation that will address the concerns it has raised through the process namely notification to prescriber of administration of medication, notification to prescriber if individual does not present at the pharmacy, process and notification for when pharmacy is out of stock of the injectable medication, training around these medications and potential side effects and adverse events and the voluntary nature of the law. NYSPA counsel is preparing language for new legislation. The 2022 law does not take effect until December 28, 2023.***

NYSPA is monitoring and tracking a myriad of bills as outlined in the separate document, List of Non-Budget Related Bills of Interest to NYSPA. For those who keep track:

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 Wednesday, March 22, 2023, 11,175 bills were introduced. Since January 1, 2023, through March 22, 2023, the Senate passed 302 bills, while the Assembly passed 146 bills. Of the 114 bills that passed both houses this year: 93 have been signed into law and 21 have not been delivered to Governor.

IV. REGULATORY ISSUES

In coordination with NYSPA's Executive Director, current and former, we are pleased to announce the Department of Financial Services issued [Insurance Circular Letter No. 1](#) directing insurers to accept and initiate processing of all health care claims submitted by psychiatrists, pursuant to, and consistent with, the current version of the American Medical Association (AMA) current procedural terminology (CPT) codes, reporting guidelines and conventions, including Evaluation and Management (E/M) CPT codes, which reflects the changes to E/M codes that took effect on January 1, 2021. The publication is the culmination of a tremendous amount of effort recognizing the impact insurers and health plans' non-compliance with the changes was having on NYSPA members and their patients.

V. DISTRICT BRANCHES' MEETINGS WITH SENATORS AND ASSEMBLYMEMBERS

We continue to encourage each district branch to convene a small group of psychiatrists, who live or work in a legislator's district to schedule a meeting with such legislator(s) in-person or virtual on NYSPA's legislative priorities and issues of concern for psychiatry including scope of practice. The recording of NYSPA's Advocacy training is available on NYSPA's website (under the Advocacy tab) along with the tool kit, which provides agenda, talking points for issue and supporting materials to be handed out. The toolkit will be updated in April (after completion of the state budget).

VI. NYSPA's VMH-PCTI

NYSPA's VMH-PCTI has been hard at work since the last report to the Committee on Legislation and Area II Council in October 2022. NYSPA's VMH-PCTI has is now scheduling presentations of its newest track prepared by Marianne Goodman, MD, the curriculum coordinator, on "Counseling on Lethal Means Safety to Reduce Suicide Risk." The roster of presentations under the VMH-PCTI now includes: (1) Invisible Wounds of War: PTSD, TBI & Combat-Related Mental Health Issues; (2) Recognition, Management and Prevention of Veteran Suicide; (3) The Clinical Importance of Understanding Military Culture; (4) Tackling Modern Day Women Veteran Issues; and, (5) Counseling on Reducing Suicide Methods, Including Gun Safety.

Virtual presentations completed this year:

- January 20 - SUNY Upstate - Recognition, Management and Prevention of Veteran Suicide
- January 31 - Westchester Medical Center - Counseling on Reducing Suicide Methods, Including Gun Safety
- February 22 - Northwell Health Division of Behavioral Health for Military Veterans & Families - Tackling Modern Day Women Veteran Issues
- March 17 - University of Richmond Medical Center, Staten Island - Invisible Wounds of War: PTSD, TBI & Combat-Related Mental Health Issue
- March 22 - Northwell Health Division of Behavioral Health for Military Veterans & Families - Counseling on Reducing Suicide Methods, Including Gun Safety

The schedule of upcoming presentations:

- March 25 - NYSPA Area II Meeting - Counseling on Reducing Suicide Methods, Including Gun Safety
- April 26 - Northwell Health Division of Behavioral Health for Military Veterans & Families - Recognition, Management and Prevention of Veteran Suicide
- April 27 - CDPHP - Counseling on Reducing Suicide Methods, Including Gun Safety
- May 2 - Bassett Health - Counseling on Reducing Suicide Methods, Including Gun Safety
- May 19 - SUNY Upstate - Counseling on Reducing Suicide Methods, Including Gun Safety

VII. MSSNY LOBBY DAY: TUESDAY, MARCH 14TH

While MSSNY had planned for its first in-person lobby day since the start of the pandemic on Tuesday, March 14, 2023, the major nor'easter storm caused it to shift to a virtual format. Leaders of specialty societies were invited to presents their society's legislative priorities and issues. Glenn Martin, MD, represented NYSPA highlighting priorities related to the budget as well as continued opposition to legislation that would grant psychologists prescription privileges.

VIII. OTHER NEWS

On March 16, 2023, Governor Hochul announced the launch of a statewide listening tour on youth mental health culminating in the convening of a Summit on Youth Mental Health and Wellness in May as part of Mental Health Awareness Month. The listening tour sessions will be coordinated by the Office of Mental Health and Office of Children and Family Services.

Per the press release, "The summit will bring together youth and parents with a broad array of subject experts from the mental health, education, technology, and law enforcement fields to discuss the challenges and opportunities impacting the well-being of our youth, including the role social media plays in their lives." The goal of the summit is to provide advice on policy recommendations.

Source: <https://www.governor.ny.gov/news/governor-hochul-launches-statewide-listening-tour-youth-mental-health>