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SATURDAY, OCTOBER 26, 2019

PART I

LEGISLATIVE REPORT:

UPDATE TO END OF LEGISLATIVE SESSION REPORT ISSUED 6/26/19 (ATTACHED)

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I. UPDATE ON LEGISLATION FROM 2019 LEGISLATIVE SESSION

Enclosed please find a copy of our “End of Legislative Session Report,” originally published on June 26, 2019. The end of session report summarizes the pertinent developments related to NYSPA’s legislative priorities and provides a status update on other legislation monitored. This separate report provides an update on the legislative and regulatory developments that have occurred since the end of the Legislative Session as well as a status update on the legislation that had passed both houses of the Legislature during the 2019 Legislative Session.

Session Statistics: For those who keep track of such things: Since January 1, 2019, the start of the 2-year term of the Legislature through Friday, June 21, 2019, 14,984 bills were introduced. Since January 1, 2019 through June 21, 2019, the Senate passed 1,555 bills, while the Assembly passed 1,009 bills. Of the 935 bills that passed both houses this year, 719 (or 76%) passed in the final three weeks of the Legislative Session, of which so far: 52 have been signed into law, 3 have been vetoed, and 880 have not yet been delivered to the Governor.

Status Update (As of October 24, 2019): Of the 935 bills that passed both houses this year, 411 have been signed into law, 3 have been vetoed, 29 are on the Governor’s desk, and 492 have yet to be delivered to the Governor.

A. Legislation Acted on By Governor/Or To be Acted On Imminently

- **S.4356 (ORTT)/A.6186-A (GUNTHER)** -- NYSPA is pleased to report the agreed upon chapter amendment (S.4356/A.6186-A) for Mental Health and Substance Use Disorder (MH/SUD) Parity Report Act (Chapter 455 of the Laws of 2018), was signed into law by Governor Cuomo on August 29, 2019, as Chapter 207 of the Laws of 2019. The law will establish a new section in the 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 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.
- **S.6591 (HARCKHAM)/A.7347 (ROSENTHAL)** – Renames the NYS Office of Alcoholism and Substance Abuse Services as the Office of Addiction Services and Supports and clarifies the scope of responsibilities of the office. **STATUS: The**

bill (A.7347) passed both houses and was signed into law on September 13, 2019, as Chapter 281 of the Laws of 2019.

- **S.3200-A (PARKER)/A.2758-A (ORTIZ)** – The bill would establish a public education initiative focused on reducing stigma and misinformation regarding mental health and substance use disorders among service members, veterans and their families as well as help to promote awareness and understanding of such and services available. *STATUS: The bill (A.2758-A) passed both houses and was signed into law on October 18, 2019, as Chapter 378 of the Laws of 2019.*
- **S.5367 (COMRIE)/A.2349 (PERRY)** – The bill requires health care providers, who will cease operations in New York State, to at least thirty days prior make good faith effort to inform current patients of closing and the right to have records transferred to provider, facility or practitioner of patient’s choosing or returned to patient. The legislation does not apply when health care practitioner’s practice is merged, consolidated, combined or acquired by another provider and the practitioner continues to provide care and treatment. *STATUS: The bill (S.5367) passed both houses and is on the Governor’s desk who must act on it by Tuesday, October 29, 2019. NYSPA is submitting letter with concerns the legislation could require physicians and health care provider to provide the “original” medical record versus a copy as is required under other provisions of New York State law.*

B. Legislation Pending Delivery to Governor

- **S.4808 (HARCKHAM)/A.2904 (QUART)** – The bill prohibits insurers and health plans from requiring prior authorization for the initial or renewal prescription for all buprenorphine products, methadone or long acting injectable naltrexone for detoxification or maintenance treatment of substance use disorder. This legislation goes beyond what was enacted as part of the Behavioral Health Insurance Parity Reforms in the 2019-20 state budget, which prohibits prior authorization for formulary forms of these medications. *NYSPA submitted a letter in support to Governor Cuomo.*
- **S.5935-A (HARCKHAM)/A.7246-B (ROSENTHAL)** – The bill prohibits prior authorization under Medicaid for all buprenorphine products, methadone or long acting injectable naltrexone for detoxification or maintenance treatment of substance use disorder. This bill would go beyond legislation enacted in 2016, which prohibits prior authorization in Medicaid for the initial and renewal prescriptions for *preferred* buprenorphine or injectable naltrexone medications. *NYSPA submitted a letter in support to Governor Cuomo.*
- **S.2849-A (BRESLIN)/A.2969-A (PEOPLES-STOKES)** – The bill significantly curtails the ability of insurers and health plans from making mid-year formulary changes. The legislation provides certain exceptions when insurers and health plans can change their formulary within a plan year as follows: (1) moving a medication into a tier with higher patient cost sharing only if they add an AB-rated generic equivalent or interchangeable biological equivalent at the same time; and (2) removing a medication if the Federal Food and Drug Administration determines it should be pulled from market. *NYSPA will be submitting a letter in support to Governor Cuomo upon bill’s delivery to Governor.*
- **S.6081 (HOYLMAN)/A.2372 (DINOWITZ)** – The bill would require a non-settling co-defendant in an action, where another co-defendant has previously settled, to choose whether to reduce his or her liability exposure by the stated settlement amount or the settling of the tortfeasor’s equitable share prior to the start of the trial. *Action Requested: NYSPA joins MSSNY and other medical specialty societies in opposing this legislation and urges NYSPA members to submit letter to Governor Cuomo via the MSSNY Grassroots Action Center: <https://cqrcengage.com/mssny/app/onestep-write-a-letter?3&engagementId=500854>.*
- **S.6552 (SKOUFIS)/A.2373 (DINOWITZ)** – The bill authorizes a plaintiff to bypass the defendant originally sued to collect a judgement from a third party defendant that been sued for contribution or indemnification as a result of the underlying action. *Action Requested: NYSPA joins MSSNY and other medical specialty societies in opposing this legislation and urges NYSPA members to submit letter to Governor Cuomo via the MSSNY Grassroots Action Center: <https://cqrcengage.com/mssny/app/onestep-write-a-letter?3&engagementId=500854>.*

C. Newly Introduced Legislation

- **S.6687 (HOYLMAN)/A.8543-A (FERNANDEZ)** – Modeled off of a law enacted in Oregon in 2018, the bill amends State Education Law to allow a student to be absent from school for mental or behavioral health reasons pursuant to regulations promulgated by the Commissioner of Education. *STATUS: The bills were referred to the Senate Rules Committee and Assembly Education respectively.*

II. VMH-PCTI UPDATE/ADDENDUM FROM REPORT ON JUNE 26TH

NYSPA's VMH-PCTI continued a robust schedule of presentations this fall with trainings provided at Albany Medical College's Primary Care Neurology Conference in Lake Placid in September, South Nassau Community Hospital and most recently to the board of the New York Academy of Family Physicians. In total, NYSPA held 17 VMH-PCTI presentations across the State training more than 200 primary care physicians, psychiatrists and residents.

Additional curriculum has been developed on women veterans' issues as well as military culture, which the curriculum-faculty advisory committee will review this fall in preparation of hosting a train-the-trainer and scheduling presentations later this year.

In addition, NYSPA has executed a contract with the Research Foundation for Mental Hygiene to have New York's Center for Practice Innovations record both of NYSPA's VMH-PCTI presentation tracks as webinars, which will be made available on the NYSPA website. NYSPA is in the process of scheduling the recording of the webinars.

On a related note, Senator Carlucci, Chair of the Senate Mental Health and Developmental Disabilities Committee, is holding a public hearing on veterans' mental health and well-being on Wednesday, November 6, 2019 at the Clarkstown Town Hall. Marianne Goodman, M.D., psychiatrist and professor of Psychiatry at the Icahn School of Medicine at Mount Sinai and frequent presenter of NYSPA's VMH-PCTI presentations, will testify on NYSPA's VMH-PCTI efforts as well as her experience and research on veteran suicide and suicide prevention.

III. UPDATE: NEW YORK'S RAISE THE AGE LAW GOES INTO EFFECT OCT. 1, 2019 FOR 17 YEAR OLDS

The second phase of New York's law to raise the age of criminal responsibility went into effect on October 1, 2019 for seventeen year olds. The first phase went into effect on October 1, 2018 for sixteen year olds. The main contours of the law are as follows:

- All misdemeanor charges under the Penal Law would be handled in Family Court.
- All felony charges would begin in a newly established Youth Part of New York Superior Criminal Courts, presided over by a Family Court judge, where offenders would have access to additional intervention services and programming. Judges in the Youth Part will receive training in juvenile justice, adolescent development as well as "effective treatment methods for reducing unlawful conduct by youths."
- Non-violent felony charges would be transferred to Family Court, unless the district attorney makes a motion and demonstrates extraordinary circumstances that justify retaining the case in the Youth Part of the criminal court.
- Violent felony charges would remain in the Youth Part of the criminal court and be subject to a three-part test that weighs the seriousness of the offense to determine whether the case will be eligible for presumptive removal to Family Court. Cases that remain in the Youth Part will be adjudicated as adolescent offenders. Youth sentenced to one year or less of confinement will be housed new specialized secure juvenile detention or Office of Children and Family Services (OCFS) secure facility. Youth sentenced to more than one year of confinement who under eighteen years of age at sentencing would be housed in adolescent offender facilities established by the Department of Corrections and Community Supervision (DOCCS). Adolescent offender facilities have opened or are in the process of opening and will provide a range of therapeutic programs and services.

The state budgets from 2017-18, 2019-20 and 2019-20 \ have allocated a total of \$300 million for implementation of New York's raise the age law. Furthermore, the State Raise the Age Implementation Task Force, consisting of a broad array of stakeholders, released a report on the implementation of the first phase of the law for sixteen year olds. Among the report's findings:

- The number of felony arrests statewide for sixteen year olds has decreased by 36 percent from 244 per month in 2017 to 155 per month after the law became effective in October 2018. Ten of New York's sixty-two counties reported no felony arrests of sixteen year olds in the first six months of implementation of the raise the age law.
- From the period of October 2018 to March 2019, 82 percent of cases involving felony-charged sixteen year olds were transferred from the Youth Part to Family Court.
- 94% of youth charged with non-violent felonies, and 73% of youth charged with violent felonies, had their cases removed from adult criminal court to the family court process.

A broad group of stakeholders have signed onto an agenda for the 2020 Legislative Session entitled "Achieving Youth Justice," which consists of:

- Ending the use of solitary confinement in adolescent facilities
- Stopping the criminalization of childhood by ending prosecution of children under the age of 12
- Extend youth offender status to age 25 by creating a “young adult status”
- End the adult incarceration of youth. Under the raise the age law, adolescents sentenced to a state prison term are sent to Adolescent Offender facilities operated by the Department of Corrections and Community Supervision. Achieving Youth Justice urges these adolescents be sent to secure facility operated by the Office of Children and Family Services.

Report on Year 1 of RTA:

https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RT_A_Task_Force_First_Report.pdf#_blank

Press Release on RTA Going Into Effect for Seventeen Year Olds:

<https://www.governor.ny.gov/news/governor-cuomo-announces-second-phase-raise-age-law-now-effect>

IV. JOINT SENATE TASK FORCE ON OPIOIDS, ADDICTION & OVERDOSE PREVENTION

The Joint Senate Task Force on Opioids, Addiction and Overdose Prevention held its first public hearing on Friday, August 9, 2019, at St. Barnabas Hospital to elicit testimony from stakeholders on strategies for reducing overdoses, improving individual and community health, and addressing the harmful consequences of drug use. This is the first in a series of planned public hearings and roundtables around the State. A public hearing is scheduled in Albany for Friday, November 15, 2019 at 10 a.m. The Task Force is accepting written testimony/comments via email at: nysoverdosetaskforce@nysenate.gov.

V. RECENT REGULATORY DEVELOPMENT SINCE END OF LEGISLATIVE SESSION

A. DFS PROPOSED REGULATION – MINIMUM STANDARDS FOR CONTENT OF HEALTH INSURANCE ID CARDS

The Department of Financial Services published a proposed regulation in the NYS Register on August 14, 2019, adding a new section to 52.69 of Title 11 NYCRR to require health insurance identification cards to contain certain information for the primary insured and dependents. Health insurers would be required to issue such identification cards within thirty days of the effective date of the coverage. The rule is not applicable to Medicaid, Children’s Health Insurance Program and the Essential Plan. Under the proposed regulation, the health insurance identification card would be required to contain, at minimum the following:

- (1) the primary insured’s name and identification number;
- (2) each insured dependent’s name and, if applicable, identification number, which shall appear either on the primary insured’s identification card or on a separate card issued to the dependent;
- (3) the full legal name of the issuer providing the coverage or the name under which the issuer is authorized to do business;
- (4) a statement that the coverage is provided and insured by the issuer;
- (5) the product or plan name;
- (6) a statement of whether the coverage has out-of-network benefits;
- (7) the name of the issuer’s health care provider network or networks for the product or plan, if applicable;
- (8) the name of the product or plan’s formulary, if applicable;
- (9) the phone number or numbers at which the insured or health care provider may readily obtain the following:
 - (i) member services assistance;
 - (ii) confirmation of eligibility or verification of benefits; and
 - (iii) prior authorization for health care services, if applicable;
- (10) the internet website address of the issuer;
- (11) the annual or plan year deductible amount for participating providers, if applicable; and
- (12) copayment information applicable to participating providers for the following services:
 - (i) primary care office visits;
 - (ii) specialist office visits;
 - (iii) urgent care; and
 - (iv) emergency room visits.

Regarding an insurer’s network of providers, the proposed regulation requires, “An issuer shall post conspicuously on its website the name of the issuer’s health care provider network or networks for the product or plan and the name of the product or plan’s formulary, as applicable. The names posted on the issuer’s website shall match the names listed on the health insurance identification card.” The regulation also requires the insurer to issue a new identification card when any information on the card

is changed, which shall occur upon renewal of the policy. The proposed regulation has a 60-day public comment period ended on October 13, 2019.

B. PROPOSED REGULATIONS TO CURB USE OF SOLITARY CONFINEMENT IN STATE PRISONS & LOCAL JAILS

The Department of Corrections and Community Supervision, which has jurisdiction over state prisons, and the State Commission of Correction, which has jurisdiction over local jails, promulgated new proposed rules to limit the use of solitary confinement, including phasing in over three years a cap in how much time an incarcerated individual can spend in solitary from 90 days effective October 2021, 60 days effective April 2022, and 30 days effective October 1, 2022.

The proposed rules would prohibit the use of solitary confinement for incarcerated individuals with a mental or physical disability, serious mental illness as well as pregnant women or women within eight weeks of giving birth. Under the proposed rules, solitary confinement would only be authorized if an incarcerated individual's behavior violates institutional rules and poses an "unreasonable risk" to health, safety or security of staff, other incarcerated individuals, or facility security, which includes among other violations engaging in a sex act, organizing a riot, damaging property, brandishing a weapon, and attempting to escape. Once an individual is placed into solitary confinement, prison and jail officials would have to review the status every seven days for the first two months and at least every 30 days thereafter. The proposed rule would also require staff assigned to solitary confinement units to receive training in interpersonal skills, de-escalation techniques as well as implicit bias. In addition, step down units would be created to assist individuals in transitioning from solitary confinement to the general population.

The proposed rules would establish new types of units that could be used to isolate incarcerated individuals, such as mental health treatment units.

The proposed regulation can be accessed at: http://www.doccs.ny.gov/RulesRegs/20190828_CCS-35-19-00001.html

The proposed regulation has a 60-day public comment period ending on October 27, 2019.

VI. CANDIDATE RECOMMENDED BY DR. PENDER & NYSPA ADDED TO STATE BOARD OF MENTAL HEALTH PRACTITIONERS

We are pleased to report that the recommendation of Dr. Pender and NSYPA Sargam Mona Jain, M.D. has been appointed to a five year term to the State Board of Mental Health Practitioners. Dr. Jain is Clinical Instructor in Psychiatry at Weill Cornell Medical College and Assistant Attending Psychiatrist at New York Presbyterian Hospital. The State Board of Mental Health Practitioners assists the Board of Regents and the Education Department with the license, discipline and practice of the professions licensed under article 163 of State Education Law, including mental health counseling, marriage and family therapy, creative arts therapy and psychoanalysis. Dr. Jain replaces Dr. Paul Mosher, whose term expired in June.

VII. 2020 LEGISLATIVE SESSION UPDATE

The 2020 Legislative Session is scheduled to commence on Wednesday, January 8, 2020 and conclude on Tuesday, June 2, 2020. The conclusion of the session is scheduled earlier given the 2020 electoral calendar, which has Congressional and State legislative primaries taking place on Tuesday, June 23, 2020. 2020 is an election year for members of the State Legislature.

Governor Cuomo has already signaled his plan to once again include a proposal to legalize adult use cannabis in his State of the State and 2020-21 Executive budget proposal. The State heads into the 2020-21 budget season with a \$2.9 budget shortfall for Medicaid and a request for state agencies to keep their budgets flat.