



2020 Session Legislative Update- Health & Mental Hygiene

July 29, 2020

The State Legislature recently returned to Albany for four days of a remote Legislative Session to address local bills, confirmation of appointees to State bodies, and some member priority issues. The State Capitol remained closed to the public and only a few people were permitted in the chambers. This was only the fourth time that lawmakers convened session since the mid-March State shutdown. Once to enact the final budget in early April and subsequent May and June sessions to act on a series of COVID-19 related and police/criminal justice bill packages, respectively. Just over 400 bills were passed by both houses this session, far less than other years given the circumstances.

Upon adjourning what some members referred to as their “end of session” session, it was noted that state legislators may need to reconvene in August or early September prior to the elections to address the State’s budget deficit estimated at between \$13 and \$15 billion. This will depend on what the fourth relief package, currently being negotiated in Washington DC, includes for state and local governments, Medicaid and other economic relief.

While we will keep you updated on the financial situation and possible future session, below we are providing a summary of all bills that passed both houses during the 2020 session in the health/mental hygiene areas. Noted in each summary is the last action on the bill including whether it has been sent to the Governor’s desk and/or acted on by the Governor at this point. Most bills await gubernatorial action.

Contents

COVID-19..... 2

Hospital/Institutional Care 4

Health Professions 5

Pharmacy..... 6

Behavioral Health 7

Developmental Disabilities..... 9

Public Health/ Patient Care..... 9

Insurance..... 11

The text/sponsor's memo for the legislation summarized below can be accessed via the State Assembly's [bill search](#) page on its website. Upon review, please let us know if you have any questions related to this update. All of us at Reid, McNally & Savage wish you and yours an enjoyable remainder of the summer and hope that you remain safe and healthy during this challenging time.

COVID-19

Medical Liability Protections (A10840 Kim/S8835 Sepulveda)

This bill narrows the medical liability protections put in place in the final 2020-21 State Budget for physicians and health care facilities during the COVID-19 pandemic. It limits the liability protections prospectively only to health care workers treating or diagnosing suspected or confirmed COVID-19 patients. Physicians, hospitals, and other health care facilities are still liable for harm caused by willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

This bill was transmitted to the Governor on July 24, 2020. No action has been taken by the Governor as of today.

Frontline Worker Trauma Advisory Council (A10629-A Rules Gunther/S8608-A Carlucci)

This bill establishes the Frontline Workers Trauma Informed Care Advisory Council. The bill requires the Commissioner of the Office of Mental Health (OMH) to establish the Council consisting of, at a minimum, the commissioners or their designees of the following agencies: Department of Health (DOH); Department of Aging; Office for People with Development Disabilities (OPWDD); Office for Addiction Services and Supports (OASAS); Department of Corrections and Community Supervision (DOCCS); Office of Children and Families (OCFS); Department of Labor; Conference of Local Mental Hygiene Service Directors; and 21 additional members appointed by the Governor, Senate Majority Leader, and Assembly Speaker.

The Council's charge includes:

- Identifying evidence-based tools to track the impact of COVID-19 associated collective trauma and the needs of frontline workers;
- Identifying or developing training opportunities for organizations that employ frontline workers on how to support the mental health and wellness of their employees;
- Identifying evidence-based trauma-informed support resources and learning opportunities for frontline workers;
- Identifying or developing a mechanism to inform and refer impacted frontline workers experiencing symptoms associated with COVID-19 to behavioral health services and supports; and
- Consulting with any organization, government entity, agency, or person that the Council determines may be able to provide the information and expertise on the development and implementation of trauma informed care for frontline workers.

The Council is charged with submitting a report to the Governor, Speaker of the Assembly, and the Senate Majority Leader by December 1, 2020.

This bill has not yet been transmitted to the Governor.

Employee Sick Leave for Mandatory or Precautionary Quarantine (S8091 Ramos/A10153 Nolan)

This bill provides, as of January 1, 2020, sick leave benefits, paid family leave, and disability benefits for employees of private and public employers who are subject to a mandatory or precautionary order of quarantine as follows:

Employees working for small employers (1-10 employees) unpaid sick leave, immediate qualification for family leave and temporary disability benefits, and full job protection.

Employees working for medium sized employers, (11-99 employees) and small employers with a net income of \$1 million annually, five paid sick days, immediate qualification for paid family leave and temporary disability benefits, and full job protection.

Employees working for large employers, (100 or more employers) and public employees, paid sick days for the entire quarantine period (up to 14 days) and full job protection.

The Department of Financial Services is charged with implementing a risk adjustment pool to assist in the stabilization of claims related to paid family and temporary disability benefits.

This bill was signed into law, Chapter 25 of the Laws of 2020.

Confidentiality of Contact Tracing Information (S8450-C Rivera/A10500-C Gottfried)

This bill provides for the confidentiality of contact tracing information from the identification of individuals who have come in contact with an individual with a confirmed or probable diagnosis of novel coronavirus, COVID-19.

This bill has not yet been transmitted to the Governor

Cultural and Linguistic Diversity COVID-19 Contact Tracers (A10567-A Rules Jean-Pierre/S8829 (Martinez))

This bill would require DOH, every county health department in the State except New York City, and any entity that hires persons to perform COVID-19 contact tracing to hire contact tracers who are representative of the cultural and linguistic diversity of the communities they serve, to the greatest extent possible. A report on contact tracer diversity must be posted on their official websites on an annual basis. This bill would take effect immediately and be deemed repealed on January 1, 2022.

This bill has not yet been transmitted to the Governor.

Placement of Former Foster Care Youth During a Certain State of Emergency (S8834 Montgomery/A10581-B Wright)

This bill authorizes former foster care youth who have been discharged from foster care to return to foster care placement during the COVID-19 state of emergency without requiring such children to file a motion authorizing their return to foster care placement and places a temporary moratorium on aging out of foster care during a state of emergency.

This bill has not yet been transmitted to the Governor.

DOH Study on COVID-19 Health Impacts on NYS Minorities (S8245-A, Parker/ A10517, Aubry)

This legislation would require a study that identifies statewide and regional rates of infection, hospitalization, recovery and mortality, and any racial and ethnic disparities in such rates and any system-related factors which may contribute to such disparities.

This bill was passed in June and signed by the Governor on June 14, 2020, Chapter 99 of the Laws of 2020.

Inclusion of OASAS Commissioner on the Disaster Preparedness Commission (S8363, Harckham/ A10509, Rosenthal, L)

This bill amends the Executive Law by including the Commissioner of OASAS as a member of the Disaster Preparedness Commission.

This bill was passed in June and signed by the Governor on June 17, 2020, Chapter 116 of the Laws of 2020.

Hospital/Institutional Care

Discharge Planning Requirements (S7185 Carlucci/ A9135 Galef)

This bill is a chapter amendment to c. 617 L. 2019 that expands discharge planning requirements to situations where an identified caregiver is unwilling or unable to confidently provide proper care. In these cases, the hospital is required to assess whether other services, including home care, are needed and if necessary to order such services.

This bill was signed into law, Chapter 81 of the Laws of 2020

Jonah Bichotte Cowan Law (A2770-C Bichotte/S8525 Montgomery)

This bill provides that if a pregnant mother presents at a hospital with concerns about being in pre-term labor, the hospital is required to:

- determine whether the mother is in pre-term labor;
- upon diagnosis of pre-term labor, admit the mother to the hospital or treat her in the emergency department for close observation and continuous monitoring until it is deemed medically safe for a discharge from the hospital, or stabilize and arrange for an appropriate transfer to another hospital; and
- provide the mother with information concerning pre-term labor and the potential health effects of pre-term labor and premature birth delivery on the mother and the fetus through the maternity information leaflet required under Public Health Law Section 2803-j (1) and (1-a).

This legislation also requires the maternity information leaflet currently required under Public Health Law Section 2803-j to include the following information:

- a statement that the Medicaid program provides coverage for all income-eligible pregnant women and children residing in the State regardless of immigration status; and
- information relating to pre-term labor and premature birth.

This bill has not yet been transmitted to the Governor.

Establishment of Obstetric Hemorrhage Protocols (S7173, Rivera/ A9520, Joyner)

This legislation requires hospitals to adopt obstetric hemorrhage protocols and requires the hospitals to provide protocols to the Department of Health upon request. DOH must develop guidance to hospitals on obstetric hemorrhages, including a toolkit and checklist and must post the guidance and toolkit on the DOH website.

This bill was passed in February and signed into law by the Governor on April 17, 2020, Chapter 75 of the Laws of 2020.

Health Professions

Physician Practice Notice of Office of Professional Misconduct (OPMC) Complaints (S6678-A Salazar/A7991-A Simotas)

This bill requires all physicians to post information in their practices on how a patient can report a complaint about a physician to the (OPMC). It would also require the OPMC to post information on its website on how patients can file a complaint against a particular physician, including information on reporting instances of misconduct involving sexual harassment and assault.

This bill has not yet been transmitted to the Governor.

Increased Whistleblower Protections for Health Care Workers (S8397-A Savino/A10326-A Reyes)

This bill prohibits health care employers from penalizing employees because of complaints of employer violations. So that patient care can improve, and such workers can be safe from retaliation.

This bill was signed into law, Chapter 117 of the Laws of 2020.

Qualifications of Personnel for Instilling Mydriatic or Cycloplegic Eye Drops (S8641-A Stavisky/A10634-B McDonald)

This bill amends the education law, in relation to allowing for the instilling mydriatic or cycloplegic eye drops by persons trained and deemed qualified by supervising licensed physicians or supervising licensed optometrists.

This bill has not yet been transmitted to the Governor

Telehealth/Telemedicine (S8416 Metzger/ A10405A Rosenthal)

This bill includes audio-only and video-only telehealth and telemedicine services as covered and eligible for reimbursement under Medicaid and Child Health Plus, pursuant to the promulgation of regulations by the Commissioner of the State Health Department.

This bill was signed into law, Chapter 124 of the Laws of 2020

Renewal of Limited Permits for Professions (A10741 Glick/S8632 Stavisky)

The bill authorizes the State Education Department to renew limited and provisional permits required for professional licensure for 12 months for the following professions: Licensed Clinical Social Workers; Applied Behavioral Analysts; Mental Health Practitioners; Psychologists; Psychiatrists; Massage Therapists; Dentists; Physical Therapists; Physical Therapy Assistants; Midwives; Respiratory Therapists; Respiratory Therapist Assistants; and Clinical Laboratory Technicians.

This bill has not yet been transmitted to the Governor.

Information on Complications from Pregnancy (A9133 Richardson/S7175 Montgomery)

This bill requires the New York State Department of Health to develop and update information on possible complications from pregnancy that can endanger the life or health of the newborn or mother and to post the information on the Department's website in each of the top six languages spoken in the State. In addition, every hospital that offers maternity or women's wellness services must provide the information to pregnant patients as clinically appropriate, but prior to discharge. Diagnostic and Treatment Centers that offer prenatal care must provide such information upon the initial prenatal care visit.

This bill was signed into law, Chapter 76 of the Laws of 2020.

Work Group to Assess Fairness of Physician Loan Repayment Application Process (S7524, Rivera/ A9097, Gottfried)

This legislation directs the Department of Health to convene a work group including individuals recommended by associations representing physicians, general hospitals, and other health care facilities, to assess the impact of the current grant application process on the number of individual applicants versus institutional applicants in underserved areas, particularly now that the application requires use of the New York State Grants Gateway. The work group will gather information on the results of this new procedural change to assure that the number of individual applicants is not negatively impacted by the increased administrative steps to apply.

This bill has not yet been transmitted to the Governor.

Pharmacy

Drug Assistance Demonstration and Emergency Prescriptions (S6492-B Rivera/A8533-B Joyner)

This bill establishes a drug assistance demonstration program and authorizes emergency prescriptions for insulin and other life sustaining medications. In particular, the bill requires the

Commissioner of the State Health Department to develop a demonstration program to provide access to such medications to residents who are uninsured, ineligible for Medicaid or other health coverage. As part of the program the Commissioner would consider modeling it after the state's HIV/AIDS Assistance Program and engage pharmaceutical manufacturers to explore a public private partnership. The Commissioner shall report to the Governor and Legislature on program options, cost sharing models and related costs.

The bill also authorizes health care practitioners to issue non-patient-specific prescriptions for insulin, related supplies or other life sustaining prescription medications identified by NYSDOH to a licensed pharmacist to dispense an emergency refill for an expired prescription, provided that:

- First attempts to obtain an authorization from the prescriber for a new prescription do not work and the prescriber does not object to utilizing a non patient specific prescription;
- The pharmacist believes in his/her professional judgment that the interruption of therapy may result in health consequences detrimental to the patient;
- The pharmacist provides refill of the prescription in conformity with the directions for use not to exceed a 30 day emergency supply; and
- The pharmacist notifies the prescriber within 72 hours of dispensing the refill or refills.

This bill has not yet been transmitted to the Governor

Partially Filled Prescriptions (S7115 Rivera/ A9034 McDonald)

This bill allows at the request of a prescriber or patient, a prescription for a C2, C3, C4 or C5 controlled substance to be partially filled, provided that the partial fill is recorded in the same manner as a refill. The remaining quantity of the prescription may be dispensed separately only once in conformity with directions for use.

This bill has not yet been transmitted to the Governor

COVID-19 Vaccine (S8182A Hoylman/ A10508A Rules-Paulin)

This bill authorizes licensed, certified pharmacists to administer an approved COVID-19 vaccine. It would take effect 90 days from when such vaccine is approved by the FDA and would be repealed July 1, 2022. In addition, the Commissioners of the State Health Department and the State Education Department shall jointly certify that this would be in the best interest of public health.

This bill was signed into law, Chapter 110 of the Laws of 2020

Behavioral Health

“Good Samaritan” Naloxone Administration (S8259 Harckham/A7812-A Rosenthal)

This bill allows “Good Samaritans” to administer overdose reversal drugs such as naloxone in stores, restaurants, and other public places without being subject to civil, criminal, or administrative liability solely by reason of such action.

This bill has not yet been transmitted to the Governor.

Stephen’s Law (S4741-B Harckham/A9536 McDonald)

This bill requires that all certified treatment programs notify every patient of their right to identify individuals who should be contacted in case of emergency, as such term is defined by the Commissioner of OASAS.

This bill has not yet been transmitted to the Governor

Officers Duty to Provide Attention to Medical and Mental Needs of Persons in Custody (S6601-B Bailey/A8226-B Fernandez)

This bill provides that when a person is under arrest or otherwise in the custody of a police officer, peace officer or other law enforcement representative or entity, such officer, representative or entity shall have a duty to provide attention to the medical and mental health needs of such person.

This bill was signed into law, Chapter 103 of the Laws of 2020.

Reporting of Youth Placed in Foster Care and Recruitment of Foster Parents (S222-C Benjamin/A1436-C Epstein)

This bill improves the reporting of the status of youth placed in foster care settings and the recruitment of foster parents. It requires information including the total number of youth placed in foster care, the reasons why such youth were placed, and the efforts the state has taken to recruit and retain foster parents.

This bill has not yet been transmitted to the Governor

Liability for Payment of Fees For Services Rendered by Office of Mental Hygiene (S4255 Carlucci/A3402 Gunther)

This bill prohibits OMH from billing a person for his/her care and treatment when the source of the funds for making such a payment comes from the proceeds of a suit against the State for negligent or improper treatment.

This bill has not yet been transmitted to the Governor

Homeless Shelter Location Hearing Requirement (S7215-A Savino/A7820-A Fall)

This bill requires that in New York City, public hearings shall be conducted related to new homeless shelters in the community where the proposed shelter is to be located before being sited.

This bill has not yet been transmitted to the Governor

Reporting of the Homeless Population During a State Disaster Emergency (S8643-A Liu/A10566-A Hevesi)

This bill requires the Commissioner of the Department of Health, the Commissioners of the Department of Homeless Services, and the Commissioner of the New-York City Department of Health and Mental Hygiene, in consultation with the local Departments of Health, to report

on the number of sheltered and unsheltered homeless individuals and families during a state disaster emergency, declared pursuant to Executive Order 202 of 2020 in response to the novel coronavirus (COVID-19) pandemic.

This bill has not yet been transmitted to the Governor

OCFS Reporting Data on Child Welfare Preventative Services (S8421-A, Persaud/ A10513, Hevesi)

Directs the Office of Children and Family Services to issue an annual report on data by social services district on the total number of children and families receiving preventative services, including how many new preventative cases were opened in the year prior, the average length of time preventative services were provided for each child or family, a descriptive list of other preventative services provided by local social services district that does not utilize preventative service funding, and then total number of children who entered foster care during the year prior.

This bill has not yet been transmitted to the Governor.

Division of Veterans' Services Study on Homeless Veterans (S6938, Parker/ A8969, Rozic)

This legislation amends the underlying chapter by limiting the total number of reports to five reports, one every three years starting in 2020. The sponsor's memo notes the study frequency is being reduced from every two years to every three years due to the significant fiscal impact on the agency.

This bill was passed in February and signed into law by the Governor on April 17, 2020, Chapter 42 of the Laws of 2020.

Developmental Disabilities

OPWDD Study on Debit Card Use (S5538-A, Brooks/ A7859-A, Jean-Pierre)

Directs the Commissioner of OPWDD to conduct a study with the State Comptroller's Office to determine the feasibility of the use of debit cards for cash accounts of residents of OPWDD facilities to be used for facilities and service providers holding operating certificates. The Commissioner shall issue a report by December 31, 2021.

This bill has not yet been transmitted to the Governor.

Public Health/ Patient Care

Dissemination of Information Regarding Bone Marrow Donor Programs (S6705 Benjamin/A5370-A Solages)

This bill requires DOH to develop and disseminate information regarding bone marrow donor programs and authorizes physicians, physician assistants and nurse practitioners to provide such information to patients.

This bill has not yet been transmitted to the Governor

Creates NYSDOH Study of the Effects of Racial and Ethnic Disparities on Infant Mortality (S6662 Benjamin/A6987-A Solages)

This bill requires DOH to conduct a study of the effects of racial and ethnic disparities on infant mortality and prepare and submit a report to the Governor and the Legislature.

This bill has not yet been transmitted to the Governor

Expansion of the Public Health and Health Planning Council (PHHPC) (S7304 Hoylman/A9530 Gottfried)

This bill increases membership in the public health and health planning council and directs the appointment of members representing additional consumers. Such as those involved in activities related to health care consumer advocacy including issues of interest to low and moderate-income individuals.

This bill has not yet been transmitted to the Governor

Creates NYSDOH Workgroup on Rare Diseases (S7172 Rivera/A9132 Paulin)

This bill directs DOH to convene a work group on rare diseases to improve education and treatment in order to advance the goals of Chapter 719 of the Laws of 2019.

This bill was signed into law, Chapter 74 of the Laws of 2020.

New York State Labor Law Severability Clause (S7197 Metzger/A8981 Jaffee)

This bill amends the labor law to make certain provisions related to prohibition of discrimination based on an employee's or a dependent's reproductive health decision making severable.

This bill was signed into law, Chapter 85 of the Laws of 2020.

Prohibition of Price Gouging for Essential Medical Supplies and Services (S8189 Hoylman/A10270 Rozic)

This bill updates New York's statute regarding the price gouging of consumer goods by expanding it to cover essential medical supplies and services and other goods or services used to promote the health or welfare of the public.

This bill was signed into law, Chapter 90 of the Laws of 2020.

Purchase of Online Groceries Using State Supplemental Nutrition Assistance Program (S8247-A Kaminsky/A10673 Hevesi)

This bill authorizes the use of supplemental nutrition assistance program benefits to purchase online groceries to ensure SNAP participants have a safe and alternative methods to access groceries.

This bill has not yet been transmitted to the Governor.

Creates Review of Policies and Practices Relating to Infectious Disease Outbreaks in Correctional Facilities (S8315-A Rivera/A10463-A Gottfried)

This bill expands the DOH review of health policies and practices in DOCCS and local correctional facilities in relation to emerging infectious diseases, including the treatment and prevention of the disease among inmates and staff.

This bill has not yet been transmitted to the Governor

Requirement for Supermarkets to Make Excess Food Available to Food Banks (S4176-A, Harckham/ A4398-A, Abinanti)

Requires supermarkets to donate excess food to organizations that provide food for free to needy persons including but not limited to religious or not-for-profit organizations, food pantries, food banks, soup-kitchens, or other community-based organizations.

This bill has not yet been transmitted to the Governor.

NYS DOH Study on Racial Disparities on Breastfeeding Rates (S6707, Benjamin/ A6986-A, Solages)

Directs the New York State Department of Health to conduct a study on the effects of racial and ethnic disparities on breastfeeding rates. One year after the effective date, DOH will produce a report containing the study's findings and policy recommendations for increasing breastfeeding rates, reducing disparities, increase access to health care and breastfeeding support throughout the State.

This bill has not yet been transmitted to the Governor.

OTDA Report on Services Provided to Human Trafficking Survivors (S8743, Hevesi/ A8645, Liu)

Directs the Commissioner of the Office of Temporary and Disability Assistance (OTDA) and Division of Criminal Justice to jointly submit a report annually regarding detailed information of services provided to survivors of human trafficking.

This bill has not yet been transmitted to the Governor.

Insurance

Prohibits Unfair Discrimination by Insurers for Individuals that Use Prescriptions to Block the Effects of Opioids (S3159-A, Harckham/ A5952-A, Rosenthal, L)

Defines an insurer denying life insurance coverage solely because the applicant had been prescribed medication to block the effects of opioids as unfair discrimination and prohibits such practices.

This bill has not yet been transmitted to the Governor.

Medicaid Coverage of Lactation Counseling Services (S6952 Kaplan/A9648 Solages)

This bill requires Medicaid coverage of lactation counseling services for all pregnant women without needing a referral from a physician, registered physician assistant, registered nurse practitioner, or licensed midwife.

This bill was signed into law, Chapter 61 of the Laws of 2020

Notice of Consumer Assistance Program on Adverse Determinations made by Medicaid Managed Care Plans (S7241, Rivera/ A9538, Gottfried)

Requires notice of the of the Department of Health designated independent consumer assistance program and the independent substance use disorder and mental health ombudsman on all notices of adverse determinations, grievances, and appeals.

This bill has not yet been transmitted to the Governor.