CHCANYS 2016 End of Legislative Session Wrap Up

The Legislature wrapped up their work early last Saturday morning, just over their projected end date of June 16. On a general note, this legislative session was oddly quiet, with legislators and the Governor focusing on issues like campaign finance reform, daily fantasy sports, addressing the opioid addiction crisis, mayoral control of schools, and reauthorizing the New York Racing Association. While most of New York's health care legislation is taken up in the budget, there were some key legislative pieces taken up outside of the budget, most of which passed last week.

Below are two sets of bills that we were watching – one is a list of bills that passed both houses, and the other set is bills that fell short.

Bills that Passed BOTH Houses

While these bills passed both houses, the Governor must take action to approve or disapprove (veto) the bill. Noted, however, are bills that reflect "3-way" agreement between the Executive, Senate and Assembly.

Addressing the Opioid Addiction Crisis. There were three bills passed that reflect **3-way** agreement on addressing the State's opioid addiction crisis. The Governor signed these bills into law this week.

- **A.10727 (Rosenthal)/S.8139.** This new law includes provider education, prescribing practices, public education and insurance provisions.
    - Provider education: the law requires registered DEA prescribers to complete, once every three years, three hours of DOH-approved coursework or training regarding addiction, pain management and palliative care. Such training shall count toward professional continuing education requirements "to the extent provided" in the regulations of SED. DOH may approve an exemption for persons who: (i) clearly demonstrate to the department's satisfaction that there would be no need to complete such course work or training; or (ii) that he or she has completed course work or training deemed by the department to be equivalent to the required course work or training.
    - Insurance provisions: the law will eliminate the need for preauthorization or utilization for the first 14-days of Inpatient or Residential treatment. All such care, however, will need to be "medically necessary" based on a retrospective review. The facility must notify the insurer of both the admission and the initial treatment plan within 48 hours of the admission; perform daily clinical reviews; and periodically consult with the insurer to ensure that both the facility and the insurer are using the "evidenced-based and peer reviewed clinical review tool" designated by OASAS (e.g., LOCADTR), to ensure that the inpatient treatment is medically necessary for the patient. Insurers may only deny coverage during the 14-day period, if determined not to be medically necessary (using a tool such as LOCADTR). Insured patients shall have no financial responsibility for services provided under this section except for copays, coinsurance or deductibles. Finally, there are to be no limits on inpatient or residential stays for SUD stays.

- Limits on prescribing of opioids: The law prohibits prescriptions of more than a 7-day supply of any Schedule II, III, or IV opioid upon initial consultation or treatment for "acute pain" as defined in the bill. To ensure that beneficiaries will not be charged multiple co-pays if a longer prescription is required, the law limits the amount of co-pays charged.
- Education Materials: The law requires the Commissioner of OASAS, in consultation with DOH, to create and utilize existing educational materials regarding the dangers of misuse and potential addiction to prescription drugs, treatment resources available, and the proper way to dispose of unused medications. Such educational materials shall be made available to pharmacies throughout the State and shall be distributed at the time of dispensing controlled substances.

- **A.10725 (Steck)/S.8137 (Ortt).** This law mandates use of an OASAS-approved clinical review tool, addresses access to Medication Assisted Treatment, extends a demonstration program, and lengthens the amount of time a person can be placed on an emergency hold.
  - Clinical Review Tool: The law requires that all utilization review agents must use a clinical review tool approved by OASAS when conducting utilization review for determining health care coverage for SUD treatments. The approved tools must be age appropriate and consistent with treatment levels within the OASAS service system.
  - Medication Assisted Treatment: The law requires that commercial insurance policies include a 5-day emergency supply of medications for the treatment of SUD in emergencies (as defined by the bill), including drugs prescribed to manage opioid withdrawal, stabilization or detox (buprenorphine and Vivitrol) will be available without prior authorization. Additionally, Medicaid will not require prior authorization for "an initial or renewal prescription for buprenorphine or injectable naltrexone for detoxification or maintenance treatment of opioid addiction unless the prescription is for a non-preferred or non-formulary form of the drug" or as otherwise required under Federal law.
  - Extension of Demonstration Program: The law extends to March 31, 2019 an OASAS wraparound services demonstration program.
  - Increasing Emergency Hold Authorization: The law increases emergency hold authorization for persons incapacitated by use of alcohol or substances from 48 to 72 hours. OASAS will designate treatment facilities which may receive persons, on an emergency basis for up to 72 hours, of persons who are incapacitated by alcohol or substances to the point that they are "likely to result in harm to self or others." The law imposes evaluation and discharge planning responsibilities on these designated facilities.
- **A.10726 (Cusick)/S.8138 (Amedore).** This law addresses overdose situations and hospital SUD policies and procedures.
  - Overdoses: The law ensures that administration of naloxone in emergencies is not considered professional misconduct for certain licensed professionals. Additionally, the law requires quarterly county opioid overdose reporting.
  - Hospital SUD policies: The law requires OASAS to make available educational material to general hospitals to provide to persons with SUD to assist with discharge planning. Additionally, OASAS will educate hospitals on referral requirements.

Limiting the substitution of abuse-deterrent analgesic opioid drug products – S.6962-A (Hannon)/A. 10478 (Cusick). A substantially similar bill was vetoed last year by the Governor, and it should be noted that it was not included in the 3-way agreed upon opioid addiction

package. There were changes made to this year's version of the bill, but it is not clear whether they will alleviate the Governor's concerns.

Human Trafficking Screening – A. 8650-B (Paulin)/S.6835-B (Lanza). This bill will require that providers of certain health care services (including those provided by FQHCs) establish policies, train staff on identifying suspected victims of human trafficking and appropriately treating and referring those suspected victims.

Breast Cancer Screening -- S.8093(Flanagan)/A.10679(Barrett). This bill, which was agreed upon 3-way, would ensure that no co-pays or deductibles apply to in-network breast cancer screenings. The bill will also require general hospitals or extension clinics certified as mammography facilities to have extended hours unless granted a waiver by the Department of Health.

Dense Breast Tissue—A. 5510-B(Jaffee)/S.7369-A(Hannon). This bill would require the Department of Health to create a program to educate people on the health impacts (including mammography impacts) of dense breast tissue.

Midwifery Birthing Centers – A.446 (Gottfried)/S. 7121 (Hannon). This bill would amend the definition of an Article 28 hospital to include midwifery birthing centers, and will allow the Commissioner to issue regulations to govern such centers. The bill would define a midwifery birthing center as an Article 28 facility that is engaged "primarily in providing prenatal and obstetric care, where such services are provided principally by midwives."

Supplemental Payments for Health and Hospitals Corp. – S. 6948-A (Hannon)/A. 9476-A (Gottfried). This bill would allow for "enhanced safety net hospital supplemental rate adjustments. The bill does not identify the amount of the payments, but specifies qualifying entities are critical access, sole community or public hospitals that meet all of the following criteria: 50% or more of patients are Medicaid or uninsured; 40% or more inpatient discharges are Medicaid; 25% or less of inpatient discharges are commercially insured; provides care to the uninsured in all lines of business (as defined by the bill); and serves not less than 3% uninsured patients. We understand that this bill is targeted at NYC's Health + Hospitals Corporation.

Expediting Credentialing – S. 2545-D(Lanza)/A.501-E(Cusick). This bill would expedite the credentialing process for providers joining managed care networks.

Step Therapy – S.3419-C(Young)/A.2834-D (Titone). This bill, which has been around for many sessions, finally passed both houses with amendments. The bill would allow an override of a managed care organization's requirement to use step therapy before allowing the prescriber's choice of drug to be covered.

E-prescribing – A.9335-B(Gottfried)/S.6779-B (Hannon). Allows process for prescribers to explain with a chart note why e-prescribing was not used.

Providing "Offsite" Care – A.7714-C(Gottfried)/S.8081(Hannon). This bill would allow hospital outpatient clinics and diagnostic and treatment centers to provide primary care visits offsite (e.g., allowing for home visits) to certain patients. The bill, however, specifically states that nothing in this bill language shall interfere with how FQHCs provide care pursuant to federal requirements.

Advanced home health aide - A.10707(Glick)/S.8110 (Lavalle). This 3-way agreed upon bill would authorize certain tasks that can legally be performed by "advanced home health aides" under the direct supervision of a licensed registered professional nurse. Regulations from the State Education Department, in consultation with the DOH, will specify "advanced tasks" that can be performed by advanced home health aides, including administering routine or prefilled medications.

Bills of Note that FAILED TO PASS Both Houses

Restricting e-cigarettes – A.5955-B (Rosenthal)/S.2202-B (Hannon). This bill passed the Assembly, but died in Senate Rules.

Medical Marijuana Expansion – A.9514-A (Gottfried)/S.7249-A (Rivera); A.9562(Gottfried)/S.6999 (Savino); A.9553(Gottfried)/S.7000 (Savino); A.9747-A(Gottfried)/S. 7467(Savino); A.10303(Gottfried)/S. 7714 (Savino). This set of bills passed neither house.

Nurse Staffing Ratios – A.8580-A(Gunther)/S.782(Hannon). While this bill that would mandate nurse staffing ratio did not pass, both houses, it did pass the Assembly for the first time. The bill would impact "acute care facilities" which are defined as Article 28 hospitals, but does not make a clear exception for diagnostic and treatment centers.

Blood Allergy Testing – A.9867 (Perry)/S.7450 (Rivera). This bill to allow Medicaid coverage of blood testing for allergies on par with skin prick testing passed the Senate, but the Assembly bill was amended so that there was no "same as" bill. The Assembly bill did not pass that house.

Collective Provider Negotiations – A.336-A (Gottfried)/S.1157-A(Hannon). This bill, which would have allowed providers to collectively negotiate with plans, did not pass either house.

Retail Clinic Bills – A.1141-B (Paulin). This bill, which did not have a "same as" bill in the Senate and would have regulated retail clinics, once again failed to pass either houses.

Expanding the Indigent Care Pool to Freestanding D&TCs providing Reproductive Health Services – A.3560 (Glick). This bill, which had no "same as" in the Senate, failed to pass the Assembly.

Funding for Freestanding Mental Health Clinics -- S.7663(Ortt)/A. 10498 (Ortiz). This bill would have amended the uncompensated care pool to adjust payments for freestanding

mental health clinics passed the Senate on the last day of session, but did not move in the Assembly.