

2014 END OF YEAR LEGISLATIVE REPORT

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NEW LAWS

Heroin/Opioid-Related Bills

Chapter 42 of the Laws of 2014 [A.8637-B (Dinowitz)/S.6477-B (Hannon)] Expanded Access to Naloxone

The law expands access to Naloxone or Narcan, an opioid antagonist, by allowing for the prescribing, dispensing and distribution of Naloxone by using non-patient specific orders. It will make Naloxone more readily available to individuals with opiate addictions, their families, and other people who are in a position to assist a person experiencing or at risk of experiencing an opioid-related overdose. This law became effective on June 24, 2014.

Chapter 31 of the Laws of 2014 [A.10154 Rules (Hennessey)/S.7902 (Hannon)] Criminal Sale of a Controlled Substance by a Practitioner or Pharmacist

The law criminalizes the act of a practitioner or pharmacist using his or her professional practice to unlawfully sell controlled substances as a Class C felony. This law became effective on June 23, 2014.

Chapter 36 of the Laws of 2014 [A.10155 Rules (Peoples-Stokes)/S.7907 (Marcellino)] Prescription Medication Fraud and Deceit

The law creates a new crime in the penal code of "fraud and deceit related to controlled substances" as a Class A misdemeanor to crack down on doctor shopping, criminalizing behavior by those individuals who obtain or attempt to obtain a controlled substance or a prescription by misrepresenting themselves as a doctor or pharmacist, or presenting a forged prescription. This law became effective on June 23, 2014.

Chapter 34 of the Laws of 2014 [A.10156 Rules (Dinowitz)/S.7905 (Marchione)] Informational Cards Distributed with Opioid Antagonists

The law requires that every Naloxone anti-overdose kit include informational cards with instructions on how to recognize symptoms of an overdose; what steps to take, including calling first responders; and how to access services through OASAS. This law became effective on June 23, 2014.

Chapter 37 of the Laws of 2014 [A.10157 Rules (Stirpe)/S.7908 (Hannon)] Criminal Sale of a Controlled Substance

The law makes the "criminal sale of a prescription of a controlled substance or a controlled substance by a practitioner or pharmacist" an offense eligible for prosecution under the enterprise corruption statute and for obtaining eavesdropping warrants, both tools for investigations into the illegal distribution of controlled substances. This law became effective on June 23, 2014.

Chapter 35 of the Laws of 2014 [A.10158 Rules (Cymbrowitz)/S.7906 (Martins)]
BNE Access to Criminal History Information

The law grants DOH's Bureau of Narcotic Enforcement (BNE) access to the criminal histories of individuals suspected of criminally diverting prescription medications which are currently maintained by the Division of Criminal Justice Services. This law became effective on June 23, 2014.

Chapter 33 of the Laws of 2014 [A.10159 Rules (McDonald)/S.7904 (Hannon)]
Opioid Treatment and Hospital Diversion Demonstration Program

The law directs OASAS to establish a Heroin and Opioid Addiction Treatment and Hospital Diversion Demonstration Program. This program will provide a new model of detoxification and transitional services for individuals seeking treatment for heroin and opioid addiction that utilizes short-term, residential and peer-supported services for opioid and heroin addiction with a goal of reducing reliance on emergency room services while providing appropriate supports to patients and families. When funds are made available, the OASAS Commissioner will provide grants to establish demonstration programs throughout the state. All programs, services, and facilities that are certified or licensed by OASAS will be eligible for grants. Within two years, OASAS is required to provide an evaluation of the program and recommendations on whether it should be continued or expanded to the Governor and Legislature. This law became effective on June 23, 2014 and will expire in three years.

Chapter 32 of the Laws of 2014 [A.10160 Rules (Gunther)/S.7903 (Carlucci)]
Heroin and Opioid Addiction Wraparound Services Demonstration Program

The law directs OASAS, in consultation with DOH, to create a Heroin and Opioid Addiction Wraparound Services Demonstration Program to provide services to adolescents and adults during treatment and for up to nine months after the successful completion of a treatment program. These services would be in the form of case management services that address education, legal, financial, social, childcare, and other supports. The OASAS Commissioner will identify and establish where the new program will be provided. Within two years, OASAS is required to provide an evaluation of the program and recommendations on whether it should be continued or expanded to the Governor and Legislature. This law became effective on June 23, 2014 and will expire in three years.

Chapter 40 of the Laws of 2014 [A.10161 Rules (Cymbrowitz)/S.7911 (Boyle)]
Heroin and Opioid Addiction Awareness and Education Program

The law requires OASAS and DOH to establish the Heroin and Opioid Addiction Awareness and Education Program. The program would utilize social and mass media to reduce the stigma associated with drug addiction, while increasing the public's knowledge about the dangers of opioid and heroin abuse, the signs of addiction, and the relevant programs and resources. This law became effective on June 23, 2014.

Chapter 38 of the Laws of 2014 [A.10162 Rules (Lupardo)/S.7909 (Felder)]
Youth Assessment Services

The law provides that young people alleged to be suffering from a substance use disorder – which could make the youth a danger to himself or herself or others – can be assessed by an OASAS certified provider as part of Person In Need of Supervision (PINS) diversion services. This law will become effective on December 20, 2014.

Chapter 39 of the Laws of 2014 [A.10163 Rules (Cymbrowitz)/S.7910 (Martins)]
Instruction on Drugs in Health Education Courses

The law directs the Commissioner of Education to make recommendations to the Board of Regents beginning December 1, 2014 and every three years thereafter related to updating the drug abuse curriculum so students have the most current and up-to-date information on coping with drug abuse and other substance abuse problems. This law became effective on June 23, 2014.

Chapter 41 of the Laws of 2014 [A.10164 Rules (Cusick)/S.7912 (Seward)]
Expanded Insurance Coverage for Substance Use Disorders

The law enhances commercial insurance coverage for the treatment of substance use disorders. It requires Insurers to use evidence-based and peer-reviewed clinical review criteria approved by OASAS when making coverage decisions about the medical necessity of treatment and the appropriate level of treatment. Those decisions must be made by medical professionals who specialize in behavioral health and substance use. Insurers will also provide up to 20 outpatient visits per policy or calendar year to family members of a person suffering from substance use disorder when they seek treatment as a family member and are entitled to coverage. In addition, the law ensures individuals have access to an expedited appeals process and allows them to stay in treatment as they appeal insurance decisions about coverage. Within 30 days of the effective date of the legislation, the Commissioners of OASAS, DFS, and DOH must convene a workgroup to study and make recommendations on improving access and availability to substance use disorder treatment services in the state. The workgroup will submit a report of its findings and recommendations to the Governor and the Legislature no later than December 31, 2015. This law became effective on June 23, 2014. However, the law will apply to policies issued, renewed, modified, altered or amended starting on April 1, 2015.

Criminal Justice/Forensic-Related Bill

Chapter 548 of the Laws of 2014 [A.10071 Rules (O'Donnell)/S.7818 (Young)]
Discharge Planning for Inmates Receiving Mental Health Services Prior to Release

This bill require inmates, who have received mental health services within three years of his or her anticipated release date from a state correctional facility, to be provided with mental health discharge planning and, when necessary, an appointment with a mental health professional in the community. Inmates who have refused mental health treatment may also be provided mental health discharge planning and any necessary appointment with a mental health professional. The law also allows regional community supervision directors to initiate involuntary commitment proceedings under Section 9.27 of the Mental Hygiene Law for a supervisee in his or her jurisdiction who is mentally ill. This law will go into effect on February 27, 2015.

OPWDD-Related Bill

Chapter 478 of the Laws of 2014 [A.9729 (Jaffee)/S.7374 (Bonacic)]
Due Process Protections for Individuals with Developmental disabilities Receiving Transitional Care

This bill would provide the parents or guardians of an adult with developmental disabilities with due process protections, including the right to an impartial hearing to challenge the determination regarding the appropriate setting for care, after the individual turns 21 years of age. Under the current law, due process protections are afforded to the parents of children with developmental disabilities while they are in school. However, those protections are severely curtailed for individuals who completed the school year in which

they reach age 21 before July 1, 1996, and eliminated for those who turn 21 after July 1, 1996. This law went into effect on November 21, 2014.

Justice Center-Related Bill

Chapter 394 of the Laws of 2014 [A.9605-A (Gunther)/S.7232-A (Carlucci)] Protocols and Procedures for Conducting Interviews by the Justice Center

This bill would require the Justice Center, in consultation with its Advisory Council, to establish protocols and procedures for interviewing an individual with a disability or a vulnerable person during an investigation. The purpose of the bill is to ensure that a Justice Center interview of a vulnerable individual is conducted safely. The bill would also require protocols and procedures to be established by the Justice Center for the notification of personal representatives, such as parents or guardians, as appropriate, of an impending interview and requires that the individual with a disability or vulnerable person be notified that a Justice Center interview is voluntary. This law went into effect on September 23, 2014.

Telehealth-Related Bill

Chapter 550 of the Laws of 2014 [A.9129-A (Russell)/S.7852 (Young)] Insurance Coverage for Telehealth Services

This bill would require commercial insurance companies and the State Medicaid program to provide coverage of telehealth services that are provided by physicians, physician assistants, dentists, nurses, midwives, podiatrists, optometrists, ophthalmologists, psychologists, social workers, speech-language-pathologists, audiologists, hospitals, home care agencies and hospice programs. This law will go into effect on January 1, 2015 and apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.

Mental Hygiene Employee-Related Bill

Chapter 492 of the Laws of 2014 [A.7909 (Gunther)/S.6183 (Carlucci)] Whistleblower Protections for Mental Hygiene Employees

This bill would protect employees of facilities, programs and providers operated, licensed, certified, authorized or funded by OMH, OASAS or OPWDD from retaliatory actions taken by their employers due to their participation in whistleblowing activities. This law went into effect on December 17, 2014.

BILLS VETOED BY THE GOVERNOR

OMH-Related Bill

A7721-A (Gunther)/S.5228-A (Carlucci) OMH Community Housing Waiting List

This bill would establish a community housing waiting list for individuals seeking housing and related services within OMH. Every 60 days, housing providers, agencies making referrals for housing services and each county's community-based agency performing assessments of people with disabilities must report to OMH the name of each person who has been referred to, applied for, been denied or meets the criteria for

housing services operated, licensed or funded by OMH. The bill also requires the Commissioner of OMH to submit a report on the community housing waiting list to the Governor and the chairs of the Assembly and Senate Mental Health Committees by January 1, 2016, and quarterly thereafter.

Changes were made to the bill to address concerns raised in previous veto messages of similar legislation, including clarifying that individuals have a documented mental illness and meet eligibility criteria for OMH funded housing before being included on a waiting list.

Final Action: Vetoed by the Governor on 11/21/14. In his veto message (No. 494) the Governor said: "This bill would duplicate OMH's "Single Point of Access" initiative, which works at the local level to match individuals with mental illness with health and housing services programs. The bill's approach is flawed: it would not provide a clear, in-time, localized picture of available housing resources and, therefore, would not effectively match persons with appropriate housing vacancies as they arise. In addition, the bill does not provide clear enforcement authority for OMH in the event providers or counties fail to submit information on a timely basis or submit erroneous information. Without appropriate controls and enforcement, the accuracy of a statewide wait list could not be guaranteed. This bill would also have an unbudgeted fiscal impact on the State. For these reasons, I cannot approve this bill."

OPWDD-Related Bills

A.8452 (Gunther)/S.1109-D (Maziarz) People First Act of 2014

This bill would enact the "People First Act of 2014." The bill would require the Commissioner of OPWDD, subject to available appropriations, to conduct a geographical analysis of supports and services in community settings for individuals with developmental disabilities and to identify gaps in services by regions of the state. In addition, the Commissioner would be required to develop a web-based data base to help prioritize the urgency of need for supports and services by identifying people in immediate need of services, in need of services within one year, and in need of services within one to five years or where the caregiver is age 60 or older. The Commissioner is also required to prepare a report annually with recommendations for the delivery of services for people with developmental disabilities.

Final Action: Vetoed by the Governor on 11/21/14. In his veto message (No. 496) the Governor said: "This bill simply duplicates existing agency efforts and would impose additional bureaucratic burdens at significant additional costs with no discernible extra benefit flowing to recipients of such services. Therefore, I cannot approve this bill."

A.8835-A (Gunther)/S.6659-A (Carlucci) Task Force on Adults with Developmental Disabilities

This bill would establish the task force on adults with developmental disabilities. The purpose of the task force would be to develop recommendations to support and meet the needs of adults with developmental disabilities, including their vocational, residential and social needs. The task force would also study the long term needs of adults with developmental disabilities who reside with caregivers. The task force would report its findings and recommendations to the Governor and the Legislature by January 1, 2016, and the task force would end after two years.

This bill is very similar to A.1713 (Gunther)/S.882 (Bonacic) which would have created the task force on adults with autism. Last year, this bill was vetoed by the Governor because it would have required a report

to be submitted by April, 1 2014, and the Governor considered that not enough time for the task force to finish its work.

Final Action: Vetoed by the Governor on 11/21/14. In his veto message (No. 499) the Governor said: “This legislation simply duplicates efforts that this administration has undertaken. OPWDD has been and will continue to be actively engaged in developing plans to serve individuals with developmental disabilities in collaboration with other State agencies and external stakeholders. For these reasons, I do not approve this bill.”

A.8846-C (Weisenberg)/S.6641-C (Carlucci)
Implementation of the Front Door Process

This bill would require the Commissioner of the OPWDD to develop a plan to overhaul and improve the Front Door process. The Front Door process was designed to allocate services and meet the needs of people with developmental disabilities based on person-centered planning. The plan would be developed in collaboration with the Developmental Disabilities Advisory Council and submitted to the Speaker of the Assembly and the Senate Majority Leader no later than January 1, 2015, with implementation beginning no later than April 1, 2015.

The plan must address the following issues:

- The service needs of people with developmental disabilities who are living with an aging caregiver;
- The development of a waiting list for services;
- The development of guidelines outlining criteria for when self-direction is and is not appropriate for individuals;
- A process for allocating residential placements and other critical services;
- An expedited appeals process to review service determinations; and
- A process to ensure that people in crisis are not subject to the Front Door process and will receive immediate services.

Final Action: Vetoed by the Governor on 11/21/14. In his veto message (No. 519) the Governor said: “OPWDD continues to streamline and improve the Front Door process, but this legislation in many respects duplicates what is currently taking place. The bill would unnecessarily divert valuable staff and financial resources from the effort and would also impose additional unbudgeted costs. As a result, this bill should have been considered in budget negotiations. Therefore, I cannot approve the bill.”

A.9766-A (Gunther)/S.7400-B (Carlucci)
Managed Care and Services for People with Developmental Disabilities

This bill would require services for people with developmental disabilities who are enrolled in managed care, including Developmental Disabilities Individual Support and Care Coordination Organizations (DISCOs), Managed Care Organizations (MCOs) or Managed Long Term Care (MLTC) programs, to be provided only by public or non-profit organizations with experience providing those services under the oversight of OPWDD.

Final Action: Vetoed by the Governor on 11/21/14. In his veto message (No. 506) the Governor said: “This bill would limit the entities that can provide managed care services for individuals with developmental disabilities to those non-profits with prior experience providing developmental disabilities services in New York State. In so restricting providers of managed care services to only those with prior experience under the regulation of New York State, the bill would violate the Commerce Clause of the United States Constitution. Therefore, I cannot approve this bill.”

OTHER LEGISLATION OF INTEREST

Bills Successfully Opposed by the Conference

S.7014 (Boyle)

OASAS Departmental Bill

This bill, which was drafted and submitted by OASAS as a Departmental bill, would create an application process for people to obtain emergency services for persons who are intoxicated, impaired or incapacitated by alcohol or substances under Section 22.09 of the Mental Hygiene Law.

Currently Section 22.09 of the MHL permits law enforcement, peace officers or DCSs to transport a person who appears to be incapacitated by alcohol or substances and is likely to be a danger to himself or herself or others to a hospital for immediate observation and treatment. That person cannot be retained for more than 48 hours.

This bill would also allow transport to emergency services to be sought for an adult or a minor based on an application to a DCS made by a physician, a person's spouse or guardian, or any other adult who has personal knowledge of the person's substance abuse, or in the case of a minor, by the minor's parent or legal guardian. The application would have to contain "the reason the applicant believes that the person has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted." The person would be transported to a treatment facility and could be retained for up to 72 hours for assessment and stabilization.

Status: S.7014 died in the Senate Alcoholism and Drug Abuse Committee.

S.7651-A (Carlucci)

AOT for Substance Abuse

This bill would establish an AOT program for substance abuse and was introduced as part of the initial Senate bill package to combat the heroin and opioid epidemic. The bill attempts to apply the current AOT program for people with mental illness to individuals with substance use disorders. However, the only real sanction imposed on a person who refuses to follow the court order under the bill, is an action under the current Section 22.09 of the Mental Hygiene Law.

Status: S.7651-A died in the Senate Alcoholism and Drug Abuse Committee.