NYS Conference of Local Mental Hygiene Directors, Inc.

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2015 END OF YEAR LEGISLATIVE REPORT

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NEW LAWS

Mental Health-Related Bill

Chapter 422 of the Laws of 2015 [A.833-A (Gunther)/S.632-A (Carlucci)]
Mental Health Tax Check-Off

This bill creates a new tax check-off on New York State income tax forms that will allow taxpayers to make a contribution to a fund that will help eliminate the stigma associated with mental illness. The fund will be used by OMH to provide grants to organizations dedicated to ending the stigma around mental illness. This law went into effect on November 20, 2015, and the tax check-off will appear on 2016 tax forms.

Chapter 371 of the Laws of 2015 [A.1327-A (Cahill)/S.4922-A (Hannon)
Expedited UR and External Appeals for Court Ordered Behavioral Health Services

This bill allows a health insurance enrollee to request an expedited utilization review (UR) and expedited external appeals for court ordered mental health and/or substance use disorder services. This law will take effect on July 1, 2016 and apply to policies issued, renewed or modified on or after that date.

Criminal Justice/Forensic-Related Bill

Chapter 518 of the Laws of 2015 [A.836 (Gunther)/S.633 (Carlucci)]
Training for Correctional Facility Staff on Mental Illness

This bill requires all security, program services, mental health and medical staff in state correctional facilities with direct inmate contact to receive at least eight hours of training each year about the types and symptoms of mental illnesses, the goals of mental health treatment, the prevention of suicide and how to effectively and safely manage inmates with mental illness. Currently, only correction officers and other new department staff working in residential mental health treatment units inside state correctional facilities are required to undergo this training. The law took effect on December 11, 2015.

Chapter 258 of the Laws of 2015 [A.6255-B (Rosenthal/S.4239-B (Murphy]
Conditions of Participation in a Judicial Drug Diversion Program

This bill allows defendants who need treatment for opioid abuse to remain eligible for participation in a judicial diversion program while receiving medically prescribed drug treatment under the care of a health care professional. Currently, New York does not have a uniform state policy regarding the use of medically

prescribed treatment during participation in a judicial drug diversion program. The law took effect on September 25, 2015.

Developmental Disability-Related Bills

Chapter 430 of the Laws of 2015 [A.3404 (Titone)/S.5932 (Savino)]
Review of Technology Used to Locate Missing Children with Developmental Disabilities

This bill requires the Commissioner of the Division of Criminal Justice Services, in consultation with the Commissioner of OPWDD, to review information technology systems used for locating missing children with developmental disabilities for the purpose of making recommendations on the creation of a statewide communication program that could be used to facilitate the coordination of finding missing children with developmental disabilities. The bill also requires that a report be submitted to the Governor and the Legislature no later than 120 days following enactment on the departments' findings and recommendations. The law took effect on November 20, 2015.

Chapter 474 of the Laws of 2015 [A.7200 (Gunther)/S.3638-A (Ortt)]
Managed Care for People with Developmental Disabilities

As currently envisioned, when individuals with developmental disabilities are transitioned into managed care, they will be able to receive services from mainstream managed care organizations, managed long term care plans, and Developmental Disability Individual Support and Care Coordination Organizations (DISCOs). This bill would require managed care organizations and managed long term care plans who lack experience in providing or coordinating services for people with developmental disabilities to have an affiliation arrangement with only a non-profit entity with experience serving this population in order to receive approval from the state to offer services for people with developmental disabilities. The law took effect on November 20, 2015.

Chapter 91 of the Laws of 2015 [A.7766-A (Gunther)/S.5730-A (Ortt)]
Military Families with Family Members with Developmental Disabilities

This bill requires OPWDD, in consultation with the Division of Military and Naval Affairs (DMNA) and the State Education Department (SED), to review existing laws and regulations applicable to military families in need of developmental disability services, review best practices used in other states to assist military families who access developmental disability services, and provide recommendations on improving laws, regulations and practices to assist these families. OPWDD is also required to submit a report with its findings to the Legislature on or before November 11, 2016. The law took effect on July 25, 2015.

AOT- Related Bill

Chapter 382 of the Laws of 2015 [A.6529 (Gunther)/S.5260 (Bonacic)]
Psychiatrists and AOT

Currently, in counties with a population under 75,000, OMH may (however is not required) to make available, at no cost to the county, a psychiatrist who is an OMH employee to conduct an AOT examination and testify at an AOT hearing. This bill would increase the allowable county population size from under 75,000 to under 80,000. The law took effect October 26, 2015.

Homelessness-Related Bill

Chapter 482 of the Laws of 2015 [A.3181-A (Titus)/S.4343-A (Carlucci)]
Report on Efforts of Local Social Services Districts to Address Homelessness

This bill requires the Commissioner of Temporary and Disability Assistance to submit a report to the Governor and the Legislature on the efforts of each local social services district to identify, prevent and address its homeless population. The report is due on November 20, 2016, one year after the law took effect. This law will expire and be deemed repealed January 1, 2017.

Telehealth-Related Bills

Chapter 167 of the Laws of 2015 [A.7369 (Russell)/S.4182-A (Young)]
Telehealth Originating Sites

This bill allows dentist's offices located within the state to be originating sites for the purpose of delivering telehealth services covered by commercial insurance as well as by Medicaid. An originating site means a site at which a patient is located at the time health care services are delivered to him or her by means of telehealth. Under current law, allowable telehealth originating sites include: hospitals; hospice; mental hygiene facilities; private physician's offices; and if undergoing remote patient monitoring, the patient's home. The law goes into effect on January 1, 2016.

Chapter 454 of the Laws of 2015 [A.7488 (Gottfried)/S.5733 (Young)]
Telehealth Providers

This bill includes occupational and physical therapists within the definition of telehealth providers. Chapter 550 of the laws of 2014 required 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, 2016.

BILLS VETOED BY THE GOVERNOR

Developmental Disabilities-Related Bill

A.7053-A (Gunther)/S.5060-A (Ortt)
Appointments and Duties of the Developmental Disabilities Advisory Council

This bill would allow the Senate and Assembly to each make five appointments to the Developmental Disabilities Advisory Council. Currently, the Council is supposed to consist of the Commissioner of OPWDD, the Chair of the CLMHD or his designee, and at least 33 members appointed by the Governor. The bill also requires the Council to make recommendations related to the regional housing needs and priority of such need based on the OPWDD registration waitlist; employment opportunities, including alternative work settings; self-directed models of care; the census reduction of institutional service settings and reinvestment of savings from such reduction into community based services; and any other programmatic or legislative need related to the state meeting its statutory requirements pertaining to the Olmstead Plan.

In addition, the bill would require the state to submit the 5.07 state comprehensive plans to the Legislature no later than January 15th of each year.

Final Action: Vetoed by the Governor on 11/20/15. In his veto message (No. 235) the Governor said:

"There is no compelling reason provided for permanently changing the DDAC's composition, directives, or reporting requirements. Further, although the 2015-2016 Enacted Budget provided funding to support some new reporting requirements, it was a one-time allocation that expires after this year. To the extent we would seek to permanently require additional reporting in law, it should be addressed in the context of the State budget negotiations to ensure that the funding to support those additional requirements exist. For these reasons, I am constrained to veto this bill."

A.7332 (Lupardo)/S.4094 (Libous)
State-Operated Community Settings for Individuals with Developmental Disabilities

This bill would require that individuals, who are being discharged from developmental centers, be given the option by OPWDD to transition to state-operated services within the service region where they are currently receiving services. If such services are requested by an individual with developmental disabilities or their family/guardian and these services do not already exist, the individual must remain in the state facility until such services are available. This exact bill language was included in both the 2015-16 Assembly and Senate One-House Budgets but was not included in the Enacted Budget.

Final Action: Vetoed by the Governor on 11/20/15. In his veto message (No. 239) the Governor said: "This bill would mandate that OPWDD reverse its policy of community integration, and move back to caring for persons with disabilities in institutionalized State-run settings. This would run counter to the Olmstead mandate, federal Medicaid guidance, and generally accepted practices for the care of persons with disabilities. For these reasons I cannot approve this bill."

Pharmacy-Related Bill

A.7208 (Gottfried)/S.4893 (Hannon)
Medicaid Managed Care Prescriber Prevails Provisions

This bill would strengthen current prescriber prevails provisions under Medicaid Managed Care for prescription drugs in the following nine classes: atypical antipsychotic; anti-depressant; anti-retroviral; anti-rejection; seizure; epilepsy; endocrine; hermatologic; and immunologic. The purpose of the bill is to ensure that patients in Medicaid Managed Care have the same protections as those in fee-for-service by clarifying that the prescribers' determination about which drugs should be prescribed are final.

Final Action: Vetoed by the Governor on 8/13/15. In his veto message (No. 191) the Governor said: "…enacting this bill would have a significant and un-budgeted impact on the Medicaid global cap outside of the State's budget process. This would necessarily impact other Medicaid services that may need to be reduced to accommodate this unanticipated spending. This bill would also limit managed care plans' efforts to deter and prevent inappropriate utilization, thereby hindering the State's ability to effectively manage pharmacy programs. Accordingly, I am constrained to disapprove this bill."

A.7427-A (Cusick)/S.5170-A (Hannon)
Opioid Abuse-Deterrent Technology

This bill would prohibit pharmacists from substituting a prescribed abuse-deterrent opioid analgesic drug, brand or generic, with an opioid analgesic drug lacking abuse-deterrent properties when the prescriber writes "dispense as written" or "DAW" on the prescription, without obtaining a new prescription for a non-abuse deterrent opioid drug from the prescriber. The bill also requires commercial insurance carriers to provide coverage for at least one abuse-deterrent opioid analgesic drug per opioid analgesic active ingredient.

Final Action: Vetoed by the Governor on 12/11/15. In his veto message (No. 284) the Governor said: "While the intent of this bill is laudable, research on the impacts of utilizing abuse-deterrent drugs is in its infancy. The effectiveness of such drugs is currently under review, and it is simply too early to tell whether it would achieve its intended effect. Second, abuse-deterrent opioid drugs are approximately two to three times more expensive on a daily basis than opioid drugs that lack abuse-deterrent properties, thus resulting in increased, and unplanned, costs to the State and consumers. Third, this bill does not contain an exception for pharmacies which directly administer medications in hospitals. This bill would necessarily increase costs because the hospital would have to dispense abuse-deterrent drugs if prescribed even though there is minimal opportunity for abuse (e.g., the drugs are administered under supervision).

For these reasons, I am therefore constrained to disapprove this bill. However, I am directing the Department of Health and the Department of Financial Services to study the costs associated with prescribing abuse-deterrent drugs and whether the benefits of such drugs necessitate a change to the drug formulary."

OTHER LEGISLATION OF INTEREST

Bills Successfully Opposed by the Conference

A.1823 (Gunther)/ S.631 (Carlucci)
AOT for Substance Abuse

This bill would establish an AOT program for substance abuse and was first introduced in 2014 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. Once again, the Conference issued a formal Memo in Opposition to the bill.

Status: A.1823 died in the Assembly Alcoholism and Drug Abuse Committee and S.631 passed the Senate.

A.1275 (Gunther)/ S.4722 (Young)
Expands the Requirements of the AOT Program and Makes the Program Permanent

This bill or a similar version, which is strongly opposed by the Conference, has been in existence since 2010. Once again, the Conference issued a formal Memo in Opposition.

The bill includes the following provisions:

1. Requires AOT Coordinators to ensure that local programs adequately review needs of AOT patients prior to expiration of an order, in consideration of prospective renewal of such order. Requires Coordinator also to monitor AOT training needs of local judges and court employees.
2. Requires OMH to develop an educational pamphlet on the process of petitioning for AOT to be made available to persons wishing to submit reports of persons who may be in need of AOT treatment and disseminated to family members and other individuals who are eligible to petition for AOT.
3. Requires the DCS to receive and investigate reports by hospital directors discharging patients who were initially admitted on an involuntary basis in cases when the hospital director does not petition for an AOT order upon release.

4. Requires AOT Program Directors to include additional information in quarterly reports, regarding court order expirations, including whether a renewal order was filed, the basis for the renewal/non-renewal, and the court's disposition of the order.
5. Adds new services to be provided under AOT which include: medication or symptom management education; appointment of a representative payee or other financial management services; and other clinical or non-clinical services.
6. Requires that in instances of an assisted outpatient moving to a location within the state of New York not served by the director overseeing the original AOT order, that the program coordinator transmit the treatment plan to the appropriate DCS in the LGU in which the AOT patient has relocated.
7. Requires that within 30 days before the expiration of an AOT order, that the Program Director reviews the order and submits documentation to the relevant AOT Coordinator to support the determination that continuance of the order is not required.

Status: A.1275 died in the Assembly Mental Health Committee and S.4722 passed the Senate.