

*The Annual End of Session Report  
Provided by  
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Despite no resolution on a number of high profile issues such as mayoral control of New York City schools (scheduled to expire on June 30, 2017), approval for hundreds of municipalities to extend local sales tax provisions (scheduled to expire December 31, 2017) and renewal of New York City Personal Income Tax, the 2017 Legislative Session came to a close on Wednesday, June 21<sup>st</sup>. By the conclusion of the six month session, there were so many twists and turns, one might have believed they were at a Six Flags Adventure Park, as opposed to the State Capitol. The first three months of session were consumed with budget negotiations which were laden with dramatic highs, lows, and hairpin twists and turns. Though they eventually reached agreement on final budget provisions a week late (on April 7<sup>th</sup>), emergency extension bills had to be enacted during the gap to avoid a government shutdown. The two primary hold up issues were, Raising the Age of criminal responsibility and education aid to charter school funding. When the dust settled, the Governor cited Raising the Age as a legacy piece he would be proud of for years to come. The overall adopted budget rang in at \$153.1 billion.

Beyond Raising the Age, the enacted budget contained a number of important policy and programmatic changes, such as: including a raise for direct care workers and clinical staff, workers' compensation reforms, and a contingency plan should New York see a reduction in federal aid. A brief report on the approved budget can be accessed at [https://c.yimcdn.com/sites/naswnyc.site-ym.com/resource/resmgr/Legislative\\_Agendas/Week\\_in\\_Review\\_April\\_10.pdf](https://c.yimcdn.com/sites/naswnyc.site-ym.com/resource/resmgr/Legislative_Agendas/Week_in_Review_April_10.pdf)

The post budget session was also ripe with excitement, as the Chapter had a very full agenda, including initiatives around mental health parity, conversion therapy, worker's compensation and protecting the scope of practice for LMSW and LCSW's as less qualified practitioners attempted (yet again) to expand their scope and reimbursement reach.

### **Protecting Your Career**

As was reported in the Budget Report, the Governor's Executive Proposal included an initiative we were extremely concerned about – in a move we read as a possible back door to altering the social work scope of practice, the Governor included an initiative in the Health and Mental Hygiene Budget to create a **Health Care Regulation Modernization Team** which would be tasked with “providing guidance for, and advice to the governor toward the fundamental restructuring of statutes, policies and regulations that govern the licensure and oversight of health care facilities and home care to better align with recent and ongoing changes in healthcare delivery...” While an initiative such as this, may, in fact sound reasonable, included in the language was a paragraph that, had it been enacted, would allow such “Team” to make recommendations for the purposes of “creating more flexible rules on licensing and scope of practice for clinicians and caregivers...” Essentially, the measure would have granted the Governor broad authority to **alter scopes of practice** (such as social work) *without* Legislative consent. Given the serious impact such a provision could exact on the profession, we prioritized extracting the language from the final adopted budget. Such work required intensive consistent communication with legislative stakeholders and staff throughout budget negotiations and resulted in success.

We also successfully halted another attempt by Licensed Mental Health Practitioners (Licensed Mental Health Counselors, Licensed Marriage and Family Therapists, Licensed Creative Arts Therapists and Licensed psychoanalysts) to mandate Medicaid and insurance reimbursement.

- **Medicaid Reimbursement Bill - A.1890-A HARRIS / S.3981-A SAVINO** – The bill sought to require Medicaid reimbursement for services provided by mental health practitioners licensed pursuant to Article 163 of the Education Law. We worked down to the wire of session (in concert with the NYS Psychiatric Association, The NYS Clinical Society for Social Work and the New York State Chapter of NASW) to stop this bill forward

trajectory. While the bill's Justification Memo referred to the prevalence of Americans suffering from a "diagnosable mental illness," it failed to recognize that New York State Law expressly prohibits those licensed under Article 163 from making a diagnosis or treating a serious mental illness without physician referral and oversight. In addition, the Medicaid program already expends public resources to reimburse for care and treatment of mental health and substance abuse services provided in hospital outpatient departments and licensed clinics, by psychiatrists, licensed psychologists, licensed social workers *and* licensed mental health practitioners in the context of facility reimbursement rates. This bill would have allowed Article 163 providers to receive such reimbursement in a private setting, a practice not allowed for other providers, such as LCSW's. ***While the bill (S.3981-A) passed the Senate and advanced to the Assembly calendar, it was laid aside for the remaining days of the legislative session.***

- **Insurance Reimbursement Bill - A.2163 BRONSON /S.3952 YOUNG** – Similar to the Medicaid Reimbursement Bill, this initiative sought to require commercial insurers that provide coverage for outpatient care provided by a Psychiatrist, Psychologist or Licensed Clinical Social Worker-R, to cover mental health practitioners licensed pursuant to Article 163 of the State Education Law. Again, we cited the same scope of practice limitations and prevailed in halting this bills progress as well. ***The Assembly bill (A.2163) advanced to the calendar but was purposely laid aside until the Assembly adjourned and the Senate bill (S.3952) remained in the Senate Insurance Committee.***

### **Workforce Development**

**Workers Compensation Program** – We continued our work with the Workers Compensation Board to add LCSW's as authorized providers. As a result, we were integral to the process of assisting the Board and the Governors office in introducing a Program Bill in each house, that, among other structural programmatic changes, sought to add several professions (including LCSW's) to the list of practitioners eligible to provide services. While we worked throughout the end of session, the bills received some last minute opposition. As a result, we will work off session to attempt mitigation of concerns and move next year.

**LLC Bills** – We continued our multi year campaign with the Title VIII Coalition on an omnibus bill (AB 1943-People Stokes / SB 4125-Lavalle), which would allow licensed social workers to form a corporate practice with any other licensed profession (who are not expressly prohibited by law to do so). As we have reported, this is a long term initiative, that must overcome many hurdles related to business corporation laws and the legislature's lack of appetite to act on such bills. We also worked to advance a stand alone bill (AB 4432-Pretlow) that seeks to allow LCSW's to form a corporate practice with Psychiatrists and Psychologists. The bill was reintroduced into the Assembly earlier this year and we recently identified a Senate sponsor in Senator Richard Funke, who put the bill in SB 5175-Funke). We will continue to work toward advancement of the bills in 2018.

**Preserving and Increasing School Social Work Positions** – We have also continued our work in conjunction with the NYS School Social Work Association to introduce a bill that would require students have access to a school based social worker and recommend student to school social worker ratio's at 250/1. In an effort to build momentum around this issue, we have partnered with the NYSUT. As such, we finalized language and as a result, are awaiting introduction of an amended version of a longstanding Ortiz/Hamilton bill. This will be an exciting new campaign and partnership!

Also in related news, the Board of Regents recently adopted the updated School Counselor Regulations, which, after 18 months of work with the Department and allied associations, rolled back initial attempts to impinge on the scope of practice for school social workers.

The Final budget included a **raise** for direct care workers and direct support professionals working at state-funded programs: 3.25 percent on January 1, 2018, and another 3.25 percent on April 1, 2018 (total of 6.5 percent). During the last 24 hours of negotiations, a provision was included to capture clinical staff at state-funded programs as well –they will receive a 3.25 percent raise starting on April 1, 2018. While we were supportive of this initiative, we also argued for a

direct investment into the social work profession. We are hopeful such an initiative will be in play next year (in the context of the social work licensure exemption discussions).

### **Social Justice Issues**

**Raising the Age of Criminal Responsibility** – After years of negotiations, a comprehensive Raise the Age initiative was included in the adopted budget bill. Provisions of the bill include:

The approved budget includes a plan to raise the age of criminal responsibility in New York State from 16 years of age to 18 years of age in phases: first to 17 on October 1, 2018, and to 18 on October 1, 2019.

16 and 17 year olds would be adjudicated as follows:

- Civil violation charges would continue to be handled in the local court, including open container violations and possession of small amounts of marijuana, as well as misdemeanors under the Vehicle and Traffic Law, such as DWIs.
- 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 the criminal court, 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.
- Juvenile cases not eligible for removal will be treated as adults for sentencing purposes, though the court will be directed to consider the defendant's age when imposing a sentence of incarceration.

Other elements of the new law:

#### **Confinement:**

- The law establishes a timeline for youth to be removed from county jails as follows: October 1, 2018 for youth under the age of 17; and, October 1, 2019 for youth under the age of 18.
  - If the detention of the youth is necessary, confinement will take place at detention facility that is operated and regulated by the Office of Children and Family Services (OCFS).
  - Youth convicted in the Youth Part and sentenced to state prison will be housed in adolescent offender facility operated by the Department of Corrections and Community Supervision with programming provided by OCFS. Further clarification is being sought regarding the shared responsibility of DOCCS and OCFS.
- **Sealing of Records:** Recognizing the damage a record of conviction can have on future opportunities for employment, higher education and housing, individuals who have been convicted of a non-violent offense will be able to apply to the court to have their record sealed following a 10-year waiting period after the completion of their sentence.
  - **Raise the Age Implementation Task Force:** Appointed by the Governor, the duties of the task force include: (a) monitoring state's implementation of raise the age law; (b) evaluating adherence; and, (c) reviewing of provisions regarding the sealing of records and effectiveness of such. The initial report of the task force is due on or before August 1, 2019.

#### **Funding:**

- \$110 million in capital projects funding for OCFS to upgrade/renovate/redesign facilities and develop capacity
- Opportunity for counties to apply for funding to the State upon a demonstration of financial hardship pursuant to an application to be submitted to the Division of the Budget
- Funding for probation departments to establish and provide “a continuum of evidenced-based intervention services for youth” adjudicated under the Family Court Act or in accordance with the provisions governing the Youth Part

The Raise the Age Campaign continues to work to determine next steps. Identified priorities thus far include: Weighing in with the Governor regarding the implementation Taskforce (potential members and issues to be measured), a clean up bill to fix a number of technical errors in the bill (an initiative that was not taken up in the last days of session), prioritization of campaign efforts moving forward (such as early implementation of parental notification and legislative issues still remaining such as lowering the years associated with eligibility for sealing of records and sentencing structures).

**Parity Implementation** – NASW- NYC and NYS worked in partnership with the New York State Psychiatric Association, the New York State Society for Clinical Social Work, the New York State Psychological Association and Families Together in New York State to advance a bill we developed in response to our analysis of the Attorney General suits against six NYS insurers who failed to comply with the state’s mental health parity bill, also known as, Timothy’s Law. The purpose of SB 1156 / AB 3694 is to require insurers and health plans to submit certain data to the Department of Financial Services and the Commissioner of Health, as a way of measuring compliance with federal and state mental health and substance abuse parity laws. The data will be used by the Department of Financial Services to prepare an annual Mental Health Parity report as part of the annual Consumer Guide. We made several amendments to the bill (introduced late in the session) and continued to work to mitigate last minute concerns with the bill until the final moments of session. The initiative will remain a priority in 2018.

The major components of the bill will capture the data on the following areas:

- Articulation of Timothy’s Law Compliance plan
- Rates of utilization for both mental health and substance abuse (such data groups will be separate)
- Number of concurrent authorization requests for mental health and substance abuse and the rate of denials,
- Number of cases/denials that have gone into peer review
- List of services that require prior or concurrent review and the number of days/threshold that triggers such a review
- List of covered medications for the treatment of substance abuse disorders
- Percentage of mental health and substance abuse disorder claims paid for in network versus Med/Surg
- Percentage of mental health and substance abuse claims paid for out-of-network vs. Med/Surg
- Medical necessity criteria
- Number of behavioral health advocates (as per AG settlements) available to policy holders
- Network Adequacy
- Number of mental health providers who have left, or have been removed from a provider network

**Conversion Therapy** - NASW-NYC and NYS (in partnership with the NY State Clinical Society for Social Work, the NYS Psychological Association and the NYS Psychiatric Association) lead the charge on a bill banning conversion therapy. Once again, the bill passed the Assembly, but, despite our work with the Senate, and a redraft of the bill, we were not able to overcome concerns in the upper house by sessions end. However, our campaign is growing in strength and numbers, and we will continue to work with key stakeholders in and out of the legislature to advance this bill.

**Racial Equity** –The NASW-NYC has lead the charge to advance a bill that seeks to create a Legislative Committee that will review legislation through a lens of racial equity. We are very excited to report, that our work has resulted in the introduction of a bill in the Assembly (AB. 5851) and we are currently meeting with a potential Senate sponsor. This is a multi year effort and as such, we are also building support among stakeholder organizations.

***Given the outstanding issues, each of the houses is expected to return to Albany by years end. In the meantime, for those of you keeping track - Session Statistics:*** Since January 1, 2017, through Wednesday, June 21, 2017, 15,332 bills were introduced, of which 1,895 passed the Senate and 989 passed the Assembly. The number of bills that have passed both Houses since January 1, 2017: 602 (or 3.9% of the bills introduced) of which 45 have been signed into law, 4 have been vetoed, 14 are in the Governor’s office awaiting action, and 541 have yet to be delivered to the Governor. As a comparison, taking into account the same time period, 618 bills passed both houses in 2016, compared to 718 bills in 2015, 658 in 2014, and 650 in 2013. For further context, of the 602 bills passed this year, 72 bills passed between January 1, 2017 and May 31, 2017, while 530 bills passed between June 1 and June 21, 2017.