

New York State Senate Standing Committee on Health



Preliminary Legislative Highlights 2017 Legislative Session

Senator Kemp Hannon, Chair
July 2017 (Updated: 9/22/2017)

Senator Kemp Hannon, Chairman
Senator David Valesky, Vice Chairman
Senator Patty Ritchie, Deputy Vice Chairman
Senator Gustavo Rivera, Ranking Member

Committee Members

Senator Simcha Felder	Senator Brad Hoylman
Senator Martin J. Golden	Senator Chris Jacobs
Senator Todd Kaminsky	Senator William J. Larkin, Jr.
Senator Velmanette Montgomery	Senator Elizabeth O'C. Little
Senator Roxanne Persaud	Senator Toby Ann Stavisky
Senator Terrence P. Murphy	Senator James L. Seward
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Given additional legislation is often adopted as part of the budget, the Health Budget Highlights of 2017 are attached. Please note all Committee meetings, events and reports are archived and available on the Health Committee's Senate webpage:

<https://www.nysenate.gov/committees/health>

Health Legislation Passed Both Houses

Public Health

E-Cigarettes—

- S. 2543-A, sponsored by Senator Hannon, prohibits vaping with e-cigarettes in certain public indoor and outdoor areas where smoking is currently prohibited.
- S. 2542-A, sponsored by Senator Hannon, was also passed by both houses and directs retailers of electronic cigarettes or liquid nicotine, who do not otherwise sell tobacco products, to register with the Department of Tax and Finance to ensure adequate oversight is in place to enforce laws banning the sale of these products to children under 18 years of age.
- S. 750, sponsored by Senator Ritchie, prohibits the use of electronic cigarettes on school grounds to further protect minors from the dangers of these unregulated devices.

Epi-Pens—S. 6005-A, (Chapter 200) sponsored by Senator Murphy, authorizes school bus drivers to administer epinephrine auto-injectors in emergency circumstances. In 2015, legislation was enacted to authorize schools to maintain and train staff to administer epinephrine auto-injectors. However, this law did not authorize use on school buses. Given thousands of children ride a school bus on a daily basis, ensuring they are equipped with this life saving medication will further help protect the health and safety of thousands of children across the state.

Restroom Access for Certain Illnesses—S. 3295, sponsored by Senator Hannon, ensures that toilet facilities at businesses open to the general public, normally available for employee use only, are accessible to those who have an eligible medical condition such as Crohn's disease, ulcerative colitis, or other medical conditions that require immediate access to a bathroom.

Septic System Replacement Fund—S. 6317, sponsored by Senator Hannon, makes it easier for homeowners to access funding made available as part of the SFY 2018 budget in the newly created Septic System Replacement Fund by allowing septic installers, upon written agreement from the homeowners, to receive direct reimbursement from the Fund.

Allergy Testing – S. 1222, sponsored by Senator Rivera, requires Medicaid coverage for skin prick method of allergy testing in addition to the currently covered blood testing method for allergies.

Protecting Children from Lyme Disease and Insect-Borne Infections—S. 6710-A, (Chapter 163) sponsored by Senator Little, allows parents to give permission to children's overnight, summer day, and travelling summer camps to administer insect repellent to help decrease the risk of Lyme disease and tick-borne infections.

Extending Kendra's Law for Five Years—S. 6726 (Chapter 67), sponsored by Senator Young, extends the existing law to June 30, 2022. Kendra's law, originally enacted in 1999 (Chp. 408), established a statutory framework for court ordered assisted outpatient treatment (AOT), which is intended to ensure that individuals with mental illness and a history of hospitalizations or violence participate in community based treatment appropriate to their individual needs. The law also provides a process for obtaining court orders for individuals with mental illness who met specific criteria to receive and engage in outpatient treatment.

Educating Medical Professionals on Drug Treatment Methods—S. 981 (Chapter 2), sponsored by Senator Amedore, requires a mandatory one-time continuing education course on medication assisted treatment (MAT) for credentialed alcoholism and substance abuse counselors (CASACs).

Expanding the Rights of Cancer Patients—S. 6800, sponsored by Senator DeFrancisco, amends the statute of limitations for cases involving the failure to diagnose a malignant tumor or cancer by allowing the current two and half-year statute of limitations to run from the date an injured patient discovered, or should have discovered, that they are the victim of malpractice. However, in no event shall the action be filed more than seven years after the date of the alleged malpractice.

Organ Donation

Transplant Council— S. 2495, (Chapter 26) sponsored by Senator Hannon, revives the Transplant Council to advise and aid the Department of Health (DOH) in addressing issues and improving rules and regulations surrounding organ donation, procurement and/or transplantation.

Makes Lauren's Law Permanent— S. 1206, sponsored by Senator Carlucci, makes permanent Lauren's Law, which requires individuals who apply for a New York State Driver's License to complete the organ donor registry section indicating whether they would like to register as an organ donor, or "skip the question."

Women, Children and Family Health

Rape Kits – S. 980 (Chapter 6), sponsored by Senator Hannon, amends Chapter 500 of the Laws of 2016 to make several technical changes and to require both prosecutorial and police agencies inventory the sexual offense evidence kits in their possession. This inventory must be submitted to the NYS Division of Criminal Justice Services (DCJS), who in turn must report to the leaders of the Senate and Assembly, by March 1, 2017. The legislation also shortens the period of time within which police and prosecutorial agencies would have to send kits currently in their possession to a forensic lab for analysis from 180 days to 30 days. Further, the legislation states that failure to comply with its provisions is not, in and of itself, grounds for suppression of such evidence. Lastly, the legislation requires DCJS to submit to the leaders of the Senate and Assembly the quarterly reports it receives from the police agencies, prosecutorial agencies and forensic labs concerning the status of sexual offense evidence kits in their possession or control.

Breast Cancer Screening—S. 4150, sponsored by Senator Griffo, expands on existing law which requires insurance coverage of mammograms for women of any age upon recommendation of a physician based on prior history or family history, baseline mammograms for persons aged 35-39, and annual mammograms for persons aged forty and older, to provide coverage of such mammograms by breast tomosynthesis. Breast tomosynthesis, also called 3-D mammography, is an advanced form of breast imaging with higher detection rates and reduces rate of additional testing.

Establishes a “Baby Box” Program—S. 3867-A, sponsored by Senator Hannon, directs DOH to establish the Newborn Health and Safe Sleep Pilot Program designed to reduce infant mortality rates across New York State through the use of “baby boxes” or other products which provide parents with a safe sleep place and encourage other safe practices by offering newborn essentials.

Medical Indemnity Fund—S. 986 (Chapter 4), sponsored by Senator Hannon, makes modifications to the Medical Indemnity Fund (MIF). The MIF was established in 2011 to rein in medical malpractice premiums and was designed to ensure that children with birth-related neurological injuries are able to have their medical needs met, and access services that they need to improve their quality of life. In furtherance of this goal, Chapter 517 of the Laws of 2016 as well this bill make changes to the MIF to allow children to better access such services. Specifically, the bills ensure rates of reimbursement for health care costs are adequate, ensure habilitation is covered and prohibits the denial of a benefit that has been determined to be medically necessary for the injured individual simply because someone else in the household may also incidentally benefit. The legislation also required the Department of Financial Services to issue a report to the Governor and the Legislature on the financial state of the MIF by April 1, 2017.

Maternal Depression – S. 4000, sponsored by Senator Krueger, directs DOH to create and update a searchable, statewide database of providers and community resources who treat maternal depression.

Prescription Drugs and Treatments

Drug Take Back Options Expanded — S. 6750, sponsored by Senator Hannon, requires chain pharmacies to provide customers with a federally approved option to dispose of their unused controlled substances and other prescription medications free of charge. Mail order pharmacies must provide pre-paid mail back envelopes to customers, at a fee of no more than \$2. This legislation requires pharmacies to post information about the options in their stores and pre-empts local take back requirements.

Complex Needs Therapy and Treatment – S.4557-B, sponsored by Senator Ortt, maintains access to quality complex rehabilitation equipment for patients with specific diagnoses and physical conditions who require individually configured equipment and technology to sustain independence, and avoid institutionalization, by requiring establishment of billing codes for such technologies and establishing qualifications to safeguard the configuration and delivery of such products. A similar bill, S. 3651-D, was vetoed in 2016.

Oxygen Wound Therapy -- S. 3421, sponsored by Senator Parker, establishes topical wound therapy as a statutory Medicaid benefit. Topical oxygen wound therapy (TOWT), which is currently covered by Medicaid, is a demonstrated safe and effective treatment for patients suffering from chronic wounds that have not responded to standard therapy. Establishing this treatment in statute will guarantee that New Yorkers will continue to have access to this safe, effective and necessary treatment.

Blood Clotting Factor-- S. 5774, (Veto 156) sponsored by Senator Hannon, excludes outpatient blood clotting factor products and related services and treatments from Medicaid managed care in order to maintain care for individuals with hemophilia or other blood clotting disorders.

Medical Marihuana –

- S. 5629, sponsored by Senator Savino, adds post-traumatic stress disorder as an eligible condition under the medical marijuana law.
- S. 5627, sponsored by Senator Savino requires that the name, contact information and any other information relating to practitioners registered to certify patients for medical marihuana be made publicly available on the Department of Health's website.

Providers and Facilities

Telehealth —

- S. 4285-A, (Chapter 238) sponsored by Senator Serino, includes any type of adult care facility licensed under Title 2 of Article 7 of the Social Services Law under the definition of “originating site” in order to allow providers to use telehealth to provide care to seniors who cannot easily travel to the doctor’s office.
- S. 3293, (Chapter 285) sponsored by Senator Hannon, also expands the definition of “originating site” to authorize the delivery of telehealth services at any elementary or secondary school, or child care program or center within the state.

Certificate of Need Process for Assisted Living Programs -- S.5840, sponsored by Senator Hannon, establishes a certificate of need (CON) process for Assisted Living Programs (ALPs). The CON process will allow expansion of ALP beds to counties that have a demonstrated need in a rational and timely manner. Further, the DOH will be relieved of the administratively burdensome competitive bid process, and, instead, will be able to use the CON process to determine county long-term care requirements holistically. However, if for any reason, savings do not result from additional ALP beds, this legislation allows the director of budget to place a moratorium on ALP beds when he or she determines there is a net negative fiscal impact on Medicaid.

Reinstate Bed Hold Payments to Preserve Nursing Home Patient’s Beds—S. 6559, sponsored by Senator Hannon, makes sure that nursing home patients who must be hospitalized do not lose their bed by restoring reserve bed day payments to the nursing homes as has been the longstanding practice. Absent this restoration patients will lose their bed and could face longer hospital stays while they await the next available bed.

Safety Net Supplemental Reimbursement – S.5661-B, sponsored by Senator Little, provides for the establishment of a supplemental reimbursement rate adjustment for enhanced safety net hospitals to support the critical need of these facilities. While this year’s budget included funding for enhanced safety net reimbursement, it did not codify a definition of safety net facilities. This legislation defines enhanced safety nets hospitals as public hospitals, critical access or sole community hospitals, and hospitals that meet certain criteria based on the percentage of Medicaid and uninsured they care for.

SSI Rate Increase for Adult Care Facilities -- S. 6732, sponsored by Senator Serino provides incremental increases in the daily rate to adult care facilities over a two-year period for individuals who are provided with enhanced residential care. The initial increase is phased in with \$1,547 beginning April 1, 2018 and ending March 31, 2019. Beginning April 1, 2019, the rate increase to \$1,667 and ends on March 31, 2020. From April 1, 2020 to March 31, 2021 the rate is \$1,787. These rate increases are essential to ensure that adult care facilities can stay open and continue to serve low income SSI recipients. Adult care facilities not only provide an important housing option, they reduce costs to the state as individuals may otherwise be cared for in nursing homes under Medicaid.

Health Legislation Passed Senate Only

\$5 Billion Clean Water Bond Act of 2018 – S 3772-B, sponsored by Senator Hannon, building upon the Senate’s 2016 Public Hearings, January 2017 Report “Water Quality and Contamination” and the final SFY 2018 state budget agreement enacting major water quality funding and initiatives, this legislation authorized the issuance of bonds in the amount of \$5 billion for preserving, enhancing, restoring and improving the quality of the state’s water. If enacted, the measure would be placed on a referendum ballot and go before voters in 2018.

Emerging Contaminants—S. 6655, sponsored by Senator Hannon, directs the DOH to post on its website information relating to emerging contaminant notification levels and educational materials so that the information is easily accessible to the public and public water systems.

Creating a "Survivor Bill of Rights" for Sexual Assault Victims—S. 6428, sponsored by Senator Hannon, builds upon legislation requiring timely processing of all sexual offense evidence kits (see page 4), by creating a “Survivor Bill of Rights” to better inform sexual assault survivors of their rights to fair and sensitive treatment during the investigation of their crime. The Sexual Assault Survivor Bill of Rights details the right of survivors to consult with and be accompanied by a victim assistance organization during physical exams and interrogations, the right to preventive treatment for HIV, and the right to get notice about the results of their sexual assault evidence kit and the status of their case. This bill also requires the state to study the feasibility of establishing a statewide sexual offense evidence kit tracking system as a way to streamline law enforcement tracking, create greater transparency and accountability to ensure compliance with the existing law, and to provide a way for survivors to check the status of their sexual offense evidence kit from collection to conviction.

Organ Donation

- S. 2496, sponsored by Senator Hannon, establishes the Living Donor Protection Act of 2017 to prohibit discrimination in the provision of life, accident, health and long term care insurance based on the status of an insured as a living organ or tissue donor and ensure eligibility for family leave for organ donation;
- S. 2497, sponsored by Senator Hannon, establishes a one-time personal income tax credit for up to \$10,000 for the expenses incurred by a resident taxpayer in the course of donating his or her organs for transplantation. New York currently has a tax deduction.
- S.5283-B, sponsored by Senator Jacobs, allows SUNY, CUNY, and library card applicants to register as an organ donor under an expansion of Lauren's Law, which changed DMV forms to require applicants to choose "yes" or "skip" the question about becoming a donor, as a way to increase the convenience for younger populations to enroll in the Donate Life Registry.
- S. 2162-A, sponsored by Senator Serino, adds human organ delivery vehicles to the list of authorized emergency vehicles in the state in order to help medical transport teams quickly operate within their necessary and sensitive time frames.

Combating Lyme and Tick-Borne Diseases

- S. 2168, sponsored by Senator Serino, requires the New York State Health Care Quality and Cost Containment Commission to meet each year and submit a report to the Governor and Legislature on the impacts of providing insurance coverage for Lyme and other tick-borne related diseases.
- S. 2588, sponsored by Senator Serino, provides homeowners with vital and reliable information on the best way to protect their property from ticks. The bill directs the Commissioner of Environmental Conservation to develop guidelines for best practices in treating residential properties to reduce exposure to ticks.
- S. 2621, sponsored by Senator Serino, establishes grants for graduate medical education in Lyme and tick-borne disease to ensure medical professionals are properly trained to treat patients with Lyme or other tick-borne diseases. The bill also authorizes the Commissioner of DOH to designate organizations as centers of excellence for Lyme and tick-borne diseases, and designate Lyme and tick-borne-disease resource centers.

Health Information Sharing

- S. 2248, sponsored by Senator Hannon, requires urgent care and other providers who see patients on a walk-in, episodic basis to have electronic health records.
- S.2639, sponsored by Senator Lanza, requires that in cases of a patient with a controlled substance overdoes, emergency room or hospital staff must consult the Prescription Monitoring Program and notify the patient's prescribing health care provider of the overdoes.
- S.6081A, sponsored by Senator Hannon, establishes a health care proxy registry within the DOH to maintain proxies submitted and provide access thereto by attending health care providers and the principal of the health care proxy.

Traumatic Brain Injury (TBI)

- S. 517, sponsored by Senator Young, allows patients who sustain a TBI after the age of 21 and are therefore ineligible for OPWDD services, to receive services from OPWDD providers in areas with limited TBI service capacity.
- S. 1870, sponsored by Senator Hannon, provides TBI and Nursing Home Transition Diversion (NHTD) waivered services shall be provided outside of Medicaid managed care.

Synthetic Cannabinoids

- S. 3518, sponsored by Senator Flanagan, classifies synthetic cannabinoids (like K2 and Spice) as Schedule I controlled substances making them illegal to sell or possess which would increase the penalty to a felony.
- S. 5619, sponsored by Senator Klein, creates a statewide synthetic cannabinoid surrender program and prohibits the sale of synthetic cannabinoids by any retailer and providers punished to retailers who violate the prohibition. The bill punishes retailers with a civil fine and increases penalties to allow removal of lottery tickets, alcohol, cigarettes and tobacco products for 5 years if a business is found in violation for a third time or selling synthetic cannabinoids.

Outlawing Lethal Fentanyl—S. 933, sponsored by Senator Croci, adds new derivatives of fentanyl to the controlled substance schedule and increases criminal penalties for the sale of an opiate containing a fentanyl derivative.

Cracking Down on Black Market Prescription Drugs—S. 2814, sponsored by Senator Hannon, establishes the offense of fraudulent prescription, dispensing and procurement of non-controlled substance prescription medications and devices, and establishes the offense of unlawful possession of non-controlled substance prescription medications and devices. This bill would address the growing black market in prescription drugs by increasing or establishing criminal penalties that better fit these crimes.

Professional Discipline – S. 1380-A, sponsored by Senator LaValle, ensures the State Education Department has the necessary tools to investigate and prosecute professional misconduct of patients and clients, including access to criminal back ground checks and authority to take summary action to suspend a professional license as the Department of Health’s Office of Professional Medical Conduct (OPMC) currently can. OPMC will continue to have oversight jurisdiction for physicians and physician assistants.

Distribution of E-Cigarettes to Minors—S. 1223, sponsored by Senator Akshar, prohibits the distribution without charge of e-cigarettes to minors.

Reducing Health Care Expenses—S. 425, sponsored by Senator Seward, redefines what constitutes a “small group employer,” as a way to help businesses facing significantly higher health care costs as a result of state regulations that took effect earlier this year.