

New York State Senate Standing Committee on Health



Preliminary Legislative Highlights 2016 Legislative Session

Senator Kemp Hannon, Chair
July 2016

Senator Kemp Hannon, Chairman
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Given additional legislation is often adopted as part of the budget, the Health Budget Highlights of 2016 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

Combating Heroin and Prescription Opioid Abuse

Treatment – S8137, sponsored by Senator Ortt, requires health plans that cover Medication Assisted Treatment provide at least a five-day supply, without prior authorization, where an emergency condition exists. This emergency coverage must also include Naloxone when it is otherwise covered under the policy. Similarly, the bill prohibits managed care providers from requiring prior authorization for buprenorphine or injectable naltrexone. This legislation requires health plans utilize tools designated by the Office of Alcoholism and Substance Abuse Services (OASAS) that are appropriate to the age of the patient and consistent with the treatment service levels within the state’s system in order to ensure patients are receiving appropriate levels of care, and not being told they must start at a lower level. The bill requires OASAS to evaluate wraparound services and identify best practices. Lastly, this bill allows for the holding up to 72 hours of individuals who are incapacitated due to drugs and/or alcohol for the purpose of emergency treatment services.

Connections to Care – S8138, sponsored by Senator Amedore, requires hospitals to develop discharge protocol for continuum of care services for individuals suffering from substance use disorder, which must include policies for identification, assessment, and referral of individuals with substance use disorder. This bill also requires the Department of Health to report data from the Opioid Overdose Prevention Program to counties every three months to assist localities in addressing the epidemic. Lastly, the bill clarifies it is not misconduct for a professional to administer Naloxone, even if their scope otherwise prohibits administering drugs.

Prevention and Recovery – S8139, sponsored by Senator Murphy, requires persons licensed under Title 8 to prescribe medications and registered with the Drug Enforcement Administration (DEA) complete three hours of course work or training every three years in pain management, palliative care, and addiction. This bill limits prescriptions of schedule II, III or IV opioids upon the initial treatment for acute pain to a seven-day supply. The bill also clarifies that federal parity requires inpatient coverage include unlimited medical treatment for substance use disorder treatment. The bill also requires coverage, without prior authorization, of in-network OASAS certified providers. Concurrent utilization review is also prohibited for the first 14 days of treatment. The insured shall not have any financial obligation under this provision, and the insurer can only deny coverage for any portion on the basis such was not medically necessary if the treatment was contrary to the clinical review tool utilized. Finally, the bill requires the Office of Alcoholism and Substance Abuse Services (OASAS) to create educational materials to be disseminated by a pharmacist to a consumer at the time the consumer receives his or her prescription of controlled substance. This section would also allow that such materials be disseminated electronically at the request of the consumer.

Abuse Deterrent Technologies – S6962A, sponsored by Senator Hannon, helps to prevent the abuse and diversion of opioid analgesic drugs by ensuring that abuse-deterrent drugs approved by the FDA are accessible to patients, and that there is insurance parity in cost-sharing and utilization review between abuse deterrent and non abuse-deterrent medications.

Naloxone – S7860, sponsored by Senator Amedore, expands upon legislation enacted last year, which authorized maintenance and administration of Naloxone in schools, to authorize such maintenance and use of Naloxone in public libraries in order to revive someone suffering from an opioid overdose; S6346B sponsored by Senator Carlucci requires pharmacies with more than 20 locations to offer Naloxone under a standing order.

Organ Donation

New York State of Health Enrollment – S6952A, sponsored by Senator Hannon, aims to increase donation in the State by requiring applicants through the state health benefit exchange be provided an opportunity to register for the donate life registry for organ, eye and tissue donations. Experience has shown that increasing the opportunities for individuals to document their decisions to give the gift of life and enroll in the registry has led to increased enrollment, which is essential given the state currently ranks second to last in enrollment.

Donors 16 and over – S5313-A, sponsored by Senator Hannon, allows New Yorkers age 16 or older to consent to donate and enroll in the New York State Donate Life Registry. Parents retain the ability to give final authorization in the event a minor is considered for organ, eye or tissue donation.

Extends Lauren’s Law – S6228, sponsored by Senator Carlucci, extends Lauren’s Law, which requires individuals who apply for a New York State Drivers 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 – S8117, sponsored by Senator Hannon, helps capture sexual predators by ensuring all rape kits are processed and tracked, and by requiring specific time frames for the transmittal and processing of the kits collected and surrendered to police agencies. Unlike many states, New York does not require evidence collected from rape victims to be processed in a timely manner or to track its status upon collection. The measure provides a longer time frame for testing rape kits received prior to the new requirements to ensure efforts to resolve backlogs do not interfere with cases requiring priority processing. Earlier this year, the Senate also secured \$500,000 in the adopted state budget to support rape kit testing.

Breast Cancer Screening – S8093, sponsored by Senator Flanagan, expands the types of breast cancer screenings available to New Yorkers without out-of-pocket costs, to include all screening and diagnostic imaging, including mammograms, breast ultrasounds, or magnetic resonance imaging and codifies provisions requiring hospital and hospital extension clinic mammography facilities to provide extended hours of operation. Lastly, this bill provides that NYC civil service workers, like civil services workers throughout the rest of the state currently, are entitled to up to 4 hours leave for breast cancer screening.

Prostate Cancer Screening – S8107, sponsored by Senator Hannon, provides that NYC civil service workers are entitled up to 4 hours leave for prostate cancer screening, just as civil service workers throughout the rest of the state are currently entitled.

Breast Density Education – S7369A, sponsored by Senator Hannon, would build upon critical legislation passed this year to promote early detection and treatment of breast cancer. Unfortunately, there have been cases where women with dense breast tissue were not referred for further screening when it would have been appropriate given their risk factors and dense breast classification. This bill requires more information about screening, assessment, and diagnosis of dense breasts be made available to help both patients and referring physicians make the correct decision regarding supplemental screening. The budget includes \$100,000 for this.

Lead Testing of Water – S8158, sponsored by Senator O’Mara, ensures that drinking water in schools is safe and free of lead contamination by requiring testing of potable water sources and systems. The Department of Health in consultation with the State Education Department are to promulgate regulations for guidelines, testing and reporting of results. The legislation also provides the Commissioner of Education ability to authorize funding to cover the expenses of such testing.

Medical Indemnity Fund – S7873B, sponsored by Senator Hannon, amends the Medical Indemnity Fund (MIF) which was established in 2011 with the goal of reducing malpractice costs by creating a funding source for the future health care costs associated with birth-related neurological injuries. Amendments were required to ensure the MIF functioned as envisioned. Specifically, the legislation ensures rates of reimbursement for health care costs are adequate, it also ensures a fair and impartial review process when a claim for a medical expense or enrollment in the fund is denied. In addition, the bill prohibits the denial of qualifying health care costs on the grounds that they are therapeutic in nature or may provide some ancillary benefit to other members of the household. Lastly, the legislation establishes a workgroup of consumers and stakeholders to be consulted prior to adoption of any proposed regulations.

Donor Breast Milk – S6583B, sponsored by Senator Hannon, helps prevent the death of high-risk babies that are born prematurely by requiring Medicaid coverage for the cost of donor breast milk in certain circumstances. Currently, donated breast milk is not covered by insurance companies or Medicaid and is expensive - costing approximately five dollars per ounce. Allowing insurance coverage would help make breast milk more readily available to families and promote healthier growth for premature infants

Birth Centers – S4325, sponsored by Senator Hannon, facilitates the expansion of birth choices for New York women by removing current barriers to establishment of midwifery birth centers. Such centers would be under the supervision of a physician or a midwife, and the Commissioner of Health is authorized to review certificate-of-need requirements to determine which are appropriate to apply to birth centers given the scope of services provided at these facilities.

Safe Sleeping and Crib Practices – S5100, sponsored by Senator Lanza, requires hospitals include information on safe sleeping practices, as set forth by the American Academy of Pediatrics, in the informational leaflet distributed to all maternity patients; S6730, sponsored by Senator Golden, provides for the education of maternity patients on crib safety and the hazards of drop-side cribs and the dangers of unsafe cribs.

Prescription Drugs and Treatments

Drug Re-dispensing - S5903A, sponsored by Senator Hannon, would allow health care facilities authorized by the Department of Health to donate unused prescription medications, in tamper-evident packaging, for re-dispensing by a pharmacist or prescriber to uninsured and underinsured New Yorkers. The currently required destruction of prescription medications not only affects those in need of these very drugs but traditional methods of disposing of unwanted prescriptions also can be harmful to the environment and public health.

Standard Prior Authorization Form – S4721A, sponsored by Senator Hannon requires the Department of Health and the Department of Financial Services to develop standards for prescription medication prior authorization requests. The standardization will reduce administrative burdens on health care providers.

E-prescriptions –

- **Nursing Home Exception** – S6778, sponsored by Senator Hannon, makes technical changes to ensure oral prescriptions, often utilized in nursing homes, given the need for constant monitoring and immediate off hours access to prescription drugs, can continue to exist despite the mandatory e-prescribing requirement. This will prevent delays in access to medication thus reducing unnecessary complications and hospitalizations.
- **Reporting** – S6779B, sponsored by Senator Hannon, authorizes health care practitioners to make a note in a patient’s record when they issue a paper prescription based on one of the statutory exceptions for e-prescribing, rather than requiring they contact the Health Department for each exception. These changes make the process less burdensome and more in line with the administrative exceptions.
- **Transferring** - S7537A, sponsored by Senator Martins, provides statutory authority for pharmacies to transfer electronic prescriptions. As the deadline for mandatory e-prescribing approached, many consumers worried they would be unable to price shop for prescription drugs, or worried what they would do if the pharmacy did not have the needed medication. This legislation protects the consumer by authorizing the pharmacy to transfer the initial prescription to another pharmacy of the patient’s choosing.

Complex Needs Therapy and Treatment – S3651D, 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.

Eliminating “Fail First” Requirements – S3419-C, sponsored by Senator Young, ensures that patients are able to access medications prescribed to them by their health care professionals in a timely fashion by providing an expedited appeals process when insurance companies’ require failing on a less expensive medication first, also known as step therapy, prior to covering the prescribed drug. For many patients such policies can come with serious consequences, and health care professionals should make those decisions not insurance companies.

Public Health

Ending the AIDS Epidemic – S8129, sponsored by Senator Hannon, supports New York's efforts to end the AIDS epidemic by decreasing the spread of HIV. The bill takes steps to remove any barriers to individuals being able to voluntarily accept HIV testing by reducing administrative hurdles, and by educating individuals about their HIV status and options for accessing treatment. Measures include: streamlined/routine testing of HIV/AIDS; requiring HIV tests to be offered to all adults, regardless of age; enabling pharmacists to dispense a seven-day starter kit of HIV infection prevention medication; allowing registered nurses to screen persons at increased risk for STDs, and increasing the number of people diagnosed and treated for HIV and other diseases.

Disclosure of HIV Data to Researchers – S7505, sponsored by Senator Hannon, allows for the disclosure of HIV/AIDS related medical information to qualified researchers who have received approval from a human research review committee established and approved by the Public Health Law or a federally approved Institutional Review Board (IRB) to conduct medical research about the disease.

Epi-pens – S6800, sponsored by Senator Hannon, authorizes public venues such as restaurants, youth organizations, sports arenas, theme parks, day care facilities and educational facilities, at their option, to stock and administer epinephrine auto-injectors in emergency situations. Increasing availability of epi-pens to administer to individuals experiencing anaphylactic shock will help save lives.

Registration of Electronic Cigarette Vendors – S6003, sponsored by Senator Hannon, requires any person selling electronic cigarettes that are not registered with the Department of Taxation and Finance to sell tobacco products, register with the Department of Health in order to ensure all sellers of electronic cigarettes are subject to compliance checks.

Lyme Disease Awareness – S5803, sponsored by Senator Serino, adds the Lyme Disease and Tick-borne Infection Awareness and Prevention Program to the Department’s Health Care & Wellness Education Program.

Lupus Education and Outreach – S5216A, sponsored by Senator Savino, creates a statewide program within the Department of Health to promote awareness to the public and health care professionals concerning the causes and consequences of Lupus.

Providers and Facilities

Advanced Home Health Aides - S8110, sponsored by Senator LaValle, increases patients' access to quality care and helps reduce disparities for Medicaid consumers of home and community based services. With certain exemptions, current law generally limits the provision of nursing care to licensed nurses. This bill creates a certification for advanced home care aides who could carry out an expanded range of tasks, such as administering routine, pre-poured medications. Individuals employed as advanced home care aids would enable more people to live in home and community-based settings who require assistance with minor medical tasks.

Human Trafficking – S6835B, sponsored by Senator Lanza, requires hospitals, public health centers, and diagnostic and treatment centers to establish and implement written policies and procedures for the identification, assessment and treatment or referral of persons suspected as human trafficking victims, and requires training of staff to achieve this end.

Safety Net Supplemental Reimbursement – S6948A, sponsored by Senator Hannon, provides for the establishment of a supplemental reimbursement rate adjustment for enhanced safety net hospitals to support the critical need of these facilities. Enhanced safety nets hospitals must be 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.

Kings County Health Transformation – S7112, sponsored by Senator Golden, amends the Kings County Health Care Facility Transformation Program to ensure that the \$700 million in capital grants appropriated for the program be awarded pursuant to an open and transparent process.

House Calls – S8081, sponsored by Senator Hannon, allows diagnostic and treatment centers or general hospital outpatient clinics to make house calls to patients unable to go on-site due to temporary or ongoing medical conditions. This will provide more access to healthcare and decrease avoidable emergency room visits.

Expedited Review – S2545D, sponsored by Senator Lanza, requires health plans to provide the expedited review of applications of health care professionals joining a group practice. Currently, even if a physician group contracts with an insurer, the insurer may still require individual enrollment. The delays in approving new physicians results in the inability of the new physicians to see patients for sometimes up to 120 days. This legislation remedies this by providing for the expedited review in such circumstances.

Hospital Patient Bill of Rights – S6347B, sponsored by Senator Hannon, updates the Patients' Bill of Rights to reflect recent laws enacted to protect individuals from surprise medical bills and their right to an independent dispute resolution process; and the CARE Act, which provides for the identification of caregivers while the patient is still in the hospital and includes caregivers in discharge planning and provides post-discharge instructions on care. Updating the Bill of Rights will help ensure patients are aware of these new protections.

Early Intervention Coordinating Council – S7689, sponsored by Senator Serino, adds three representatives from managed care as members of the Early Intervention Coordinating Council.

EMTs – S5542B, sponsored by Senator Bonacic, requires emergency medical technicians be screened for sex offense convictions. Emergency medical technicians are usually in situations where children and families are present and vulnerable due to a medical emergency. This bill will increase the safety of the general public by allowing ambulance companies and services to screen prospective EMTs and determine whether the applicant shall be eligible to become a member of such company or service.

Funeral Directors – S7307A, sponsored by Senator Young, allows a licensed funeral director to remove the body of a deceased person from a county non-adjacent to the county in which the funeral firm is located to any county within New York State, in the same manner as has long been allowed for deaths in adjacent counties.

Health Legislation Passed Senate Only

SSI Rate Increase for Adult Care Facilities – S7333, sponsored by Senator Serino provides adult care facilities with a \$7.50 per day rate increase for eligible individuals they provide enhanced residential care for. The increase is phased in with \$2.50 beginning January 1, 2017, another \$2.50 beginning April 1, 2017 and an addition \$2.50 per day April 1, 2018. The rate increases are essential to ensure that adult care facilities can stay open and continue to serve low income SSI recipients. These 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. This increase was also included in the Senate's SFY 2017 One House Budget Proposal.

Organ Donation – S7529, sponsored by Senator Hannon establishes the Living Donor Protection Act of 2016 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; S7003, sponsored by Senator Flanagan directs the State Education Department (SED) to make recommendation for including instruction in blood, organ and tissue donation in high schools (Note: In April SED announced they will develop model curriculum, lesson plans and best practice instructional resources on the importance and value of organ and tissue donation and make it available free at every school district beginning in September 2016); S7439, 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. S7945 sponsored by Senator Hannon updates the mission of the Transplant Council and directs the Council to make annual recommendations to the Commissioner of Health.

Synthetic Cannabinoids -- S2836-C, 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; S1640A and S6040A, sponsored by Senator Klein, which add any analogous drugs to the controlled substance schedule so slight chemical changes do not allow them to be legal 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.

E- Cigarettes – S4188C, sponsored by Senator Ritchie, prohibits the use of e-cigarettes on school grounds; and S6978, sponsored by Senator Akshar, prohibits the distribution without charge of e-cigarettes to minors.

Professional Discipline – S7791B, 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.

Allergy Testing – S7450, 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.

Health Information Sharing – S5094, sponsored by Senator Hannon, requires urgent care and other providers who see patients on a walk-in, episodic basis to have electronic health records; S6081A, sponsored by Senator Hannon, establishes a health care proxy registry within the Health Department to maintain proxies submitted and provide access thereto by attending health care providers and the principal of the health care proxy; S7335, sponsored by Senator Hannon, requires hospitals participating in bundled payment arrangements to provide patients with notice of such arrangement and other relative information upon admission or a decision to schedule surgery.; S7946, sponsored by Senator Lanza, requires that in cases of a patient with a controlled substance overdose, emergency room or hospital staff must consult the Prescription Monitoring Program and notify the patient’s prescribing health care provider of the overdoses.

Maternal Depression – S6715, sponsored by Senator Krueger, directs the Health Department to create and update a searchable, statewide database of providers and community resources who treat maternal depression.

Traumatic Brain Injury (TBI) – S6655, 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; S6575, sponsored by Senator DeFransisco establishes the office of Brain Injury in the Department of Health; S6814, sponsored by Senator Hannon, provides TBI and Nursing Home Transition Diversion (NHTD) waived services shall be provided outside of Medicaid managed care.