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2021 Budget Testimony

Albany, New York - This pandemic has highlighted the critical nature of Physician Assistants (PAs) as frontline workers. The flexibility afforded by Executive Orders to health care settings in their use of PAs has been key in allowing providers to nimbly pivot in the face of an emergency to ensure access to quality healthcare by removing unnecessary bureaucratic hurdles. As the Legislature looks to “lessons learned” by this pandemic, we encourage consideration of making permanent some of the flexibility around workforce provided through the Executive Orders – and, specifically, flexibility for PA practice.

The New York State Society of Physician Assistants (NYSSPA) is a constituent organization of the American Academy of Physician Assistants (AAPA) and the representative organization for PA practice in New York State. For over 40 years, NYSSPA has successfully advocated for a PA’s ability to provide quality, cost effective, patient-centered care. PAs are an integral solution to healthcare workforce issues in New York. PAs are trained in the medical model and are licensed by the NYS Education Department Office of the Professions. They practice in primary and specialty care, in every clinical discipline and in every clinical setting including mental health, palliative care, hospice and addiction medicine. PAs are a proven cost saver throughout New York State’s Health Care Delivery System including inpatient and outpatient settings, Federally Qualified Health Centers, School Based Health Clinics, Mental Health Facilities, Substance Use Clinics, Correctional Facilities. PAs practice in many communities across the state that find it difficult to recruit physicians.

Since 1971, New York law has recognized the education and training of physician assistants (PA) in Education Law Article 131-B and Public Health Law Article 37, providing for the licensing and scope of practice of physician assistants. PAs have a very broad scope of practice. “Notwithstanding any other provision of law, a physician assistant may perform medical services, but only when under the supervision of a physician and only when such acts and duties as are assigned to him or her are within the scope of practice of such supervising physician.” Education Law § 6542 (1).

Many laws and regulations refer to what a physician may do. Although the Education Law definition of the PA scope of practice begins with a broad "notwithstanding" clause, some regulatory and judicial interpretations have erroneously held that PAs are excluded from those various provisions because they are not specifically mentioned. For example, one court held that a PA may not direct the drawing of blood for a blood alcohol test in an alleged drunk driving case, since the Vehicle and Traffic Law refers to a “physician” directing the drawing of blood. This and similar rulings and interpretations thwarted the letter and intent of the PA statute.

To clarify the intent of the 1971 law, in 2010 the Legislature passed and Governor David Paterson signed, Chapter 30 of the Laws of 2010, enacting Public Health Law § 3704 which states, “A physician assistant may perform any function in conjunction with a medical service lawfully performed by the physician assistant, in any health care setting, that a statute authorizes or directs a physician to perform and that is appropriate to the education, training and experience of the physician assistant and within the ordinary practice of the supervising physician. This section shall not be construed to increase or decrease the lawful scope of practice of a physician assistant under the education law.” Governor Paterson stated in his Approval Memorandum:

“This bill seeks to ensure that physician assistants are not needlessly prevented from performing certain functions that flow from their provision of medical services to patients. The legislation addresses the concern that if a statute authorizes or directs physicians to perform an act related to a medical service but does not specifically refer to physician assistants, it may be subject to the interpretation that a physician assistant is not authorized to perform the act, even if the act is related to a medical service lawfully provided by the physician assistant, concerns the same patient who received such medical service, can be competently performed by the physician assistant in light of his or her education, training and experience, and is within the supervising physician’s ordinary practice. Such an interpretation would defeat the public policy objectives served by the registration of physician assistants.”

Recently, the Department of Health applied this legislation in relation to certifying a patient for use of medical marijuana under Public Health Law Article 33, Title 5-A. The medical marijuana law refers to physicians certifying patients, the Department adopted regulations authorizing PAs to certify patients, properly applying the PA legislation. This application of the 2010 legislation is the exception and not the rule; unfortunately, PAs are frequently mistakenly excluded from practicing due to perceived limitations.

2020 was the dawn of a new appreciation of what PAs mean to quality access to healthcare delivery in NYS and the State’s ability to respond to unforeseen medical emergencies. The surge of patients related to COVID 19 fostered the issuance of an Executive Order allowing PAs to meet the need for NYS to take care of surge volume of patients who were often critically ill. Health system and executive leadership across the state relied on a PAs to meet their medical staff needs in inpatient and outpatient settings, in critical care units, Urgent Cares and Vaccine PODS. The EO allowed for this to happen without unnecessary administrative barriers. Along with our physician colleagues and other members of the healthcare team, PAs rose to the occasion. To quote one NYS health system leader “PAs are the intersection of a stem cell and a 3D printer and were integral to our ability to care for our patients”.

NYS has many healthcare challenges ahead, and PAs look forward to being a part of the solution. However, PAs still routinely encounter barriers to practice, barriers that add unnecessary costs to healthcare delivery and often delay timely patient care, resulted in expensive treatment options and decreased quality of life:

- NYS Medicaid does not list PAs as PCPs in their contracts nor are patients allowed to enroll in a PA panel.
- Barriers exist to PA prescribing practices, including non-patient specific orders for purposes of vaccinations.
- Outdated statutory language creates confusion and barriers to allow quick deployment of PAs to ensure access to care.
- Some third-party payers in NYS do not credential/par PAs.
- Many NYS and other municipality medical forms do not list PAs as signers creating great confusion and patient care disruption.
- Many NYS websites incorrectly list PAs as registered rather than licensed, creating unnecessary confusion.

- The Worker's Compensation Board requires administrative processes for PAs not required by NYS Law nor required of other healthcare providers.

At a time when NYS is looking to ensure patient access, reduce Medicaid and consumer cost, PAs offer a fiscally responsible solution to health delivery in NYS. This is why NYSSPA believes the 2021 Budget language should reference PAs wherever physicians are referenced and requests legislative support to remove unnecessary barriers to PA practice.

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