



*Coalition Of Provider Associations*

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## COPA 2016 SESSION WRAP-UP

The 2016 New York State Legislative Session was scheduled to end on June 16<sup>th</sup> but the Senate and the Assembly worked through Friday night and ended the session in the early morning of June 18<sup>th</sup>. The COPA team was very busy advocating for legislation to pass both Houses as well as ensuring that bills opposed by COPA were not able to pass both Houses.

Following is a brief summary of the bills of most interest to COPA members.

**The following bills passed both Houses and will be sent to the Governor for action:**

### SUPPORT

- **COPA Turnover and Vacancy Stabilization Act - S. 7677-A (Ortt)/A.10409 (Gunther)** - requires the Commissioner of OPWDD to submit a report by 11-1-16 concerning factors causing increasing turnover and vacancy rates and identifying funding necessary to deal with this problem. It is unclear if the Governor will sign this bill.
- **School psychologists in EI & 4410 extender - S.6851 (LaValle)/A. 9422 (Glick)** – extends the authority of school psychologists to provide evaluations and services for children in the Early Intervention and preschool special education/4410 programs. The bill was sent to the Governor on June 27, 2016 and it is anticipated that the Governor will sign it.
- **Transformation Panel - S.7644-A (Ortt)/A.10053-A (Gunther)** - requires quarterly progress reports, insuring transparency, and adds the OPWDD Transformation Panel, which was convened by the Commissioner in early 2015 to provide OPWDD recommendations and strategies to ensure that supports and services reflect the consumers' needs and the changing service delivery model, in statute. It is anticipated that the Governor will sign this bill.
- **ABLE ACT Amendment - A.10206 (Gunther)/S.7882 (Carlucci)** - authorizes the State Comptroller to enter into a contract with the existing third party administrator of the NYS College Choice Tuition Savings Program for the purpose of administering the NY ABLE savings account program and providing account depositories and managers. It is anticipated that the Governor will sign this bill.
- **ABLE ACT Clarification - A.9171-A (Gunther) and S.8101-A (Carlucci)** - which clarifies that the only the designated ABLE account beneficiary may be the owner of the ABLE account. This bill conforms the NYS ABLE Act with the current federal law creating ABLE accounts. It is anticipated that the Governor will sign this bill.

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- **Complex rehab managed care bill** – S.3651 (Ortt)/A. 5074 (McDonald) - protects Medicaid recipients' access to quality complex rehabilitation technology and retains consumer protections for those who transition into Medicaid Managed Care. It is hoped that the Governor will sign this bill and that there will be a chapter amendment (see S.8142 / A.10718 below) to address concerns voiced by managed care plans at the very end of session.
- **Advanced Home Health Aides** - S.8110 (LaValle)/A.10707 (Glick) authorizes home health aides to perform advanced tasks under the supervision of a registered professional nurse employed by a home care services agency, a hospice program or an enhanced assisted living residence. This bill is critical to implementation of the Community First Choice Option of the Affordable Care Act which provides an enhanced 6% federal Medicaid reimbursement. It is anticipated that the Governor will sign this bill.
- **Article 28 DTC offsite health care services** - S.8081 (Hannon)/A. 7714 (Gottfried) – authorizes diagnostic and treatment centers to provide offsite primary care services to patients who are chronically ill and temporarily or permanently homebound at their residence, including those residing in long term care settings that are considered the individual's residence. It is hoped that the Governor will sign this bill.

#### **NO POSITION**

- **Autism Spectrum Advisory Board** – S.8036 (Nozzolio)/A.10558 (Santabarbara) – Requires the establishment of an Advisory Board to report to the Legislature and Governor on new and innovative ways to treat and serve people with autism and to work to improve interagency coordination. COPA did not take a position because OPWDD recently announced the newly created Centers of Excellence (The Center for Discovery, Developmental Disabilities Institute and Upstate Cerebral Palsy). The Centers of Excellence funded through the Balancing Incentive Program will define more effective supports for children with autism and other complex needs in coordination with several, state agencies. COPA believes that the Centers of Excellence makes the Autism Spectrum Advisory Board unnecessary, especially if it expands its mission to include adults.

#### **The following bills did not pass both Houses:**

#### **SUPPORT**

- **Modernization of “school” in Mental Hygiene Law** - S.7452-A (Ortt)/A. – clarifies that “school” in mental hygiene law only means a developmental center and not all OPWDD certified services especially for the Safe Patient Handling Act. – Assembly would not introduce until after session because of CSEA opposition. CP of NYS and COPA continues to engage OPWDD in discussions to resolve the issues with OPWDD’s new interpretation that Mental Hygiene Law 1.03 definition of “school” means all certified OPWDD services and not just developmental Centers as intended.
- **Excludes TBI from Managed Care** - S.6814 (Hannon)/A. 9397 (Gottfried) – permanently excludes TBI Waiver individuals from mandatory Medicaid Managed Care.
- **Complex rehab chapter amendment** - S.8142 (Ortt)/ A.10718 (McDonald) – technical amendment to address concerns of S.3651 /A. 5074 (passed both Houses) voiced by managed care plans at the very end of session. Passed Senate. Still in Assembly Committee

- **SAPA 90 day implementation period after regulations are final -S.7619 (Ortt)/A.10447 (Gunther)** – Requires a 90 day implementation period after regulations are final and before the date on which they become effective to eliminate the problem of finalizing regulations on the date that they also become effective, leaving no time for implementation. Passed Senate and Assembly Committee.

## **OPPOSE**

- **Call 911 & DA for all reportable incidents - S.6010 (Lanza)/A. 8307 (Weprin)** – and it is a class E felony if the mandated reporter fails to make the calls. The ‘Reportable’ incident category covers two distinct types, Abuse / Neglect, and Significant. The significant category has been greatly expanded as of 2016, and includes several classifications that are arguably more clinical in nature than ‘criminal’, e.g. missing person, unauthorized absence, injury with hospital admission, choking, conduct between individuals, etc. Provider agencies are already required to contact law enforcement for any ‘possible crime’, and this is aggressively reviewed by OPWDD Incident Management Unit staff via the IRMA database. Also, a single reportable incident may be reported by many mandated reporters. Neither 911 nor the DA's office are equipped to handle the major influx of calls required by this ill- conceived legislation. The deployment of first responders to true emergencies would be jeopardized as multiple mandated reporters called 911 to report that a fellow DSP raised their voice to an individual under their care. Senate floor and Assembly Committee.
- **New 911 bill** – S.8121 (Lanza)/A. 10704 (Weprin) –same as above but exempts "taunting" from the list of reportable incidents that are required to be called into 911 and the DA. Remains in Senate & Assembly committees.
- **Annual radon testing in “schools” - S.8039-A (Lanza)/A.10236-A (Weprin)** – as defined in MHL 1.03 which OPWDD is interpreting to mean all OPWDD certified services. Another ill-conceived bill which fails to understand that if a test for radon is negative, meaning the gas was not present, that there is no reason to do annual testing. . Remains in Senate & Assembly committees.
- **Family Bill of Rights** – S.3634-A (Ortt)/A. 424-A (Abinanti) – Requires that an OPWDD Family Bill of Rights be hung in a public place of all OPWDD certified supports and services. COPA understands the intention of the sponsors but continues to express concern with sections of this bill such as the requirement that the family bill of right be hung in public and conspicuous place people’s homes. Moreover, COPA strongly opposes infringing on the individual's rights without going to court to find out if the person lacks the capacity to make decisions. Passed Assembly & Senate Committee
- **Cameras in entrances and exits of OPWDD facilities** – S.3623 (Ortt)/A.1059 (Gunther) – requires cameras be placed at the entrances and exits of all facilities operated by OPWDD. In Senate and Assembly Committee.
- **NYC planning commission to hold a public forum - S.4542C (Klein)/A.2553C (Benedetto)** - prior to approving location or continued operation of a supportive housing or social services center. Senate and Assembly Committees.

In addition to working on the myriad of bills throughout the past few months of session, the COPA team worked on a number of issues that were neither directly statutory nor budget. These included:

### **4410 & 853 GROWTH**

The COPA team continued to work with the Legislature, the State Education Department (SED), the Division of Budget (DOB), the Governor's office, the Association of Counties and our education colleagues to ensure that both 4410's and 853 receive the modest 4% increase as was requested by SED. For the first time, the Governor put out a press release on June 7, 2016 announcing a "*Four Percent Increase Will Help Schools Serving Students with Some of the Most Challenging Disabilities.*"

Only 853 and Special Act special education schools will receive a 4% increase for the 2016-2017 school year that begins on July 1, 2016. While we appreciate the 4% increase for our 853 schools, we are disappointed that it does not include our 4410 schools for preschool children with special needs. The Governor and the Division of Budget (DOB) have not yet announced the 4410 increase. COPA continues to advocate for an equal 4% for our 4410 school children.

### **AFFORDABLE HOUSING**

The enacted budget provides for \$1.97 billion to be spent over five years, for supportive and affordable housing initiatives which will be allocated pursuant to a Memorandum of Understanding (MOU) between the Governor's office and the Legislature. The COPA team has been working with the Senate, Assembly, Governor's office, DOB and our association colleagues to ensure that at least \$100 million, of the \$1.97 billion affordable housing funding be dedicated for individuals with developmental disabilities. The developmental disabilities population is newer to the affordable housing area, since traditionally we have had our housing needs met through Medicaid funding. For this reason we had work to do, to ensure that decision makers in Albany understood our current need and would support us. We met with Paul Francis of the Governor's office and key members of the Assembly and Senate Housing committees, in addition to Mental Hygiene and Housing central staff in both houses. The Assembly and Senate wholeheartedly support our request and as of this writing, we have been assured that the Legislature, which is pushing for explicit language to direct this spending, will advocate for us.

Despite ongoing discussions, the MOU is being held up over related issues including the expiration of the 421a tax credit for developers and a union push for prevailing wages for construction workers on these projects. There is concern that there may not be any agreement on the MOU or the allocation of the \$1.97 billion until next session or budget. COPA will continue to advocate for the MOU to include \$100 million over five years for affordable housing for individuals with developmental disabilities.

## **COPA 2016-2017 NYS BUDGET RE-CAP**

**As previously reported in April, the New York State 2016-2017 enacted budget provides:**

### **Minimum Wage**

State funds to support the first year, of the multi-year minimum wage increase include: \$4.1 million for OPWDD; \$1.1 million for SED 4410s, 853s and special education programs; and \$800,000 for OMH.

### **OPWDD**

- \$120 million annually, all shares, for new service opportunities, including \$10 million to develop residential options for people with priority two and three status;
- A 0.2% COLA/Medicaid trend;
- \$15 million in capital funding to support the development of affordable housing opportunities for individuals with intellectual and/or developmental disabilities;

- An additional \$15 million to expand START (Systemic Therapeutic Assessment, Respite and Treatment) to New York City and Long Island.
- An additional \$10 million in Federal BIP funds are made available to transform various non-residential programming to more integrated community settings.
- \$24 million to transition individuals currently in developmental centers and other institutional settings into more appropriate community-based settings.
- **Article seven budget bills:**
  - Extended the social work/psychology licensure exemption for the field for an additional two years;
  - Requires OPWDD to provide employees of sheltered workshops with other service options as appropriate;
  - Grants OPWDD the authority to appoint a temporary operator under certain conditions;
  - Requires additional reporting by OPWDD regarding progress in meeting housing needs, the activities of the Transformation Panel and the closure or change of auspice of state-operated IRAs.

**DOH**

- Proposals which would have adversely impacted Early Intervention Programs and a proposed change in the current Prescriber Prevails law were rejected.
- Movement of Traumatic Brain Injury and NHTD waiver programs to managed care were delayed by the Legislature until January of 2018.

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For further information on these or any other bills, please contact any of the following:

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