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Recapping the 2013 NYS Legislative Session – Bills that Passed

These bills of interest to pharmacists are among the many that passed both the Senate and Assembly in the regular 2013 Legislative Session that ended June 21. The next step in the process is consideration by the Governor who decides whether these become law.



TRANSPARENCY IN MEDICAL AND PHARMACY CLAIMS FOR PUBLIC EMPLOYEES

A481 by Assembly Member Magnarelli (co-sponsored by Members Aubry and Colton) and S3788 by Senator Flanagan amends civil service law to require transparency in health insurance claims data, both pharmacy and medical, paid for public employees participating in the NYS Health Insurance Program commonly referred to as NYSHIP. The disclosures are to be made quarterly to employers, with claims of over \$50,000 noted separately.

Transparency in claims paid under the NYS Health Insurance Program will allow school districts, cities and other public employers (including the state itself) to see health care costs in greater detail. It is important to remember that NYS Insurance Laws such as AMMO do not apply to NYSHIP, meaning that this bill, if it is signed into law, will break new ground in our ongoing efforts to curb restricted pharmacy networks and promote more local access to covered prescriptions. Transparency in paid pharmacy claims will give payers more usable information, promoting a better understanding of the cost of mandatory mail as compared to retail. Please note that the information PSSNY uncovered during our work on AMMO revealed that payers were charged more for prescriptions filled by mail in “apples to apples” comparisons to prescriptions dispensed under

the same plan by local pharmacies. We will closely monitor developments as this bill moves to the Governor’s desk.



INSURANCE MANDATE FOR ENTERALS ADMINISTERED ORALLY

S2287-A by Senator Ball (co-sponsored by Senator O’Brien) and A490-A by Assembly Member Paulin (co-sponsored by Members Gunther, Maisel, Zebrowski, Katz, Rosenthal, Hooper, Ceretto and Dinowitz) requires health insurance policies to cover the cost of enteral formulas that are administered both orally and via a feeding tube. The bill known as ‘Hannah’s Law’ expands coverage to enteral products used orally.

The bill is named for Hannah DeVane, a six-year-old girl with eosinophilic esochagicis. Currently the family is forced to pay approximately \$14,000 out of pocket annually if they choose to feed Hannah without a feeding tube.



REGULATE SALES OF PRODUCTS WITH DEXTROMETHORPHAN

S696-B by Senator Grisanti (co-sponsored by Senators Breslin, Espaillat, Maziarz and Parker) and A933-B by Assembly Member Jaffee (co-sponsored by members Graf, Roberts, Zebrowski, Boyland, Weprin, Gunther, Aubry, Schimel, McDonald, Abinanti, Arroyo, Braunstein, Ceretto, Clark, Cook, Finch, Gabryszak, Gibson, Markey, Perry, Robinson, Titone and Weisenberg) restricts the sale of products with dextromethorphan as an active ingredient to persons under the age of eighteen without a valid prescription and requires

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pharmacies and other establishments selling such products to require proof of age. The bill arises out of concerns that the use of the “next crystal meth” is increasing among teens. An important aspect of this amended bill is that it pre-empts local laws and ordinances, thereby establishing one clear statewide policy.

Earlier versions of the bill would have required products containing dextromethorphan to be kept behind the pharmacy counter. Proponents fought to lessen the compliance burden by allowing products to remain on the shelf and to overturn the patchwork of local ordinances in favor of one statewide policy.



IMPROVE ACCESS TO FACTOR PRODUCTS FOR OUTPATIENTS

A962-A by Assembly Member Kellner (co-sponsored by Members Crouch, Finch, Gottfried, Morelle, Curran, Cusick, Hevesi, Lentol, Lupardo, Markey, Mosley, Perry and Walter) and S2186-A by Senator Robach (co-sponsored by Senators Adams, Breslin, Grisanti, Larkin, Marchione, Nozzolio, Parker and Valesky) requires payment under Child Health Plus and Family Health Plus for outpatient treatment of clotting protein deficiencies.

Access to clotting factor products has vastly improved the lives of patients with hemophilia and other blood protein deficiencies such as Von Willebrand Disease. Preventative regimens, together with the coordinated care provided by hemophilia treatment centers, have significantly reduced visits to emergency rooms, hospitalizations and joint damage, thereby creating the cost-benefit rationale for this legislation in the state-managed programs named in this bill.



OPTIONAL TAKE-BACK PROGRAMS IN PHARMACIES

A1101-B by Assembly Member Gunther (co-sponsored by Members McDonald, Jaffee, Kearns, Colton, Rosenthal, Raia, Otis, Lupardo, Boyland, Ceretto, Crouch, Duprey and Magee) and S3944-B by Senator Hannon (co-sponsored by Senators Avella, Felder, Kennedy, Parker and Valesky) will allow the NYS Health Department to develop a program that allows pharmacies in New York to take back controlled substances once federal regulations proposed by the DEA are finalized.

Passage of this bill is further evidence that legislators continue to be concerned about the over-supply of controlled substances in household medicine cabinets. It is clear that take-back programs are effective. If signed into law, this legislation will not take effect immediately, pending finalized regulations at both the federal and state level. Pharmacy participation will be optional. The sponsor’s memo mentions both collection boxes and mail-back programs.



MEDICATION PRICE-GOUGING

S2138-B by Senator Lanza (co-sponsored by Senator Ranzhofer) and A3751-B by Assembly Member Crespo (co-sponsored by Members Rodriguez, Ramos, Maisel, Dinowitz, Skoufis, Englebright, Montesano, Gibson, Scarborough, Roberts, Gabryszak, Santabarbara, Titone, Abinanti, Arroyo, Boyland, Braunstein, Brennan, Camara, Colton, Cook, Crouch, Duprey, Finch, Gottfried, Heastie, Hooper, Mosley, Moya, Perry, Rivera, Robinson, Rosa, Schimel, and Sepulveda) amends the general business law to ban price gouging of medicines listed to be in short supply by the FDA. The legislation includes criteria for the courts to use to determine if prices are unconscionably excessive and authorizes the NYS Attorney General to prosecute.

According to the sponsor’s memo, this price-gouging legislation is aimed at secondary suppliers and gray market vendors that buy scarce drugs from small regional wholesalers and resell them at wildly inflated prices. According to the AP report that was the impetus for this legislation, 549 U.S. hospitals reported purchasing sub-standard products from gray market vendors, causing harm to patients being treated for serious infections and those needing chemotherapy. In the first half of 2013 the FDA added 210 products to the list of drugs in short supply.



ADD MENINGOCOCCAL VACCINE

S4881-A by Senator Hoylman (co-sponsored by Senator LaValle) and A7324-A by Assembly Member O’Donnell (co-sponsored by Members McDonald and Perry) authorizes certified pharmacists to administer meningococcal vaccine to adults pursuant to a standing order or a patient-specific order.

This bill adding meningococcal vaccine to the list that certified pharmacists are allowed to administer under NYS law represents progress in the public perception of the profession. The impetus for this legislation came from a localized public health concern in an area of New York City. To address the problem legislators embraced the idea that pharmacists working under standing orders are the best solution to improving access to a necessary vaccine among people who should have it, including those who for any reason may not have a primary care physician to write a patient-specific order.

Please see additional comments below regarding S 4528-A/A7734-A.



ESTABLISH ELECTRONIC NYS DEATH REGISTRATION SYSTEM

S7500 by Assembly Member Steck (co-sponsored by Gottfried, Schimel and Galef) and S4668-A Carlucci (co-sponsored by Senator Savino) directs the Department of Health to implement an electronic death registration system funded by a \$20 fee for each burial and removal permit issued to a funeral director.

While this legislation initiated at the request of funeral directors may not at first glance appear to be relevant to pharmacists, please recall that in the recent past the state has tried to extract a price from pharmacies for its present inefficient system for processing death notices. The NYS Medicaid Inspector General sought to recoup monies from audited pharmacies for prescriptions dispensed for “dead people”. We learned in a meeting with OMIG that it took an average of 90-days for EMEDNY to cancel Medicaid eligibility because of death. We argued that pharmacies are not liable if the state’s eligibility files are not accurate. Returning to the present legislation, it is likely that improved accuracy in death records will yield savings in state-funded benefit programs including Medicaid that will go beyond the \$2.2 million in projected revenue from the proposed fees.



ALLOW SCHOOLS AND CAMPS TO ACCESS IMMUNIZATION REGISTRIES

S4528-A by Senator Hannon (co-sponsored by Senators Avella, Fuschillo, Grisanti and Maziarz) and A7734-A by

Assembly Member Paulin (co-sponsored by Member Gottfried) amends public health law to allow schools, camps and universities to access the immunization registries maintained by the NYS and NYC Health Departments.

It is important to note that this bill represents one half of the NYS Health Department’s program bill that in addition to amending Public Health Law as described above, also amended pharmacist-immunizer sections of Education Law to remove sunsets, remove the county restriction on standing orders and add Tdap. Because the DOH program bill amended two different laws, central assembly program staff split the original bill. This half succeeded. The remaining half remains in committee.

PSSNY, the NYS Council of Health System Pharmacists, the NYS Chapter of the American Society of Consultant Pharmacists and the NYS Chain Pharmacy Association lobbied for the original NYS Department of Health program bill, introduced as S4528 by Senator Hannon. In fact, we were very pleased to note that the NYS Health Department embraced the role of pharmacists in the prevention of communicable diseases and the advancement of public health goals.

Additional Bills of Interest



AMMO REFORM

Please refer to the article on page 15.



PBM TRANSPARENCY

The assembly has again passed legislation (A5352 Gottfried) that would establish PBMs as fiduciaries under state law. The bill is strenuously opposed by PBMs and health plans. PSSNY is in strong support.



MEDICAL MARIJUANA

Legislation remains under consideration. The most current amended legislation (S4406-A Savino and A6357-A Gottfried) would allow various organizations to acquire, manufacture, sell, deliver, distribute or dispense marijuana for certified medical use provided the organizations meet the registration requirements established by the Health Department. Included are Article 28 facilities (hospitals, clinics,

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etc.) and for-profit and not-for-profit corporations. The assembly passed the unamended bill on June 3. Neither the Senate nor the Assembly has passed the amended version.

It is important to mention that during this session PSSNY has not issued a written position on the bill. In the past PSSNY's support for medical marijuana was based on the position that pharmacies would be the only DOH-authorized points of distribution. In addition, MSSNY has just reversed its position to one of opposition on the basis that individual states should not adopt policies that undermine the FDA's authority to approve products and devices for medical use.



REGISTER AND CERTIFY PHARMACY TECHNICIANS

Under the bill now in print, A4221-A Englebright and S775-A Fuschillo, technicians would be required to register with SED within a year. Requirements for registration are high school diploma or GED, over eighteen years of age and pass a criminal background check. By January 1, 2017, every registered technician would be required to be certified. Certified pharmacy technicians would be required to complete a training program approved by the department and pass an examination approved by the department. Excep-

tions are provided. Nothing in the legislation changes the responsibility of the licensed pharmacist to supervise technicians. In its current form the bill authorizes the Board of Pharmacy to consider an adjustment of the ratio and to consider duties and tasks delegated to technicians. PSSNY has taken no position on the bill. Discussions continue.



ELECTRONIC PEDIGREE

Legislation that would establish electronic tracking of products in their smallest unit of packaging from manufacturer to ultimate distribution to a consumer in New York law is once again proposed in A3842 Paulin/S3904 Hannon. PSSNY remains opposed because of the cost imposed on pharmacies and the fact that this issue calls for a national policy, not individual state laws.



CHOICE OF PHARMACY UNDER WORKERS COMP

This bill (A2653 Simotas and S1754 Robach) that would give injured workers access to local pharmacies passed the assembly and nearly passed the senate. PSSNY strongly supports the legislation.

UPDATE: MEDICAID FEE-FOR-SERVICE

Results of Cost of Dispensing and Acquisition Cost Surveys Delayed

Although the Health Department continues to collect cost data from Medicaid enrolled pharmacies every month, results of both COD and AAC surveys are not yet available pending further internal review by DOH staff and Ernst & Young. DOH plans to release the results of both surveys simultaneously and to first discuss preliminary results with focus groups. No focus group meetings have been scheduled. Before new pharmacy reimbursement can be implemented, DOH must secure approval from CMS. New York is one of few states with mandatory surveys.

UPDATE: MEDICAID MANAGED CARE

New Budget Language Improves Access to Specialty Medications at Retail

The 2013-2014 NYS Budget changes the Medicaid managed care law to allow a retail network pharmacy willing to accept comparable reimbursement to mail order specialty pharmacies to dispense covered medications, effective April 1, 2013. Accordingly, DOH has instructed health plans to have a process in place to ensure that Medicaid enrollees who wish to obtain prescriptions from the local network pharmacy to receive them without delay. A patient, or a pharmacist acting on behalf of the patient, should contact the health plan, and the health plan must have a process in place. To resolve problems, send an e-mail to ppno@health.state.ny.us. (To read more about how the law was changed, refer to pages 22, 23 and 24.)