



2014 Opiate Legislation Package: Bill Summaries

On June 23rd, Governor Andrew Cuomo and legislative leaders announced that an agreement had been reached on a series of bills aimed to combat the ongoing heroin and opioid epidemic in New York State. In total twelve bills were signed into law that will expand access to treatment and services for substance use disorders, provide enhanced penalties for the unauthorized distribution of controlled substances by practitioners and pharmacists, and increase public education programs on the services available to those suffering from substance use disorders. Additionally, a separate provision was codified to expand access to Naloxone, an opioid antagonist used to counteract the effects of an opioid overdose. Below is a summary of the various legislative changes.

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A10164/S7912:

Expanded Insurance Coverage for Treatment of Substance Use Disorders

(Amends Insurance Law §§ 3216, 3221, 4303)

- Mandates that all insurance policies (regulated by the NYS Dept. of Financial Services) that provide hospital, major medical, or similar comprehensive coverage, provide inpatient and outpatient services for the diagnosis and treatment of substance use disorders, including detoxification and rehabilitation services. Such coverage shall not apply financial requirements or treatment limitations that are more restrictive than those applied to other medical/surgical benefits and must comply with federal mental health parity and addiction equality law (29 U.S.C 1185A).
- Coverage for treatment of substance use disorders may be subject to deductibles and co-pays provided that they are consistent with those imposed on other benefits within the plan and are deemed appropriate by the superintendent of the Dept. of Financial Services.
- Coverage may be limited to facilities/programs certified or licensed by the Office of Alcoholism and Substance Abuse Services (OASAS), or in other states, those accredited by the Joint Commission.
- Mandates coverage for up to 20 outpatient treatment visits per calendar year for family members of individuals suffering from a substance use disorder, who are included in the plan and are otherwise entitled to such services under their policy.
- The above provisions also apply to contracts with hospital or health service corporations (non-profit medical services).

Establishes Standards for Insurance Determinations Regarding Treatment Coverage for Substance Use Disorders

(Amends Insurance Law §§ 4900, 4902; Public Health Law §4902)

- Mandates that when undertaking a utilization review for substance use disorder treatment – the process of determining coverage eligibility for treatment requiring pre-approval – insurance companies must employ “recognized evidence-based and peer reviewed clinical review criteria.” The criteria must be appropriate to the age of the patient.

- OASAS, in consultation with the Dept. of Health and Dept. of Financial Services, is responsible for approving the clinical review criteria to be employed by utilization review agents.

Expedited and Clinician Reviewed Insurance Coverage Pre-Approval and Appeals Process

(Amends Insurance Law §§ 4900, 4903, 4904; Public Health Law §§ 4900, 4903, 4904)

- Mandates that insurance providers complete a utilization review within 24-hours of receiving a request for inpatient substance use treatment, so long as such request is made 24-hours prior to discharge from an inpatient admission.
 - During the pendency of the utilization review, the insurance provider cannot deny any inpatient substance use treatment on the basis of medical necessity or lack of prior authorization.
- Creates an expedited appeals process requiring an insurance provider to issue a decision within 24-hours of receiving an appeal of a denial of coverage for inpatient substance use treatment.
 - Provided that an appeal is filed by the patient or health care provider within 24-hours of the adverse determination, inpatient substance use treatment provided during the utilization review process cannot be denied on the basis of medical necessity or lack of prior authorization while the appeal is pending.
- Establishes a definition for “clinical peer reviewer” for insurance coverage determinations related to substance use disorder treatment. In effect, this requires that all adverse determinations for substance use disorder treatment be reviewed by practitioners in the behavioral health with experience in the substance use disorder treatment field.

Compliance Examination of Insurers and Health Maintenance Organizations (HMOs)

(Amends Insurance Law § 309; Public Health Law § 4409)

- Requires that the Superintendent of the Dept. of Financial Services ensure that insurance companies and HMOs are in compliance with the new provisions regarding substance use disorder coverage and proper utilization review/appeals process, as part of an examination of covered providers.

Establishes a Workgroup to Make Recommendations for Enhanced Access to Substance Use Disorder Treatment

- Mandates that the Commissioner of OASAS, Superintendent of Dept. of Financial Services, and Commissioner of Health, shall jointly establish a working group to study and make recommendations on improving access to and availability of substance use disorder treatment. Working group shall consist of: health care providers, insurers, additional professionals, and individuals/families affected by addiction.
- The work group shall review a number of issues, including but not limited to:
 - Identifying barriers to obtaining necessary substance use disorder treatment;
 - Making recommendations for increased access to substance use disorder treatment, including in underserved areas of New York State;
 - Identifying best clinical practices for substance use disorder treatment;
 - Reviewing and improving insurance coverage requirements for substance use disorder treatment;
 - Making recommendations for improving state agency communication/collaboration relating to substance use disorder treatment;

- Establishing resources for families/individuals having difficulty obtaining substance use disorder treatment; and
- Developing standards to measure performance of substance use disorder treatment facilities.
- The workgroup shall submit a report to the Governor, Senate, and Assembly, on findings and recommendations no later than December 31, 2015.

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A10158/S7906:

Expanded Access to Criminal History Information

(Creates Public Health Law § 3385-A)

- Grants authorized employees of the Department of Health’s Bureau of Narcotic Enforcement, those designated as peace officers for enforcement of prescription drug regulations, access to criminal record history information for the purposes of criminal investigations. Requires that the Director of Bureau of Narcotics Enforcement demonstrate the “necessity for such access as part of an identified, ongoing criminal investigation.”
- Authorizes the Commissioner of DCJS to establish terms and conditions of access to criminal records for investigative purposes.

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A10154/S7902:

Establishes Crime of “Criminal Sale of a Controlled Substance by a Practitioner or Pharmacist”

(Amends Penal Law § 220.65)

- Expands existing statute, “Criminal Sale of a Prescription for a Controlled Substance,” to include enhanced penalties for the unauthorized sale of a controlled substance by a practitioner or pharmacist. The provision prohibits a practitioner or pharmacist, purportedly operating within the scope of their profession and/or license, from selling a controlled substance when acting in other than good faith.
- In effect, the legislation increases penalties to a C felony for the sale of a controlled substance by a practitioner or a pharmacist, regardless of the quantity sold – previously lowest level sale, even if committed by a physician or pharmacist, would have constituted a D felony.

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A10155/S7907:

Fraud and Deceit Related to Controlled Substances

(Creates Penal Law § 178.26)

- Establishes an A-Misdemeanor for the following conduct related to fraud/deceit in acquiring a prescription for a controlled substance:
 - Obtaining, or attempting to obtain, a controlled substance, a prescription for a controlled substance, or an official NYS prescription form by fraud, deceit, misrepresentation or subterfuge; concealment of a material fact; or using false name/address;
 - Making false statements in conjunction with authorizing, ordering or reporting prescription information;

- Falsely assuming identity of a licensed manufacturer, distributor, pharmacist, practitioner or other authorized person, for the purpose of obtaining a controlled substance;
- Making false/forged prescriptions;
- Affixing forged label to package containing a controlled substance; and
- Imprinting or affixing false/forged serial number or symbol to a package containing a controlled substance.
- Establishes that possession of a forged/false prescription for controlled substance or possession of a blank prescription form, by an individual not licensed/authorized, is presumptive evidence of possessor’s intent to illegally obtain a controlled substance.
- Prohibits an individual who is supplied with a prescription for a controlled substance by a physician in the course of treatment, from intentionally deceiving another physician to obtain another prescription for a controlled substance. The above conduct is also categorized as an A-misdemeanor.

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A10157/S7908:

Expands Use of Eavesdropping and Video Surveillance Warrants

(Amends Criminal Procedure Law § 700.05)

- Includes “Criminal Sale of a Prescription for a Controlled Substance or of a Controlled Substance by a Practitioner or Pharmacist,” (the offense created above) as a designated offense for the issuance of an eavesdropping or video surveillance warrant.
- In practice, this allows a judge to issue an eavesdropping warrant or a video surveillance warrant upon application of an applicant who is authorized by law to investigate, prosecute or participate in the prosecution of “Criminal Sale of a Prescription for a Controlled Substance or of a Controlled Substance by a Practitioner or Pharmacist.”

Expands Qualifying Offenses for Enterprise Corruption

(Amends Penal Law § 460.10)

- Includes “Criminal Sale of a Prescription for a Controlled Substance or of a Controlled Substance by a Practitioner or Pharmacist,” to criminal acts covered by the enterprise corruption statute. “Enterprise Corruption,” a class B felony, prohibits a group of individuals from organizing in furtherance of a shared common purpose of engaging in criminal conduct. The offense is defined as knowingly undertaking, controlling, or investing proceeds of an enterprise by engaging in a pattern of criminal activity, consisting of at least three criminal acts, of which two are felonies other than conspiracy. Additionally, two acts (of which one must be a felony) must have occurred within five years of commencement of the criminal action, and each act must have occurred within three years of a prior act.

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A10162/S7909:

Family Court Diversion for Youth with Substance Use Disorders

(Amends Family Court Act §§ 712, 735)

- Creates procedures in cities and counties with more than a million inhabitants for the diversion of youth at risk of being the subject of a person in need of supervision petition.

- Requires that a lead agency (defined as either a probation department or a local social service district) determine whether an assessment for substance use disorder is necessary in any case where a person seeking to file a petition alleges that a youth has a substance use disorder or is in immediate need of detoxification.
- Such assessment is to be carried out by an OASAS certified provider and the lead agency shall not be required to pay for the assessment (except through Medicaid).
- Amends definition of “**Diversion Services**” to include an assessment for substance use disorder by an OASAS-certified provider where a person seeking to file a petition alleges that a youth has a substance use disorder or is in immediate need of detoxification. Establishes subsections defining:
 - **Substance Use Disorder**: “The misuse of, dependence on, or addiction to alcohol and/or legal or illegal drugs leading to effects that are detrimental to the person’s physical/mental health or welfare of others.”
 - **Assessment for Substance Use Disorder**: “Assessment by a provider that has been certified by [OASAS] of a person less than 18 years of age where it is alleged that the youth is suffering from a substance use disorder which could make a youth a danger to him/herself or others.”
 - **A Substance Use Disorder Which Could Make a Youth a Danger to Himself or Herself or Others**: “A substance use disorder that is accompanied by the dependence on, or the repeated use or abuse of, drugs or alcohol to the point of intoxication such that the person is in need of immediate detoxification or other substance disorder services.”
 - **Substance Use Disorder Services**: “Examination, evaluation, diagnosis, care, treatment, rehabilitation, or training of persons with substance use disorders and their families or significant others.”

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A8637B/S6477B:

Opioid Overdose Prevention – Distribution of Opioid Antagonists

(Amends Public Health Law § 3309)

- Directs the Commissioner of the Dept. of Health to establish standards for prescribing, dispensing, distribution, possession and administration of opioid antagonists.
- Defines an “**Opioid Antagonist Recipient**” as a person at risk of experiencing an opioid-related overdose, or a family member, friend or other person in a position to assist a person experiencing or at risk of experiencing an opioid-related overdose, or an organization registered as an Opioid Overdose Prevention program.
- Authorizes a health care professional to prescribe by either a patient-specific or non-patient-specific prescription, or to dispense or distribute either directly or indirectly, an opioid antagonist to an “opioid antagonist recipient.”
- Authorizes pharmacists to dispense an opioid antagonist through either a patient-specific or non-patient-specific prescription to an “opioid antagonist recipient.”
- Permits an opioid antagonist recipient to possess an opioid antagonist, distribute an opioid antagonist to other recipients, and administer an opioid antagonist to a person reasonably believed to be experiencing an opioid overdose.
- An opioid antagonist recipient, operating in good faith in compliance with Opioid Overdose Prevention provisions, shall not be subject to criminal, civil or administrative liability.
- Available “Opioid Antagonists” are limited to Naloxone and other FDA approved medications that are sanctioned by the Dept. of Health for such use.

- Added new categories of information to annual report submitted by the Commission of Health to the Governor and Legislature, in order to enable them to ascertain the success of the program and, if necessary, develop additional means of further reducing overdoses.

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A101056/S7905:

Opioid Antagonist Educational Information Cards

(Amends Public Health Law § 3309)

- Requires that any opioid antagonist distributed through the state’s Opioid Overdose Prevention Program include educational information card. The card should include, at a minimum, information on:
 - How to recognize symptoms of opioid overdose;
 - Steps to take prior/after administering an opioid antagonist;
 - Toll free number & website information for the Office of Alcoholism and Substance Abuse Services (OASAS); and
 - Any other information deemed relevant by the OASAS Commissioner.

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A10160/S7903:

Heroin and Opioid Addiction Wraparound Services Demonstration Program

(Creates Mental Hygiene Law § 19.18-A)

- Creates a 3-year demonstration program to provide wraparound services to adolescent and adult drug treatment patients who are participating in a treatment program and for a clinically appropriate period of up to nine months after completion of a treatment program.
- The services include:
 - Case management services that address educational resources, legal services, financial services, social services, family services, and childcare services;
 - Peer-to-peer support groups;
 - Employment support; and
 - Transportation assistance.
- No later than 2-years after effective date, the OASAS Commissioner must provide an evaluation and report to the Governor and key members of the legislature on the effectiveness of the program and whether it is worth continuing.

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A10159/S7904:

Opioid Addiction Treatment and Hospital Diversion Demonstration Program

(Creates Mental Hygiene Law § 19.18)

- Directs the Commissioner of OASAS, in consultation with the Dept. of Health, to formulate statewide demonstration programs over the next 3 years for medically monitored detoxification through the use of existing beds and transitional services at locations throughout the state for individuals seeking treatment for heroin and opioid addiction.
- Authorizes grants to programs, services, and facilities to provide short-term residential and peer-supported services. These programs are aimed to reduce reliance on emergency room

services. Those receiving detoxification services through this demonstration program are also to be provided with services to facilitate their recovery upon completion of detoxification.

- No later than 2 years after effective date, the OASAS Commissioner must provide an evaluation to the Governor and key members of the legislature regarding the effectiveness of the program and whether it is worth continuing and/or expanding. Topics to be covered by the evaluation include:
 - The program’s overall effectiveness as it relates to patients, the surrounding community, health care providers and health care payers;
 - Locations and utilization rates;
 - Amounts of grants awarded;
 - Programs, services and facilities receiving grants;
 - Effectiveness of programs in providing access to services;
 - Impact of services; and
 - Cost savings associated with services.

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A10161/S7911:

Heroin and Opioid Addiction Awareness and Education Program

(Amends Mental Hygiene Law § 19.07)

- Requires that the OASAS and DOH Commissioners create an awareness and education program, using public forums, social media and mass media, to provide the public with information regarding:
 - Risks associated with abuse/misuse of heroin/opioids;
 - How to recognize the signs of addiction; and
 - Resources available for those needing assistance for heroin/opioid addiction.
- The education program shall be designed to enhance awareness of New York’s Opioid Overdose Prevention Program and “Good Samaritan” laws.

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A10163/S7910:

Updated Health Education Regarding Heroin, Opioids and other Drugs

(Amends Education Law § 804)

- Authorizes Commissioner of Dept. of Education, in collaboration with OASAS and Dept. of Health, to make recommendations to the Board of Regents relating to modernizing mandatory health education programs regarding misuse/abuse of alcohol, tobacco and other drugs, using most up-to-date, age appropriate information.
 - Instruction should include information regarding drugs and other substances that are most prevalent among school aged youth, including but not limited to heroin and opiates.
- Recommendations are to be made every three years, starting December 1, 2014. If the Board of Regents votes to adopt the recommendations, they are to be included in the curriculum by the beginning of the following school year.