

**COPA Members:**

Alliance of Long Island Agencies, Inc. (ALIA)
Cerebral Palsy Associations of New York State (CP of NYS)
Developmental Disabilities Alliance of WNY (DDAWNY)
InterAgency Council of Developmental Disabilities Agencies, Inc. (IAC)
New York Association of Emerging & Multicultural Providers, Inc. (NYAEMP)

COPA 2019 NYS LEGISLATIVE SESSION WRAP-UP

The 2019 New York State Legislative Session ended in the early hours of June 21st. With the November 2018 defeat of the Senate Republicans and the emergence of a strong and unified Senate Democratic Majority to partner with the Assembly Democratic Majority, 2019 was one of the most progressive sessions in New York history. A number of high profile items were passed by both Houses in the first year of one-party rule in New York including; fundamental changes to the Election Law and the Campaign Finance Law; decriminalization (not legalization) of marijuana and vacating some prior marijuana-related convictions; the "Green Light" bill to allow undocumented immigrants to get driver's licenses; allowing undocumented New Yorkers to receive TAP college benefits (The Dream Act); strengthening of state sexual harassment laws, extension and expansion of rent regulations; an increase in labor rights for farm workers; a sweeping measure to combat climate change; eliminating the religious exemption from the requirement that school children be vaccinated; strengthening the State's gun control laws and an extension of the minority-and-women-owned business enterprises law to 2024, among others.

While there were 935 bills passed by both houses this session, outlined below are those of interest to providers, staff, families and individuals with disabilities. Most still require action by the Governor before they would take effect, as noted in the description.

To view the text and sponsor's memo of any of the bills we have summarized, you can use the Assembly's bill search tool at the following link: <https://nyassembly.gov/leg/>

COPA will keep you informed on all issues of importance. We urge you to reach out to us if there is any additional information you need or to make us aware of any issues that you don't see covered. As always, we appreciate your participation and interest in our advocacy efforts and urge you to join our regular Legislative Briefing Calls.

COPA Legislative Briefing Calls

The COPA Legislative Briefing Calls are weekly during session and monthly for non-session months (July through December). Please join us on 7-29-19 at 11:00am and monthly, as listed below, for an update on state and federal issues of interest to people with disabilities, families and staff. **Please see the last page of the 2019 Legislative Session Wrap-Up for call details.**

Following is a summary of the bills of interest to COPA members

*The following bills passed both Houses and will be sent to the Governor for action
(unless noted)*

Passed BOTH Houses

SUPPORT

- **OLAS 4410** – S. 5629 (Mayer)/A. 7694 (Benedetto) – COPA requested this legislation \which authorizes boards of cooperative educational services (BOCES) to enter into contracts with 4410 preschool special education providers to use their online recruitment tool.
- **ABLE Act Expansion** – S. 6238 (Carlucci)/A. 7473 (Gunther) – This Office of the State Comptroller bill increases the maximum account balance for the New York ABLE program in accordance with the NY state college choice tuition savings program.
- **Repeal of Vaccine Exemption for Religious Beliefs** – S. 2994-A/A. 2371-A (Dinowitz) – Repeals subdivision 9 of section 2164 of the public health law relating to exemption from the vaccination of school children due to religious beliefs. Signed by the Governor on 6-3-19. **Chapter 35 of the Laws of 2019.**
- **Small Business Tax Credit** – S. 5545 (Addabbo)/A. 7475 (Cusick) – Establishes a small business tax credit for hiring individuals with disabilities.
- **Complex Rehabilitation Technology (CRT)** – S. 5741(Skoufis)/A. 7492 (Phil Steck) – Codifies the existing process to qualify for CRT, ensures that appropriately diagnosed patients have access to CRT and that Suppliers meet stringent requirements to protect quality and access to services and repairs. Requires Medicaid billing codes be updated to conform with Medicare.
- **Changes OMRDD to OPWDD** – S. 4276 (Skoufis)/A. 6174 (Gunther) – Amends numerous sections of law to change OMRDD to OPWDD.
- **Non-medical switching bill** – S. 2849-A (Breslin)/A. 2969-A (Peoples Stokes) – Prohibits health plans from making prescription drug formulary changes during a contract year except to add generics and a few other exceptions.
- **Rare Disease Advisory Council** – S. 4497 (Rivera)/A. 5762 (Paulin) – Establishes a Rare Disease Advisory Council consisting of 21 appointed members. The role of the Council would be to advise and consult on policy matters related to rare diseases. The Council would meet at least three times annually.

- **Printed Material for College Students with Disabilities** – S. 5393 (Lanza)/A. 7251 (Cusick) – Extends the program that provides instructional materials for college students with disabilities for three more years.
- **OPWDD Front Door Process Awareness** – S. 5347 (Carlucci)/A. 6344A (Gunther) - Requires the Commissioner of the Office for People with Developmental Disabilities to publish, on their website, information regarding the process for obtaining eligibility for services and access to services, including but not limited to, residential, respite, employment, habilitation, and self-directed services. This bill was passed in May but has not yet been delivered to the Governor.

NO POSITION

- **911 Posting bill** – S. 5121 (Carlucci)/A. 1370 – C (Abinanti) – Requires that notices to call 911 in an emergency be posted in the staff office of facilities licensed or certified by OPWDD. COPA worked with the sponsors of this legislation to include amendments that addressed our concerns.
- **Temporary Commission for OMH Housing Programs** – S. 5637A (Carlucci)/A.7489-A (Gunther) -Establishes a temporary commission to investigate and provide policy guidance and recommendations relating to the adequacy of funding levels and need for sufficient staffing in all supportive housing under the auspices of OMH. The commission shall consist of nine members; two appointed by the assembly majority, one by the assembly minority, two by the senate majority, one by the senate minority, and three by the Governor. The commission shall make a report of its finding no later than October 1, 2020.
- **OPWDD Eligibility Information** – S. 5347 (Carlucci)/A. 6344-A (Gunther) – Instructs the OPWDD Commissioner to make information regarding the process for individuals to obtain eligibility for services and to seek access to services, available on the OPWDD website.
- **Anaphylactic Policies for Child Care Services** – S. 218-B (Benjamin)/A. 6971-B (Taylor) – Requires DOH to create a procedure and treatment plan for child care services personnel for responding to anaphylaxis and other guidelines for creating strategies for the reduction of risk exposure for children with a food or other allergy.
- **Automatic Medicaid Enrollment** – A. 7578-A (Gottfried)/S. 5485-A (Carlucci) – Provides for the automatic enrollment and recertification simplification for Medicaid managed care plans and long- term care plans

- **Notification Requirements for Suspension of Services in an IRA – S. 5315** (Carlucci)/A. 7199 (Gunther) – Requires that in the event of a suspension of service of an OPWDD operated IRA, OWPDD must notify the Senate, Assembly, and labor representatives of affected employees.
- **Lease Termination for Individuals with Disabilities – S. 3891** (Sepulveda)/A. 2118 (Hunter) – Extends lease termination rights to people with disabilities when determined that the individual can no longer live independently. Qualifying conditions include: financial hardship related to the disability; physician certification that the individual can no longer live independently or that their housing conditions are currently unsuitable; or when notification is received that they may live in an adult care facility, a residential healthcare facility, supportive housing, or subsidized housing. This bill was passed in May but has not yet been delivered to the Governor.
- **Office of the Advocate for People with Disabilities – S. 1674** (Skoufis)/A. 4737(Steck) – Establishes, in statute, the Office of the Advocate for People with Disabilities, which shall advise and assist state agencies in developing policies designed to help meet the needs of persons with disabilities. The Director shall serve as the Chairperson of the Most Integrated Setting Coordinating Council. This bill was passed in May but has not yet been delivered to the Governor.
- **Differing Diagnoses by Health Care Practitioners related to a Disability – S. 4641** (Persaud)/A. 4236 (Hevesi) – Ensures that the opinions and determinations of a public assistance applicant's treating health care practitioner are given sufficient weight when making disability determinations by establishing factors to be considered when a health care practitioner, upon examination, has a different opinion from an applicant's treating health care practitioner as to an applicant's disability.
- **Medicaid Medication Synchronization – S. 3118A** (Hoyleman)/A. 2785A (Gottfried) – Allows for insurance coverage of medication synchronization for patients with Medicaid coverage.
- **Medication Synchronization – S. 4078** (Breslin)/A. 3009 (Quart) – Allows for insurance coverage of medication synchronization for patients with commercial coverage.
- **PBM Regulation** (S. 6531, Breslin/A. 2836A, Gottfried) – Provides for initial registration and later licensure of Pharmacy Benefit Managers (PBMs) under the jurisdiction of the Department of Financial Services and State Department of Health.
- **Medicaid Coverage for Licensed Mental Health Practitioner Services – S. 3421-A** (Savino)/A. 648-A (Bronson) – Allows licensed mental health practitioners to bill Medicaid directly for the services they provide.
- **Medicaid Coverage for Licensed Clinical Social Workers- S. 5960** (Savino)/A. 8104 (Bronson) – Ensures that care and services provided by licensed clinical social workers is eligible for coverage under Medicaid.

- **Insurance Coverage for Outpatient Treatment by Mental Health Practitioners –** S. 6212-A (Krueger)/A. 670-A (Bronson) - Requires commercial insurance plans to provide coverage for outpatient treatment provided by mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts licensed under article 163 of the education law.

*The following bills passed only one House and therefore
will not become a law this year*

Passed Senate

COPA Support

- **Medicaid Coverage of ABA** – S. 1821 (Rivera)/A. 2802 (Gottfried) – Includes applied behavioral analysis, provided by a licensed behavior analyst or certified behavior analyst assistant for treatment of autism spectrum disorder, under standard coverage for Medicaid recipients. This was done administratively during the budget but the sponsors wanted it in statute.
- **Community Residence Discharge** – S. 4894 (Parker)/A. 2999 (Ortiz) – Provides that nothing shall be construed as creating a relationship of landlord and tenant between an operator of a community residence and a resident; defines community residence.
- **TAP for Students Working in I/DD Field** – S. 5701 (Skoufis)/A. 7236 (Gunther) – Allows students in certain postsecondary education experience or transition programs to receive awards from the tuition assistance program.
- **Independent Consumer Assistance Program** – S. 5145 (Rivera)/A. 7754 (Gottfried) – Would add the current program, established and funded as part of the ACA, to New York Statute and ensure that community health advocate services continue. Requires that all NYS regulated health plans provide contact information for the state independent consumer assistance programs on notices to consumers of adverse determinations, as well as other documentation.

Passed Assembly

COPA Support

- **Confidential Registry for Disaster Preparedness** – S. 5750 (Sepulveda)/A. 3923 (Weprin) – Requires counties to maintain a confidential registry of people of all ages with disabilities for disaster preparedness.
- **Waives State Immunity under ADA** – S. 5208 (Sanders)/A. 1092 (Lifton) – Waives the state's sovereign immunity to liability under the Americans with Disabilities Act and certain other federal Acts.

Other significant bills that did not pass either House

COPA Support

- **Interim Plus Rates** – S. 5606 (Mayer) (and not same as) A. 7120-A Benedetto – Would require that approved growth for 4410, 853 and Special Act schools be added to their interim rates while they wait for SED to calculate and update their rates. SED provided amendments very late in the session which resulted in two different versions of the bill.
- **90-day Medicaid billing Delay Code** – S. 1818 (Rivera)/A. 2786 (Gottfried) – Adds a delay code under “other” for the case where implementation or upgrade of EMR systems have caused billing errors not detected in a timely way, so providers can correct these errors and bill beyond the 90 day limit for Medicaid services rendered. DOH claims that CMS will not allow this and has instead provided an “administrative remedy” where the agency CEO/Executive Director can write to DOH, on a case by case basis, explaining why they were not able to bill within the required timeframe.
- **Medical Marijuana** – A. 7467-A (Gottfried)/S. 5657-A (Savino) – Provides that medical marihuana may be used as part of the treatment of a patient's condition and removes the requirement for a "serious" designation of such condition; provides that a practitioner be authorized to prescribe controlled substances in the state and removes the requirement that a physician prescribe such medical marihuana; increases the supply amount of marihuana from thirty to sixty days; allows a designated caregiver facility or designated caregiver facility employee to possess, acquire, deliver, transfer, transport or administer medical marihuana; requires the commissioner of health to establish a medical marihuana research license; establishes a medical marihuana research program; requires the registration of designated caregiver facilities; authorizes the commissioner of health to approve and permit one or more independent laboratories to test medical marihuana; increases the number of dispensing sites of a registered organization from four to eight.

- **Preferred Drug Program** – S. 5923 (Rivera)/A. 2795 (Gottfried) – Extends the preferred drug program to Medicaid managed care providers and other health plans.
- **TBI-NHTD** – S. 1890 (Rivera)/A. 2798 (Gottfried) - Provides that services for medical assistance recipients suffering from traumatic brain injuries or qualifying for nursing home diversion and transition services shall be provided outside of managed care.
- **ASD Comprehensive Assessment Centers** – A. 3599 (Gunther)/ No Senate same as – Develops comprehensive assessment centers for autism spectrum disorders; provides grants for their development and lays out reporting and research requirements.
- **Health Care Transformation Fund CBO Set Aside** – S. 6376 (Rivera)/A. 7977-A (Gottfried) – Provides that on and after April 1, 2019, on an annual basis, at least 25% of the moneys deposited into the health care transformation fund shall be allocated exclusively for certain community-based health care providers including OPWDD providers.

COPA No Position

- **Special Education Transportation** – S. 4168 (Addabbo)/A. 1686 (Pheffer Amato) – Allows a child who has been referred by a local committee on special education to receive transportation services to the alternate school rather than only to the local school district school. Last Action: **Assembly Floor**.

COPA Opposed

- **Surveillance Cameras on All OPWDD Entrances & Exits** – A. 3529 (Gunther)/ S. 4015 (Carlucci) – Requires video cameras to be placed on the entrances/exits of all facilities run by the office for people with developmental disabilities. Last Action: **Reported to Assembly Ways & Means**.
- **Prevailing Wage for Publicly funded construction projects** – S. 1947 (Ramos)/ A. 1261 (Bronson) – Requires that the prevailing wage be paid to everyone working on state financed construction projects.
- **Elimination of Sub-Minimum Wage** – S. 4018-A (Skoufis)/A. 7077-A (Steck) – Eliminates the subminimum wage for employees based on their age or disability.

4410 & 853 STAFFING CRISIS

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 related. The COPA team continues to work with the Legislature, the State Education Department (SED), the Division of Budget (DOB), the Governor's office and the Legislature to highlight the 4410 and 853 staffing crisis.

The Division of Budget has approved the 2019-2020 tuition methodology for 4410, 853 and Special Act Schools.

The methodology includes:

- 3.6% growth for school-age programs
- 2% growth for 4410 preschool programs
- No new funding for Excessive Teacher Turnover Prevention (funding remains at \$8 million)

COPA 2019-2020 NYS BUDGET RECAP

As previously reported in April, the New York State 2019-2020 enacted budget includes the following highlights of interest to COPA members with the following two changes that are explained in more detail as an update:

1. The Health Facility Transformation Fund Phase III grants will be awarded by 9-1-19 (had been 6-1-19).
2. The SAM funding appropriation language does not include “non-profits” this year. We urge you to ask your legislators for re-appropriated funding.

OPWDD

- **Deferral of Human Services COLA – \$0** We are extremely disappointed that the final budget did not include a COLA (2.9% this year) and defers it to 3-31-21.
- **#bFair2DirectCare** –The final budget included funding for a 2% increase, including salary and salary related fringe benefits, effective 1-1-20, for 100 and 200 CFR codes and another 2% increase, effective 4-1-20, for 100, 200 and 300 codes. \$8.4 million state share. Increases provided from 4-1-19 can be counted towards the 1-1-20 2% increase for 100 & 200 code employees.

- **Development – ACCEPTS** the Governor’s proposal for an additional **\$30 million state share this year for a fully annualized all shares \$120 million** (State and federal funding for a full year) in additional funding available for “Program Priorities,” including; certified housing supports in the community; independent living; day program and employment options and respite.
- **Housing – ACCEPTS** the Governor’s proposal for an additional **\$15 million** in capital funds to develop affordable housing.
- **Managed care readiness – ACCEPTS** the Governor’s proposal for \$5 million for the NY Alliance for Inclusion and Innovation “to improve provider readiness for managed care through the development of best practices, performance measurement and outcome monitoring tools.”
- **“More efficient use of state resources” – ACCEPTS** the Governor’s proposal for OPWDD to continue to work with DOH and CMS on efficiencies including to “reconcile” room and board financial support against actual room and board costs and a proposal to modify rate methodology to reduce administrative reimbursement to 15% in accordance with the cap in Executive Order 38, presumably on a program by program basis.
- **Integrated outpatient services – ACCEPTS** the Governor’s proposal to add Article 16s to the list of clinics that do not need an additional license to provide multiple services. Last year, Article 28, 31 and 32 clinics were granted joint licensure to provide any of those clinic services under their current license. Article 16 clinics are now included.
- **Minimum wage funding – ACCEPTS** the Governor’s proposal for \$47.4 million state funding (for a total of approximately \$94.8 with the federal funds included).

DOH

- **Early Intervention – ACCEPTS** the Governor’s proposal to provide a 5% rate increase for Early Intervention PTs, OTs and SLPs. The Legislature did not expand the 5% increase to all EI providers as COPA had advocated, and the 5% increase is not extended to services provided by PT and OT Assistants. Additionally, the “covered lives pool” language did not make it into the final budget.
- **Consumer Directed Personal Assistance Program (CDPAP) Program/ Fiscal Intermediary (FI) Changes – MODIFIES** the Governor’s language to require FIs to submit a contract application to DOH within 90 days of it’s posting on the DOH website. Eligible applicants include, but are not limited to, FIs established prior to 2012 and

continually providing services, and independent living centers. Additionally, the DOH Commissioner shall establish a stakeholder workgroup, no later than May 15, 2019, to address fiscal intermediary services, the needs of consumers including transition plans and criteria for selecting FIs. FI reimbursement will move to a per member/per month methodology with three corridors but we have not yet seen the final parameters or reimbursement amounts for those corridors.

- **Health Facility Transformation Fund Phase IV – ACCEPTS** the Governor's proposal to use \$300 million, of the \$525 million in new Phase III funding, that was included in the 2018-2019 budget, to fund Phase II applicants that did not receive a grant. These Phase II applicants will be rescored and those who will be awarded a grant, from the \$300 million, will be notified by May 1, 2019 – **this was amended to September 1, 2019 at the end of session.** There will be a new RFP for the remaining \$225 million from phase III with no new funding in the 2019-2020 budget proposal for Phase IV.
- **Applied Behavioral Analysis (ABA) – ACCEPTS** the Governor's proposal for Medicaid coverage of ABA for over 4,000 children with Autism Spectrum Disorders, including those who have aged out of the Early Intervention program. \$6.4 million for 2019-20.

OMH

- **Human Services COLA – \$0** and defers the COLA (2.9% this year) to 3-31-21.
- **#bFair2DirectCare** – The final budget included funding for a 2% increase, effective 1-1-20, for 100 and 200 CFR codes and another 2% increase, effective 4-1-20, for 100, 200 and 300 codes. \$1.2 million state share.
- **Mental Health Education in Schools – ACCEPTS** \$1.5 million in the SED budget to prevent bullying, trauma, suicide etc.
- **Supportive housing and SROs rate increase – ACCEPTS** the Governor's \$10 million increase.
- **Supports for high-need individuals – ACCEPTS** the Governor's \$10 million for those residing in adult homes with specialized supports such as peer support and in-reach.
- **Community Reinvestment – ACCEPTS** funding for community services expansion derived from the closure of additional state hospital beds of \$5.5 million/\$11 million fully annualized.
- **Capital Funds for Community Based Nonprofit Housing Providers – ACCEPTS** \$60 million addition

- **Behavioral Health Parity** – Budget includes several million dollars to enhance staff at the Department of Financial Services and the Department of Health to help assure health plans have adequate provider networks and are in compliance with parity requirements. dedicated to network adequacy and reviewing existing health plans to help ensure compliance with parity. Some of the specifics are:
 - assures 28 days of SUD services and 14 days of inpatient psychiatric services for youth without the barriers associated with prior or concurrent insurer and health plan approval
 - assures access to prescribed medications for treatment of substance use related conditions without prior insurer and health plan approval
 - assures that the clinical review criteria used by utilization review agents must be approved by OMH and OASAS
 - requires insurers and health plans to post additional information regarding their in-network providers of MH/SU services

OTHER

STATE AND MUNICIPAL FACILITIES PROGRAM (SAM) – The final capital budget was not negotiated by the April 1st deadline and did not include new SAM funds which will be distributed by Senators, Assembly member and the Governor. Our 853 schools were added in the 2017-2018 budget and “non-profits” were added last year. The budget contains \$1.9 billion in re-appropriations (not completely spent) funding. **UPDATE: The end of session bills included a Capital budget with \$385 million in new/additional SAM funding but the appropriation language does not include “non-profits” this year.** We believe that this was an oversight and we urge you to ask your Senator, Assembly member for funding that was re-appropriated from the \$475 million SAM funding in 2019-2019 budget that included nonprofits.



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

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COPA Legislative Briefing Calls

JOIN YOUR COPA TEAM AT

<https://CPofNYS.zoom.us/j/886664736>

By Phone

+1 646 876 9923

Meeting ID: 886 664 736

One tap mobile

+16468769923,,886664736#

The COPA Legislative Briefing Call dates for the rest of the year are:

- Monday, July 29th 11am
- Monday, August 26th 11am
- Monday, September 23rd at 11am
- Monday, October 21st 11am
- Monday, November 25th 11am
- Monday, December 15th 11am