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TO: Memo Distribution List

FROM: Hinman Straub P.C.

RE: 2020 Legislative Session Summary

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The Legislature reconvened “virtually” during the week of July 20th to presumably conclude the 2020 Legislative Session. This is the third reconvening of the Legislature following a recess due to the COVID pandemic, with the first to pass legislation related to the COVID and the second to pass a package of policing reforms. Last week, the Legislature passed a wide-range of bills, including automatic voter registration, amendments to the redistricting process, and limiting the immunity granted to health care providers in the 2020-21 Budget. Notably, the Legislature did not take any action to address the projected budget deficit. As a result, there remains a strong possibility of the Legislature returning again prior to the end of the year.

The Legislature has announced a series of joint legislative hearings over the coming weeks to examine how the COVID-19 pandemic impacted New York State. Lawmakers will examine topics including higher education, residential health care facilities, hospitals, the MTA, and a review of the primary elections. Leaders say the hearings will help build on progress made and serve to guide legislation as New York moves forward.

This memorandum provides a summary of: (1) Bills impacting the health care industry that passed both Houses during the 2020 Legislative Session that have not been signed by the Governor; and (2) other Bills of interest that may impact your business operations and have also passed both Houses of the Legislature. We will provide a more detailed analysis of a number of the Bills after they have been signed into law.

Health Care

1. Limiting Immunity for Health Care Services During COVID (S8835 Sepulveda/A10840 Kim)

This Bill amends, prospectively, the statutory liability protection granted in the 2020-21 Budget to healthcare professionals, health care facilities, and organizations that provide treatment and services related to COVID during the duration of the COVID-19 state of emergency. The scope of the liability protection is now limited solely to the treatment, diagnosis, and care of an individual as it relates to COVID when such individual has a confirmed or suspected case of COVID. Thus, the liability protection no longer extends to the treatment or care provided to individuals that are not being treated for COVID. The statute also amends the definition of the health care services that are eligible for immunity from liability by removing “prevention” of COVID from the definition of health care services. Lastly, the amendment removes immunity protections for a health care facility or health care professional that is “arranging for” health care services.

This Bill was delivered to the Governor on July 24, 2020. If signed by the Governor, the amendments will take effect immediately. The amendments apply to claims occurred on or after the effective date.

2. Dental Telehealth Services (A10034 Gottfried/S7879 Rivera)

This Bill requires dental telehealth services to adhere to the same standards of appropriate patient care required in dental health settings. The Bill prohibits a dental telehealth provider from requiring a patient to waive liability for dental services in advance of delivering telehealth services.

It requires all dental telehealth providers to identify themselves to patients, including providing their New York State license number.

If signed by the Governor, this law will take effect immediately.

3. Pre-Term Labor Care and Information (A2770C Bichotte/S8525 Montgomery)

This Bill requires general hospitals to undertake the following actions when an expectant mother is undergoing pre-term labor:

- Determine whether the expectant mother is in pre-term labor;
- Upon a diagnosis of pre-term labor, admit the expectant mother or treat in the emergency room for close observation and continuous monitoring until it is deemed medically safe for discharge or stabilize and arrange for the transfer to another general hospital; and
- Provide the expectant mother with informational materials prepared by the Department of Health concerning pre-term labor and the potential health effects of pre-term labor and premature birth delivery on the mother and fetus.

The Bill requires DOH to update the leaflet "Maternity Information – Childbirth Services" to include information relating to pre-term labor and premature birth, and include a statement that Medicaid provides coverage for all income-eligible pregnant women and children regardless of immigration status.

If signed by the Governor, this law will take effect 60 days after it is signed into law.

4. Drug Assistance Demonstration Program (S6492-B Rivera/A8533-B Joyner)

This Bill requires DOH to establish a demonstration to ensure access to insulin “and other life sustaining maintenance prescription drugs identified by the commissioner” and to allow emergency refills of insulin and other life sustaining maintenance prescription drugs.

The demonstration program would be available for individuals who: (1) are without health care coverage, or (2) are ineligible for Medicaid or other publicly available coverage, or (3) are otherwise determined to be eligible by the commissioner and “depend on the medication for their survival.” The Commissioner would be required to engage with drug manufacturers to explore a “public-private partnership” to provide affordable drugs through the program, and must consider modeling the program on the state’s existing HIV/AIDS drug assistance demonstration program, which provides access to HIV/AIDS drugs individuals based on their income and poverty level.

The emergency prescription authority would allow prescribers to issue non-patient specific prescriptions for pharmacists to be able to dispense an emergency refill of insulin or life sustaining prescription drugs to a person on an emergency basis, as long as that person had a valid prescription for the drug during the prior twelve months which has since expired. Before filling the emergency prescription, the pharmacist would need to try and obtain the authorization from the prescriber for the patient-specific prescription, and not be successful doing so, and the original prescriber cannot object to the dispensing of the non-patient-specific prescription. In addition, a pharmacist must also reasonably believe interruption of the therapy might produce “health consequences

detrimental to the patient's welfare or cause physical or mental discomfort". Refills cannot exceed a thirty-day emergency supply and notification must be made to the original prescriber within 72 hours of dispensing the emergency refill.

If signed by the Governor, the law would take effect immediately.

5. Partial Fill for Opioid Prescriptions (A9034 McDonald/S7115 Rivera)

This Bill authorizes a pharmacist to partially fill a prescription for a Schedule II-V controlled substance, upon the request of the prescriber or the patient, provided that the partial filling is recorded in the same manner as a refill. It would also allow a pharmacist to dispense the remaining quantity of prescription separately only once.

This Bill is a slightly modified version of A3918 McDonald/S1813 Rivera, which was vetoed by the Governor in 2019 on both technical and substantive grounds.

If signed by the Governor, this law will take effect on January 1, 2021.

6. Managed Care Notice of Consumer Assistance (A9538 Gottfried/S7241 Rivera)

This Bill requires Managed Care Organizations (MCOs) to include additional information on all written notices of adverse determinations, grievances, and appeals to enrollees. Specifically, the written notice will be required to include the name, address, phone number and website of the Department of Health designated Independent Consumer Assistance Program and the independent Substance Use Disorder and Mental Health Ombudsman.

If signed by the Governor, this law will take effect 180 days after it is signed into law.

7. Public Health and Health Planning Council Membership (A9530 Gottfried/S7304 Hoylman)

This Bill increases the membership of the Public Health and Health Planning Council (PHHPC) from 24 members to 26 members. The composition of PHHPC is amended to require at least 3 members being representatives of health care consumer advocacy organizations that have a statewide or regional constituency involved in activities related to health care consumer advocacy, including issues of interest to low- and moderate-income individuals.

This Bill was passed in response to the Governor's veto of a Bill that would have increased PHHPC membership from 24 to 36 people. In the veto message, the Governor stated that supported the intent of diversifying PHHPC to reflect the community and that he would appoint additional consumer advocates. Thus, it is expected that this Bill will be signed by the Governor and will take effect immediately and apply to all members appointed or re-appointed on and after that date.

8. Ambulatory Care on Staten Island (A10470-A Fall/S8719 Savino)

This Bill requires the Commissioner of Health to conduct a study of the delivery of primary care, retail clinics, urgent care centers, federally qualified health centers (FQHCs), and other ambulatory care services on Staten Island. The Bill excludes ambulatory surgery centers (ASCs) and office-based surgery practices from the study. The study must examine the impact of the providers on the delivery, quality, accessibility, and cost of ambulatory health care and include recommendations to improve the delivery, quality, accessibility, and cost of the full range of ambulatory health care services required by the community. During the course of the study, any clinic, urgent care or ambulatory practice must give a 30-day notice to DOH and locally elected officials before a closure, relocation or decertification.

If signed by the Governor, this law will take effect immediately, with the findings and recommendations to be published 1 year from such date.

9. Certified Treatment Program Notice of Emergency Contact (A9536 McDonald/S4741-B Harckham)

This Bill requires that all certified treatment programs notify every patient of their right to identify individuals who should be contacted in case of emergency. The Bill also directs OASAS to develop guidelines to help patients to identify individuals who can assist in their treatment and recovery and those who can serve as emergency contacts.

If signed by the Governor, this law will take effect 120 days after it is signed into law.

10. Prohibits Discrimination for Naloxone Prescription (S3159-A Harckham/A5952-A Rosenthal)

This Bill prohibits insurers from denying a life insurance or annuity contract to individuals who have been prescribed medication used to block the effects of opioids (i.e. Naloxone or Narcan). The Bill also prohibits an insurer from adjusting the amount of premiums or rates charged for life insurance policies or annuity contracts solely because such individual has been prescribed medication used to block the effects of opioids, unless such action is based on sound actuarial principles or actual or reasonably anticipated experience.

If signed by the Governor, this law will take effect immediately.

11. Administration of Dilating Eye Drops (S8641-A Stavisky/A10634-B McDonald)

This Bill amends a statute enacted last year authorizing ophthalmologists and optometrists to supervise trained personnel to instill dilating eye drops. The amendment authorizes physicians to delegate and supervise trained personnel to instill dilating eye drops. It requires that trained personnel be at least eighteen and comply with standards issued by the Department. The supervising physician must submit a form prescribed by the department detailing the identity of persons instilling such eye drops under their supervision and attest to compliance.

If signed by the Governor, this law will take effect 9 months after it is signed into law.

12. Professional Misconduct Involving Sexual Harassment and Assault (A7991-A Simotas/S6678-A Salazar)

This Bill requires the Office of Professional Medical Conduct (OPMC) to post on its website information on how patients can report instances of professional misconduct involving sexual harassment and assault. All physician practice settings must post signage, visible to their patients, directing patients to OPMC's website for information about their rights and how to report professional misconduct.

If signed by the Governor, this law will take effect immediately.

13. DANY Applications in Grants Gateway (S7524 Rivera/A9097 Gottfried)

This Bill directs the Department of Health to form a workgroup to assess the impact of requiring individual applicants for grants from the Doctors Across New York (DANY) physician loan repayment and physician practice support programs to use the New York State Grants Gateway. Representation on the workgroup would include individuals recommended by associations representing physicians, general hospitals and other health care facilities, and must be formed by March 31, 2021.

If signed by the Governor, this law will take effect immediately.

14. Bone Marrow Registry Information (A5370-A Solages/S6705 Benjamin)

This Bill permits physicians, physician assistants and nurse practitioners providing primary care or urgent care to a new patient who is between the ages of 18 and 45 whether he or she is registered with the bone marrow registry and to provide information to the patient of the registry if they are not registered. It directs the Department of Health to develop information regarding bone marrow donation and registries, including the "Be The Match Registry", and make the information available to physicians, physician assistants and nurse practitioners to distribute to patients.

If signed by the Governor, this law will take effect January 1, 2021.

15. Crohn's and Colitis Identification Card (A8146 Paulin/S6226 Felder)

This Bill requires the Department of Health to develop a Crohn's and Colitis identification card for people with gastrointestinal conditions defined in the Crohn's and Colitis Fairness Act to gain access to restroom facilities. The Act provides individuals with Crohn's and Colitis access to an employee-only bathroom in a place of business. The ID card will allow individuals to verify with a business of their condition and outline that employee's responsibility under the Crohn's and Colitis Fairness Act.

If signed by the Governor, this law will take effect 180 days after it is signed into law.

16. ALS Research and Education Fund (A9913 Gunther/S7787 Mayer)

This Bill substitutes the Commissioner of Health for the Office of the State Comptroller with respect to the expenditure of funds from the ALS Research and Education Fund.

If signed by the Governor, this law will take effect immediately and be deemed to have been in full force and effect as of October 1, 2018.

Other Bills

1. Public Employer Plan for Operations During Declared Public Health Emergency (S8617-B Gounardes/A10832 Abbate)

This Bill requires public employers (excluding schools) to create a plan for continued operation in the event the Governor declares a public health emergency involving a communicable disease. The operation plan is required to include, but is not limited to the following:

- A list and description of positions and titles considered essential in the event of a state-ordered reduction of in-person workforce, and a justification of such consideration for each position and title included;
- A specific description of protocols the employer will follow in order to enable all non-essential employees and contractors to telecommute;
- A description of how the employer will, to the extent possible, stagger work shifts of essential employees and contractors in order to reduce overcrowding on public transportation systems and at worksites;
- A description of the protocol the employer will implement in order to procure the appropriate personal protective equipment for essential employees and contractors;
- A description of the protocol in the event an employee or contractor is exposed to a known case of the communicable disease that is the subject of the public health emergency;
- A protocol for documenting precise hours and work locations, including off-site visits, for essential employees and contractors; and
- A protocol for how the public employer will work with such employer's locality to identify sites for emergency housing for essential employees in order to further contain the spread of the communicable disease.

Once drafted, each public employer shall present the plan to all applicable duly recognized or certified representatives of the employer's employees, who are then given an opportunity to review the plan and make recommendations. The employer must consider and respond to such recommendations in writing within a reasonable timeframe.

A copy of the final version of such plan is required to be published in a clear and conspicuous location, and in the employee handbook, to the extent that the employer provides such handbook to its employees, and in a location accessible on either the employer's website or on the internet accessible by employees. No employer shall take retaliatory action or otherwise discriminate against any employee for making suggestions or recommendations regarding the content of the plan.

The Department of Labor shall establish procedures to allow for public employees or contract workers to contact and inform the department of any alleged or believed violations. The department is also required to establish a dedicated webpage and hotline through which any public employee or contractor may report alleged or believed violations of any state law, regulation, rule or guidance related to occupational health and safety involving a communicable disease, including but not limited to the novel coronavirus COVID-19. Such webpage and hotline shall allow individuals to report alleged or believed violations anonymously.

If signed by the Governor, this law would take effect immediately; provided, however that the operation plans in the event of certain declared public health emergencies shall be finalized and published, the hotline and webpage shall be functional, and the protocols for responding to a declared public health emergency involving a communicable disease shall be established and functional within 30 days of the effective date.

2. Written Notice Requirements for Mass Layoffs (A10674-A Otis/S8748 Mayer).

This Bill requires employers with WARN Act notice obligations to notify the chief elected official of the local government(s) and the school district or districts in which the mass layoff, relocation, or employment loss will occur. The Bill also requires notice be provided to each locality that provides emergency services to the site of employment where the employment loss will occur. Currently, WARN Act notices are only required to be given to the employee, the Department of Labor, the local workforce investment boards.

If signed by the Governor, this law would take effect immediately.

3. Takes Child Care into Consideration for Unemployment Benefits (A3033 Solages/S2231 Sanders)

Current law requires unemployment insurance claimants to actively seek gainful employment in order to receive a benefit. The Department of Labor is required to promulgate regulations defining systematic and sustained efforts to find work and setting standards for the proof of work search efforts. This Bill requires the Department to take into consideration the need for childcare within the definition of systematic and sustained efforts to find work.

If signed by the Governor, this law would take effect on December 7, 2021.

4. Single-Occupancy Bathrooms (A5240-A O'Donnell/S6479-A Salazar)

This Bill requires all single occupancy bathroom facilities in public places and in all public and private schools as gender neutral. Public places include, but are not limited to, restrooms located in schools, restaurants, bars, mercantile establishments, or factories. All such bathroom facilities are required to be labeled as gender-neutral.

If signed by the Governor, this law would take effect 90 days after it is signed into law.

5. Denial of Access to an Employee Toilet Facility (A8821 Paulin/S7211 Felder)

Chapter 471 of 2017 established the Crohn's and Colitis Fairness Act to permit individuals with certain medical conditions access to employee toilet facilities in places of business when necessary. This Bill provides state and local consumer protection departments the authority to receive complaints for consumers who were denied access to employee toilet facilities, mediate complaints where appropriate, and refer such complaints to the agency authorized by law to enforce the provisions of the Crohn's and Colitis Fairness Act.

If signed by the Governor, this law would take effect immediately.

6. Direct Deposit of Workers' Compensation Benefits (A7579 Reyes/S7210 Savino)

This Bill mandates that workers compensation insurers provide the option of direct deposit of workers' compensation benefits and requires the Workers' Compensation Board to provide notice of such option and the forms necessary to enroll. Currently, insurance carriers are permitted to provide direct deposit, but are not mandated to do so.

If signed by the Governor, this law would take effect immediately.