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2020-2021 Budget Testimony

Albany, New York - The New York State Society of Physician Assistants (NYSSPA), a constituent organization of the American Academy of Physician Assistants (AAPA), and the representative organization for PA practice in New York State has, for over 40 years successfully advocated for a PAs ability to provide quality, cost effective, patient-centered care. PAs are an integral solution to healthcare workforce issues in New York. PAs are trained in the medical model and are licensed by the NYS Education Department Office of the Professions. They practice in primary and specialty care and in every clinical discipline and in every clinical setting including mental health, palliative care, hospice and addiction medicine. PAs are a proven cost saver to Health Systems, Federally Qualified Health Centers, School Based Health Clinics, Mental Health Facilities, Substance Use Clinics, Correctional Facilities and throughout New York State’s Health Care Delivery System.

Since 1971, New York law has recognized the education and training of physician assistants (PA) in Education Law Article 131-B and Public Health Law Article 37, providing for the licensing and scope of practice of physician assistants. PAs have a very broad scope of practice. “Notwithstanding any other provision of law, a physician assistant may perform medical services, but only when under the supervision of a physician and only when such acts and duties as are assigned to him or her are within the scope of practice of such supervising physician.” Education Law § 6542 (1).

Many laws and regulations refer to what a physician may do. Although the Education Law definition of the PA scope of practice begins with a broad "notwithstanding" clause, some regulatory and judicial interpretations have erroneously held that PAs are excluded from those various provisions because they are not specifically mentioned. For example, one court held that a PA may not direct the drawing of blood for a blood alcohol test in an alleged drunk driving case, since the Vehicle and Traffic Law refers to a “physician” directing the drawing of blood. This and similar rulings and interpretations thwarted the letter and intent of the PA statute.

To clarify the intent of the 1971 law, in 2010 the Legislature passed and Governor David Paterson signed, Chapter 30 of the Laws of 2010, enacting Public Health Law § 3704 which states A physician assistant may perform any function in conjunction with a medical service lawfully performed by the physician assistant, in any health care setting, that a statute authorizes or directs a physician to perform and that is appropriate to the education, training and experience of the physician assistant and within the ordinary practice of the supervising physician. This section shall not be construed to increase or decrease the lawful

scope of practice of a physician assistant under the education law. Governor Paterson stated in his Approval Memorandum:

“This bill seeks to ensure that physician assistants are not needlessly prevented from performing certain functions that flow from their provision of medical services to patients. The legislation addresses the concern that if a statute authorizes or directs physicians to perform an act related to a medical service but does not specifically refer to physician assistants, it may be subject to the interpretation that a physician assistant is not authorized to perform the act, even if the act is related to a medical service lawfully provided by the physician assistant, concerns the same patient who received such medical service, can be competently performed by the physician assistant in light of his or her education, training and experience, and is within the supervising physician’s ordinary practice. Such an interpretation would defeat the public policy objectives served by the registration of physician assistants.”

As the sponsor of the 2010 law, Assemblyman Gottfried offered a memorandum in May 2019 to reaffirm the intent of that law. PAs are primary care practitioners, who may also practice in specialty areas, consistent with their training and the practice of the supervising physician. As such, it is neither necessary nor practicable to list every function a PA may perform or provide, so this legislation was created to apply to all PA roles in every setting in which a PA functions. Section 3704 was enacted to avoid having to go through the law amending section after section to add a reference to PAs wherever physicians are mentioned. Prospectively, if Bills are introduced that include the title *physician*, NYSSPA serves as a resource to clarify if the title *PA* should be included as well.

Recently, the Department of Health applied this legislation in relation to certifying a patient for use of medical marijuana under Public Health Law Article 33, Title 5-A. The medical marijuana law on its face refers to physicians and nurse practitioners certifying patients. The Department adopted regulations authorizing PAs to certify patients, properly applying the PA legislation.

PAs are very much aligned with our physician colleagues. PAs are trained to practice medicine, PAs follow the same best practice protocols, PAs sit on the NYS Board of Medicine, PAs are represented on the NYS Board of Professional Misconduct. At the health system level PAs are credentialed and issued Medical Staff privileges as are physicians and patient outcomes and quality of care is monitored by the same oversight bodies as physicians. Despite this PAs still routinely encounter barriers to practice:

- NYS Medicaid does not list PAs as PCPs in their contracts nor are patients allowed to enroll in a PA panel.
- Some third-party payers in NYS do not credential/par PAs.
- Many NYS and other municipality medical forms do not list PAs as signers creating great confusion and patient care disruption.
- Many NYS websites incorrectly list PAs as registered rather than licensed, creating unnecessary confusion.

At a time when NYS is looking to reduce Medicaid and consumer cost, PAs offer a fiscally responsible solution to quality healthcare delivery in NYS. This is why NYSSPA believes the 2020-2021 Budget language should be amended to include PAs where physicians are referenced.

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