New Jersey State Legislative Update

Laurie Clark –Legislative Counsel to NJSIPP

September 29, 2021

As you can well imagine, it has been a busy summer in our state capitol. Here are some of the highlights.

We are in the midst of elections season with all 120 Seats of the Legislature and the Governor on the ballot in November. The Legislature is slated to return to Trenton after the November Election.

GOVERNOR MURPHY SIGNS LEGISLATION REGARDING STUDENT ATHLETE CONCUSSIONS

Under the provisions of the new law, S225, student-athletes that have sustained a concussion would be prohibited from returning to competition until they have returned to regular school activities and are symptom-free.

The return of the student-athlete or cheerleader would be required to be in accordance with the Center for Disease Control's (CDC) graduated, six-step "Return to Play Progression" recommendations, which address time frames for participating in: light aerobic activity; moderate activity; heavy, non-contact activity; practice and full contact; and competition.

The bill would require the Department of Education to revise its athletic head injury safety training program to include information on the CDC's graduated, six-step "Return to Play Progression" recommendations, and would also require school districts to revise their written policy concerning the prevention and treatment of sports-related concussions and other head injuries.

TELEMEDICINE PARITY BILL IS ON THE GOVERNOR'S DESK

S-2559 (Gopal/Gill)/A-4179 (Downey/Conaway) is on the Governor's Desk. This monumental bill revises the telemedicine and telehealth law, P.L.2017, c.117 (C.45:1-1 et al.), to require health benefits plans, Medicaid and NJ Family Care, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage and parity in payment for services provided using telemedicine and telehealth on a permanent basis.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The amended bill provides that, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth if the federal Centers for Medicare and Medicaid Services has authorized the use of the platform to provide services using telemedicine and telehealth under the federal Medicare program.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person. The bill as amended further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person.

More updates will be provided as soon as we have more information with respect to future action by the Governor.

BILL MANDATING IMPLICIT BIAS TRAINING SIGNED INTO LAW

The new law (S703 - Ruiz) requires every hospital that provides inpatient maternity services and every birthing center licensed in the State pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to implement an evidence-based explicit and implicit bias training program for all health professionals that who provide perinatal treatment and care to pregnant persons at the hospital or birthing center, regardless of the compensation agreement, contractual status, or privilege status that may exist between the health professional and the hospital or birthing center, and all supportive staff members, as defined by the Department of Health (DOH) who interact with pregnant persons at the hospital or birthing center.

The training program would include, but not be limited to: identifying previous and current unconscious biases and misinformation when providing perinatal treatment and care to, or

interacting with, pregnant women; identifying environmental, personal, interpersonal, institutional, and cultural barriers to inclusion; information about the effects of historical and contemporary exclusion and oppression of minority communities; information about cultural identity across racial, ethnic, and other marginalized groups; information about communicating more effectively across racial, ethnic, religious, and gender identities; information about reproductive health; discussions on power dynamics and organizational decision-making and their effects on explicit and implicit bias, and on inequities and racial, ethnic, and other disparities within the field of perinatal care, and how explicit and implicit bias may contribute to pregnancy-related deaths and maternal and infant health outcomes; corrective measures to decrease explicit and implicit bias at the interpersonal and institutional levels; and review of the annual report of the New Jersey Maternal Mortality Review Committee.

A health care professional who provides perinatal treatment and care to, and a supportive staff member who interacts with, pregnant persons at a hospital or birthing center would be required to complete the training program and a refresher course, every two years. The refresher course would be designed to provide the health care professional with updated information about racial, ethnic, and cultural identity, and best practices in decreasing interpersonal and institutional explicit and implicit bias. Upon successful completion of the training program, the health care professional or administrative or clerical staff member would receive a certification from the hospital or birthing center.

Under the bill, a hospital or birthing center that implements an explicit and implicit bias training program is to ensure that the program is structured in a manner that permits health care professionals to be eligible to receive continuing education credits for participation in the program.

As amended, the bill requires the DOH to identify an explicit and implicit bias training tool to be utilized by the explicit and implicit bias training program implemented by a hospital or birthing center. The use of DOH's training tool by a hospital or birthing center would not preclude the hospital or birthing center from utilizing additional or customized training tools in addition to the DOH's training tool.

As amended, the bill provides that in the event that a hospital or birthing center fails to implement an explicit and implicit bias training program, the DOH would invoke penalties or take administrative action against the hospital or birthing center. Any penalties imposed or administrative actions taken by the DOH may be imposed in a summary proceeding.

As amended, the bill establishes a requirement for physicians, physician assistants, nurses, nurse midwives, certified professional midwives, or certified midwives who provide prenatal or perinatal care to pregnant women to complete one credit of continuing education in explicit and implicit bias training, which explicit and implicit bias training course is to meet the requirements for an explicit and implicit bias training course required for physicians and staff providing perinatal care in a hospital or birthing center. A health care professional who completes a continuing education course in explicit and implicit bias training will be deemed to have satisfied the explicit and implicit bias training requirement required for health care professionals providing perinatal care in a hospital or birthing center.

The bill, as amended by the committee, requires that as a condition of being appointed as a member of the Board of State Medical Examiners or the New Jersey Board of Nursing, or the member's continued appointment to the board, as applicable, a board member would

complete an evidence-based explicit and implicit bias training program approved by the Division of Consumer Affairs in the Department of Law and Public Safety that is equivalent to the training program provided for in subsection b. of section 1 of this bill. The board member would be required to complete, and acknowledge the completion of, the training program at a frequency determined by the division.

As defined in the bill, "health care professional" means a person licensed or certified to practice a health care profession pursuant to Title 45 of the Revised Statutes. "Explicit bias" means attitudes and beliefs about a person or group on a conscious level. "Implicit bias" means a bias in judgment or behavior that result from subtle cognitive processes, including implicit prejudice and implicit stereotypes that often operate at a level below conscious awareness and without intentional control. "Implicit stereotypes" means the unconscious attributions of particular qualities to a member of a certain social group, influenced by experience, and based on learned associations between various qualities and social categories, including race and gender. "Perinatal care" means the provision of care during pregnancy, labor, delivery, postpartum and neonatal periods.

The new law, which was approved on May 11, 2021, takes effect on the first day of the sixth month next following the date of enactment, October of 2021.