

Report Monthly



OCTOBER 2020

SESSION UPDATE

The Legislature has not returned to Albany since the week of July 20th. Members have remained in their home districts since and are focusing most of their efforts on Election Day. All 212 districts will be electing representatives for the 2021-2022, 2-year term.

While there have been no legislative sessions, we continue to monitor the movement of legislation that has passed both houses of the legislature to date. Of particular note to NYSAND, we continue to track three bills on your behalf which have passed both houses, but have yet to be sent to/acted on by the Governor, including:

- A.10607-A Lupardo / S8561-A Metzger -- Establishes a New York food supply working group.
- A.10629-A Gunther/ S 8608-A Carlucci -- Relates to establishing the frontline workers trauma informed care advisory council.
- A.10673 Hevesi/S.8247-A Kaminsky -- Authorizes the use of supplemental nutrition assistance program benefits to purchase online groceries and relates to the state supplemental nutrition assistance program outreach program.

COVID-19 – NEW YORK FORWARD

As the autumn has approached, the Governor has closely monitored the uptick in cases within the State and has taken action to mitigate hotspots that have developed around the State. Although not as frequent, but more frequent than during the summer months, the Governor continues to hold press conferences updating the public on COVID-19 and an array of Federal issues. The Roffe Group continues to monitor and report to NYSAND on every press conference the Governor has held since the COVID-19 outbreak.

The Governor has continued to extend Executive Orders to address the changing needs of the State as it relates to COVID-19. Further, in an effort to maintain the State's overall low number of cases, the Governor has focused on certain areas around the state which have recently experienced a surge in cases. In addition to a travel restriction and quarantining that has remained in place for individuals traveling to New York State from 43 states, the Governor has outlined a new "micro-

THE ROFFE GROUP

HIGHLIGHTS:

Session Update

COVID-19 New York Forward

Medicaid For RDN Services

Policy & Other Legislation

Plant-Based Food Option

State Budget Update

Outreach

Resources

cluster" strategy to tackle COVID-19 hot spots. The micro-cluster strategy is predicated on three principles: refined detection, specific and calibrated mitigation, and focused enforcement.

MEDICAID FOR REGISTERED CERTIFIED DIETITIANS/NUTRITIONISTS SERVICES

A large group of NYSAND members, led by Lois Chait and Ellie Wilson conducted two internal calls to discuss the opportunity of Medicaid coverage and telehealth regulations specifically for registered dietitians/nutritionists' services. Our goal is to support the New York State Department of Health (NYS DOH) Prevention Agenda to improve quality of health care, patient experience, meet prevention and outcomes targets, and improve healthcare provider productivity.

We continue to discuss the best approach of achieving the goal of the state authorizing Medicaid coverage for RDN services. We are weighing the best of the 2 formal procedures that registered certified dietitians/nutritionists may become qualified providers for patients insured by all New York Medicaid Managed Care plans.

One way is for registered certified dietitians/nutritionists to become enrollable providers for the State Medicaid Plan. This will automatically make registered certified dietitians/nutritionists qualified providers for Medicaid Managed Care plans, because Medicaid Managed Care plans must provide at least all of the benefits of Medicaid fee-for-service. The second way is to amend the Medicaid Managed Care model contract to specifically state that registered certified dietitians/nutritionists are qualified to become network providers.

Action Item: Continue internal discussions to determine the best regulatory construct to achieving Medicaid Coverage for RDN services. Once the best approach is agreed upon, our next steps will be to brief DOH staff on the need for the proposed regulatory changes.

POLICY & OTHER LEGISLATION

We have continued to track legislation and regulations of concern to NYSAND. We are particularly focused on TDO legislation A.7660A(Jaffe)/S.5665(Rivera) and licensure of dietitians and nutritionists A.7380 (Jaffe)/S.5442 (Gaughran). The following is an update on efforts and future goals and objective for both bills.

1. Amendments

Our meetings with legislators during our lobby day in February, made clear that both TDO and licensure required amendments in order to be considered for passage. While licensure requires substantial amendments, TDO should only need minor, yet significant, tweaks in language.

Therapeutic Diet Order

Our first priority was to secure agreement internally on a specific approach for amending the language of both bills. We have held two internal calls to discuss the bills: one of which focused on TDO and the

current language. To further our chances of passage, NYSAND has formalized the needed amendments to TDO.

We have recognized that the State Education Department (SED) approval is imperative to the bill's authorization. Following our BODAN call in August, we reached out Executive Director, Jason Kramer to discuss the TDO bill and to obtain feedback on the legislation.

Action Item: Obtain final signoff from NYSAND on a document to share with SED and the Governor's office that illustrated the need for such legislation and highlighting NYSAND members' extraordinary experiences during COVID-19.

Our goal of the memo is to layout the demands on staff and the impact on patients, including delays in getting patients the proper nutrition to recover. Our intent is to emphasize the emergency rooms scenario and virus specific wards at the height COVID-19 were overwhelming in a number of areas and outlined the following:

- Patients needing to be placed on ventilators also need prescribed enteral and parenteral nutrition as a result of being intubated.
- Doctors managed high volumes of patients and were pulled in a number of critical directions making it difficult to have a doctor sign off on an enteral or parenteral nutrition order expeditiously. These delays contribute to potential complications for the patient and can be very detrimental to the patient's recovery.
- Dietitians and nutritionists are the professionals who are best qualified to assess a patient's nutritional status and to design and implement a nutritional treatment plan in consultation with the patient's interdisciplinary care team.
- Qualified dietitian or nutritionist must be viewed as an integral member of the hospital interdisciplinary care team, one who, as the team's clinical nutrition expert, is responsible for a patient's nutritional diagnosis and treatment in light of a patient's medical diagnosis.
- COVID-19 patients need very specific nutrition to battle the virus and many including most physicians recognize that registered dietitians are best equipped to decide and provide such nutrition.

Licensure Bill

As we finalized the TDO legislation, we continue to spend the off-session reviewing the legislation and amending the licensure bill so that we can have it ready for with state and elected officials. Ultimately, we would like to have the bills ready for reintroduction in January, when the legislature returns for the 2021 session. Our work internally to get the legislation finalized will feed all our work going forward. Without such preliminary work, all future steps will be inhibited.

To that end we held an internal meeting to review the provisions of the licensure bill with the National Academy of Nutrition and Dietitians. And it has been determined that licensure will require several amendments. The bill must be redrafted to address the recommendations of the legislature and also meet NYSAND's needs.

Action Item: Need specific amendment language to address the concerns of the chair of the Higher Education Committee, Assembly member Glick which will also provide support for further discussions with SED, Legislature and Governor's staff.

2. Building Support

Regarding TDO, our goal has been to gather support of hospitals and institutions around the state where our members are employed. Currently, NYSAND has urged the Governor's office to adopt an EO on TDO, however, without out broad support from other organizations in addition to NYSAND there is little opportunity to get such action to occur.

We encourage NYSAND members to continue seeking hospitals across NYS to sign-on to our letter. We recommend that this is a main action item for the months of June and July. It is our intent that once we have a significant number of hospitals from various regions in the State on board, we will reach out to HANYS to secure a sign-on from them as well.

Another goal to move legislation forward, is for NYSAND to review their membership to determine the number of RDNs that are members of 1199. Should the total be significant, and we decide if it makes sense, our goal is to set up a call with the union to encourage them to support for TDO.

Additionally, we have discussed meeting with American Nutritionist Association on our Licensure bill. Our objective is to discuss the approach to licensure, review language of the legislation with the goal of finding common interest or at the very least, neutrality in the passage of our Licensure bill. Again, once our draft is finalized internally, we should begin outreach to the Association to begin a conversation with its members.

Building on such efforts to education policymakers and advance on TDO, specifically, Ellie Wilson has greatly assisted in contacting Susan Zimet seeking suggestions for others within the Administration that NYSAND could discuss the benefits of TDO legislation. Susan recommended Jill Dunkel from DOH and Jill added Lynn Edmunds who leads RD in the Division at DOH. We have reached out to all three asking for opportunity to discuss both TDO and the licensure bill. Our goal is to get input on our legislation and guidance on how best to proceed with an EO and/or formal legislation for both issues. We await their response.

Action Item: In order to prepare for a possible push for action from the Governor on an EO to implement the TDO legislation if there is a second COVID-19 wave, NYSAD members must continue to seek signatures from hospitals and organizations to the sign-on letter.

3. Board of Dietetics and Nutrition (BODAN)

As mentioned above we have been in contact with relatively new, Executive Secretary, Jason Kramer, of the Board of Dietetics and Nutrition (BODAN) to ask about the Board makeup and raise our legislative agenda. (See below for BODAN Meeting)

Currently, there are two vacancies on BODAN, both of which are reserved for public members. Our goal is to engage further with the Secretary and provide suggestions for the vacancies and discuss our legislative agenda at the appropriate time.

Action Item: There are vacancies on the BODAN board, if any NYSAND members have thoughts on possible board members we could suggest to the new Executive Secretary, we should send those recommendations to him.

4. Other Legislation

This month the Governor announced actions aimed at reducing food insecurity among community college students, older adults and disabled New Yorkers. These actions include expanding Supplemental Nutrition Assistance Program (SNAP) eligibility to up to nearly 75,000 low-income college students enrolled in career or technical education course work and shortening the SNAP application for those on fixed incomes in an effort to encourage greater enrollment among eligible older adults and disabled individuals.

A.6884(Cook)/S.8876 (Comrie) - Requires persons offering weight loss services to provide notice of certain weight loss and dieting information. Of particular concern, is a provision in the legislation regarding weight loss providers addressing medication interactions. At issue is an unlicensed person without defined training being authorized to evaluate medication and treat obesity. This bill was first introduced in the Assembly in 2019 and has passed the Assembly in both 2019 and 2020. Senator Comrie recently picked up the bill.

Action Item: It is recommended that we pull together talking points or a memo in opposition to the bill. Once in hand The Roffe Group will can reach out to the Senate staff to discuss the concerns.

S.3458A (Rivera)/A.2794- Medical assistance coverage for medically tailored meals – Currently in Senate Finance and Ways & Means – NYSAND Opposes. Awaiting suggested amendments or a memo in opposition to share with the legislature.

S.7935 (Biaggi)/No Same-as- Relates to licensing of a dental therapist and an advanced dental therapist– Currently in the Senate Higher Education–NYSAND Opposes. Need to remove language about nutritional counseling and dietary analysis.

A.10723(Rosenthal)/S.8785 (Harkham) - Amends the Public Health Law, in relation to reimbursing health care providers at the same rate for telehealth visits as in-person visits and achieve payment parity between telehealth and telemedicine services and in-person services. This bill is currently in the Health Committees in each house. We have scheduled an internal NYSAND call on July 30th to discuss the provisions and the potential of inclusion of nutritional services.

PLANT-BASED FOOD OPTIONS LEGISLATION:

The Governor signed A.4072-A (Gottfried)/S.1471-A(Hoylman)(Plant-based food options in hospitals) legislation on December 6, 2019 (Chapter 588). As mentioned last month DOH has determined that they will not be implementing any additional regulations attendant to the bill's implementation at this time. We will continue to monitor this issue in the event these changes and regulations are proposed by the Department.

As a result of our inquiry in March, NYS DOH reached out to clarify certain aspects of the plant-based food legislation. Below are the questions posed to the Department along with their responses:

1. Will this regulation apply to nursing homes and assisted living facilities too?

- a. NYS DOH: The statute applies to both general hospitals and nursing homes, however, given that only Art 28 is amended and not the Social Services Law, this law would not apply to Adult Care Facilities.
2. Will there be an update to the NYS Food & Dietary codes, 405.23 for Hospitals and for Nursing Homes, Part 415.14. Both codes are under Title 10 but assisted living would fall under title 18.
 - a. NYS DOH: While the Department does not plan to issue regulations, my understanding is that when there is a new law, we alert impacted facilities.
3. How will the NYSDOH regulate compliance for the facility? How will they site facilities for non-compliance of the new regulations?
 - a. NYS DOH: Compliance would be assessed upon full survey. The Department would also respond to and investigate any complaints we received about non-compliance.
4. Does the regulation require the facility to list all food items that are available for the patient? Or will the facility be required to provide a 7 - 21 day patient menu layout?
 - a. NYS DOH: The statute provides: "All the hospital's written material describing food offerings shall include the availability of a plant-based food option." It does not prescribe whether that is a listing of all options in their entirety or a 7-21 day patient menu layout.

NYS DOH also noted that if there were any resources or information NYSAND would like to share with the department, to please pass it along.

STATE BUDGET UPDATE

The State's finances continue to be impacted by COVID-19. While the State and local governments are facing a two-year budget shortfall of roughly \$50 billion, the Governor has announced that he will not address our fiscal issues until post-election day. His hope is that if Joe Biden gets elected, an aid package will be forthcoming from the new administration and the Governor would be able to avoid taking actions that would unnecessary harm to the state. Should the President get reelected, the chances of aid coming to New York State are slim and therefor draconian cuts, revenue raisers and debt will need to be implemented. To date, rather than cutting funding, the Governor instead has "delayed" by roughly 20%, state payments to local governments, not for profit organization and others this State fiscal quarter.

OUTREACH

As staff continues to focus on Budget and COVID-19, our face-to-face meeting have ceased. For the foreseeable future our goal to meet with legislators in their districts to advance our two pieces of legislation will continue to be placed on hold. However, even in traditional sessions, much of our outreach is done through email and conference calls throughout the year. In these uncertain times, we will need to rely heavier on such techniques to keep our issues elevated and moving along. Furthermore, our goal is to turn to other means of communicating the importance of our bills.

We have a comprehensive a social media outreach plan to educate, inform and advocate our initiatives. We have had just brief conversations about its implementation. Over the next couple weeks, we will continue our discussion to finalize a social media plan to meet NYSAND goals and objective of passing legislation.

RESOURCES

For more information on New York State's COVID-10 and NYS's reopening, please visit:

<https://forward.ny.gov/>

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYForwardReopeningGuide.pdf>

COVID-19 Tracker Site: <https://covid19tracker.health.ny.gov>

Regional Dashboard: <https://forward.ny.gov/regional-monitoring-dashboard>

New York Forward Business Reopening Lookup Tool: <https://www.businessexpress.ny.gov/app/nyforward>