PROGRAM BILL # 46

**GOVERNOR'S PROGRAM BILLS**
**2014**

**MEMORANDUM**

**Purpose:**

New York is confronting a rapidly growing problem involving the use, abuse and trafficking of heroin and prescription painkillers. This package of comprehensive legislation will strengthen New York's ability to combat abuse of these drugs, and provide communities, families, and individuals devastated by these dangerous substances with critical tools for addressing crime and addiction.

**Summary of Bills:**

These 11 bills would:

- amend Public Health L. (PHL) § 3385-a to further enhance the investigation capabilities of the Bureau of Narcotic Enforcement (BNE) in the Department of Health (DOH) by directing the Division of Criminal Justice Services to give BNE access to criminal history information currently maintained by the Division;

- create a new Penal L. § 178.26 creating the crime of fraud and deceit related to controlled substances, a Class A misdemeanor;

- rename and amend Penal L. § 220.65 by adding the additional element of criminal sale of a controlled substance by a practitioner or pharmacist while he or she purports to act in his or her capacity as a practitioner or pharmacist;

- amend Criminal Procedure L. § 700.05 (8) (c) to add newly amended Penal Law § 220.65, as a designated offense for purposes of obtaining "eavesdropping and surveillance warrants" and amend the Penal L. § 460.10 (1)(a) to add Penal L. § 220.65 as a "criminal act" within the Penal Law definition of "enterprise corruption";

- amend PHL § 3309 to expand distribution of informational cards or sheets listing, among others, the steps to take before and after an opioid antagonist is administered;

- amend Mental Hygiene L. § 19.18 to establish the Opioid Addiction Treatment and Hospital Diversion Demonstration Program whereby the Commissioner of the Office of Alcoholism and Substance Abuse Services (OASAS), is authorized to establish demonstration programs throughout the state to test new approaches to providing services to individuals who are attempting to detoxify from heroin where a hospital level of care is unnecessary;

- amend the Mental Hygiene Law by adding a new § 19.18-a to require OASAS in consultation with the Department of Health to create a wraparound services demonstration program which would provide services to adolescents and adults for up to nine months after the successful completion of a treatment program;

- amend the definition in Family Court Act (FCA) §§ 712 and 735 to specify that Persons in Need of Supervision (PINS) diversion services, in cases where the petitioner alleges the child has a substance use disorder or is in need of immediate detoxification or substance use disorder services, may include assessment for substance use disorders;

- amend Education L. § 804 to require the Commissioner of Education to review the existing health curriculum requirements and to incorporate standards and requirements related to the risks of heroin and opioid use;

- amend Mental Hygiene L. § 19.07 to require the OASAS to develop, in consultation with the Department of Health, a multi-media public education program regarding heroin and opioid abuse and misuse; and

- amend Insurance L. §§ 3216, 3221 and 4303 to improve access to care by requiring insurers to use peer-reviewed, clinical review criteria when making decisions regarding the medical necessity of treatment for persons suffering from substance use disorders, to require that medical necessity decisions be made by medical professionals who specialize in behavioral health and substance use, and to ensure that individuals requiring treatment have access to an expedited appeals process and that they are not denied care while the appeals process is underway.

**Existing Law:**

These bills would amend the Executive Law, the Public Health Law, the Education Law, the Family Court Act, the Penal Law, the Insurance Law, and the Mental Hygiene Law.

**Justification:**

The trafficking and abuse of heroin and opioids is increasing rapidly. To combat this onslaught, New York State must continue to be a leader in the fight against these devastating drugs. In New York City alone, from 2010 to 2012, heroin-related deaths rose 84%. The destruction caused by heroin has not been limited to New York City. From 2002 to 2012, the number of young adults across the state, ages 18-25, using heroin has more than doubled. Upstate, the treatment admissions involving heroin have gone up 25%. Heroin is inexpensive compared to other narcotics and it continues to be readily accessible, making it the drug of choice for many addicts. In fact, felony drug court participants that reported heroin as their drug

of choice increased from 13% in 2008 to 24% in 2013. This comprehensive legislative package takes a bold new approach to curb the spread of these dangerous drugs.

**Give BNE Access to Vital Criminal History Information**

Criminal background and other key information about the target of any investigation is a vital component in the investigative process. The BNE is a crucial collaborator in the investigation and prosecution of criminal prescribers of opioids. In order to further enhance the capabilities of the BNE, it is essential that it be able to run criminal history checks on targets of investigations. This bill would provide this necessary investigative tool to the BNE, resulting in successful investigations.

**Make Fraud in Obtaining Controlled Substances a Penal Law Crime**

Under PHL § 3397, it is an unclassified misdemeanor for a person to use fraud or deceit to obtain a controlled substance or a prescription for controlled substances. Adding a similar section to the Penal Law will further enhance law enforcement's ability to combat such fraud and deceit, including doctor shopping, by putting police and district attorneys throughout the state on notice by creating a clearly defined crime and related penalty within the Penal Law.

**Impose Higher Penalties on Certain Professionals Who Divert Controlled Substances**

Penal L. §220.65 prohibits the sale of a controlled substance by a practitioner or pharmacist. Currently the sale of a controlled substance by anyone is a Class D felony. This amendment would create the higher class C felony for those licensed professionals, including physicians and pharmacists, who abuse the public's trust by illegally selling controlled substances under the guise of legitimate medical practice or other health care practices.

**Give Law Enforcement More Tools to Combat Controlled Substance Abuse**

Criminal Procedure L. §700.05(c) would be amended to include the newly amended and created crimes in Penal L. §220.65 as an enumerated offense under the definition of "eavesdropping warrants." This small but significant amendment would give law enforcement and prosecutors the ability to utilize eavesdropping warrants to further fully investigate crimes involving the distribution of controlled substances.

Penal L. §460.10(1)(a) would also be amended to include the newly amended and created crimes in Penal L. §220.65 under the definition of the crime of "enterprise corruption". This would empower law enforcement to further prosecute organized activity related to prescription drug trafficking in New York State.

**Distribute Information on Opioid Antagonists**

In 2006, DOH established community-based opioid overdose prevention programs to train persons likely to witness an overdose on how to recognize and respond to such a situation, including the use of naloxone, an opioid antagonist that can reverse the overdose. Since that time, 130 programs have been registered and 15,000 responders have been trained. Among those trained have not only been police and other traditional first responders, but also family members of opioid users, homeless shelter staff, employees of drug treatment programs, and drug users themselves. Since 2006, over 850 overdose reversals have been reported to the Department of Health. This bill would make an already successful program even more impactful and save many more lives through the distribution of informational cards or sheets when opioid antagonists are dispensed. These informational cards would provide recipients with the important information on how to recognize symptoms of an overdose; what steps to take, including calling first responders; and how to access services through OASAS.

**Establish a Demonstration Program to Test New Approaches to Treating Substance Abuse**

Through this demonstration program, OASAS would work with its providers to test new approaches to providing services to individuals who are attempting to detox from heroin where a hospital level of care is unnecessary. This demonstration program would provide alternative short term community based treatment, thereby avoiding unnecessary emergency room costs. By demonstrating new approaches statewide, OASAS will be able to study the effectiveness of the new approaches to determine their validity while, more importantly, addressing the needs of individuals in need of care.

**Establish a Wraparound Program to Provide Comprehensive Treatment Services**

OASAS in consultation with the Department of Health would create a wraparound services demonstration program which will provide services to adolescents and adults for up to nine months after the successful completion of a treatment program. These services would be in the form of case management services and including addressing:

- Education resources;
- Legal services;
- Financial services;
- Social services;
- Family services;
- Childcare services;
- Peer to peer support;
- Employment support;
- Transportation assistance;

Wraparound services generally refer to a complete and comprehensive method of providing services that would have the greatest impact on the individual who is receiving such

services. This legislation would require OASAS to expand its existing case management services and build relationships in communities across the state to provide services that will allow for them to provide services to their clients that will greatly improve their quality of life and greatly reduce the likelihood of a person relapsing.

**Expand the Availability of PINS Diversion Services for Youth**

FCA §§ 712 and 735 would be amended to allow the designated lead agency for the purpose of providing PINS diversion services (either the local social services district or the local probation department) to determine whether an assessment for substance use disorder by an OASAS certified provider of services is necessary in cases where the youth is alleged to be suffering from a substance use disorder which could make the youth a danger to himself or herself or others. The legislation requires OASAS to make available a list of certified treatment providers to designated lead agencies. It also provides that the designated lead agency shall not be required to pay for an assessment for substance use disorder or related services, except in cases where Medicaid may be used to pay for such assessment or services.

**Establish through the State Education Department and Updated Drug Abuse Curriculum**

This bill would amend Education L. § 804 to require that the Commissioner of Education update drug abuse curriculum every three years so that students have the most current and up-to-date information on coping with drugs and other substances.

**Implement a Public Awareness Campaign**

This would amend the Mental Hygiene Law to direct OASAS to undertake a public awareness and educational campaign in cooperation with DOH utilizing public forums, media (social and mass) as well as all forms of advertising to educate youth, parents, healthcare professionals and others about the risks associated with heroin and opioids, how to recognize signs of addiction and the resources available to deal with these issues.

**Expand Insurance Coverage of Treatment for Patients Suffering from Substance Abuse**

This legislation would improve access to care by requiring insurers to use peer-reviewed, nationally recognized clinical review criteria when making decisions regarding the medical necessity of treatment. This will require insurers to consistently cover the appropriate level of treatment for patients suffering from substance use disorders. In addition, medical necessity decisions will be made by medical professionals who specialize in behavioral health and substance use. Further, the legislation would also ensure that individuals requiring treatment have access to an expedited appeals process and that they are not denied care while the appeals process is underway.

**Budget Implications:**

There will be sufficient funding for all proposals through existing and future appropriations.

**Effective Date:**

Each bill has its own effective date.