

This Week in New York

Covering New York State and City Government

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In the News – New York State

As NY Prepares for First MMA Contest, State IG Finds Deficient Practices & Conflicts of Interests at Athletic Commission

Lack of Emergency Plans And Proper Communications Results in Heavyweight Boxer Taking a Taxi to Hospital While Bleeding Into His Brain As Ambulances Stood Idling Nearby

Commission Executives and Staff Used Positions to Receive Improper Benefits and Gifts

New York State Inspector General Catherine Leahy Scott this week released a report of an investigation into the New York State Athletic Commission (“NYSAC”), the entity that regulates professional boxing matches in the State, that found many practices, policies and procedures were either nonexistent or deficient; a lack of appropriate oversight by commissioners; and conflicts of interest involving the Commission’s top executives and staff.



State Inspector
General Scott

“The Commission’s lack of appropriate emergency medical protocols and oversight procedures, as well as clear conflicts of interest among senior staff, reflect a systemic breakdown of its most basic operations,” said Inspector General Leahy Scott. “With the Commission’s critical oversight of boxing and, now, mixed-martial arts in New York State, it is imperative that all commissioners and staff adopt necessary reforms and adhere to the highest standards of ethical conduct and professionalism.”

Earlier this year, Governor Andrew Cuomo signed legislation legalizing mixed martial arts in New York State. Under the law, the State Athletic Commission is charged with regulating the sport. UFC will host a live event at Madison Square Garden on November 12 and plans a second event in upstate New York before the end of the year.

The IG’s report culminates an investigation that began after a heavyweight title fight between Magomed Abdusalamov and Ismaikel Perez at Madison Square Garden in which Abdusalamov sustained a brain injury. The investigation began as a probe into the circumstances surrounding Abdusalamov’s injury and post-bout medical treatment at the arena, and subsequently included NYSAC’s operations as well as several alleged conflicts of interest involving NYSAC’s leadership and staff. Inspector General referred her findings to both the New York State Department of State and the New York State Joint Commission on Public Ethics.

Inspector General Leahy Scott's investigation found that on the night of the fight, NYSAC's policies and procedures relating to post-bout medical care, tactical emergency plans, communication, and training were either deficient or non-existent, and that NYSAC failed to carry out its responsibilities prior to, during and after the fight. She charged that Melvina Lathan, chair of the Athletic Commission at the time of the bout, failed to ensure appropriate and routine review of Athletic Commission policies and procedures, and failed to train staff on the proper response to medical issues that may arise after a fight.

The investigation also found potential conflicts of interest by NYSAC leadership and staff. In one example, the investigation found that an inspector took unauthorized photographs of a fighter and obtained hand wraps to sell for a boxing charity. The Inspector General found that this conduct violated the Athletic Commission Code of Conduct and created a conflict of interest with his position as an Athletic Commission inspector.

During the investigation, the Inspector General also determined that then NYSAC Chairperson Lathan and staff had received improper gifts from promoters, including wine and jewelry, violating NYSAC policy and potentially New York State ethics laws. Ms. Lathan served as chair through June 2015, at which time she resigned.

The continuing investigation also found that Thomas Hoover, who replaced Ms. Lathan as chair of the Commission in June 2015, permitted friends and relatives to obtain "credentials" allowing them to attend boxing matches free of charge and recommended that a personal friend apply for an Athletic Commission position, knowing that he was unqualified. In doing so, Mr. Hoover may have violated the New York Public Officers Law.

The Inspector General made the following recommendations based on the findings of this investigation, all of which NYSAC has agreed to implement:

- Establish and staff a pre-designated room at events to centralize operations and emergency communications; provide all staff members at events with communications devices; and develop a tactical emergency plan so all staff are aware of emergency procedures and prepared to address medical issues at any time during a fight event through prompt and appropriate referrals.
- NYSAC commissioners and staff must undergo ethics training from the Inspector General and the Joint Commission on Public Ethics.
- Under the guidance of its chief medical officer, NYSAC should develop and implement procedures and forms to better document boxers' post-bout examinations and direct post-bout medical care.
- Develop standard pre-fight and post-fight physical and neurological examinations;
- Institute a policy to ensure that all procedural requirements have been met before a boxer is allowed to leave the arena.
- Provide interpreters for boxers as required by the New York State Language Access Plan. The forms provided to boxers must also be translated into the State's six most common languages, as required by the Language Access Plan.

The State Athletic Commission has approved regulations to govern MMA in New York. The regulations are currently subject to a 45-day public comment period and can be viewed at <http://www.dos.ny.gov/athletic/pdfs/Official%20-%20NYS%20Athletic%20Commission.pdf>.

Public comment will be received until August 27, 2016. Any interested person or entity may submit written comments (data, views, or statements) regarding the proposed regulations by mail to: James Leary, Esq., One Commerce Plaza, 99 Washington Ave., 11th Floor, Albany, NY 12231-0001; or by email to James.Leary@dos.ny.gov.



State Issues Guidance on Mental Health Parity

The state Department of Financial Services (DFS) has issued guidance to insurance firms on how they should provide the same level of coverage for mental health and substance abuse issues as for medical and surgical care. It follows legislation designed to eliminate barriers to mental health and substance abuse treatment.

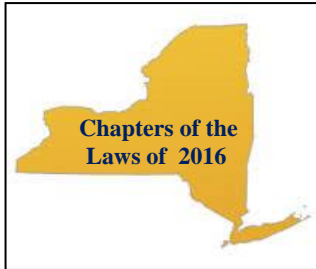
Under New York Insurance Law, insurers cannot impose prior insurance authorization for inpatient treatment or for greater access to drug treatment medications. The law also requires insurers to use objective state-designated criteria to determine the level of care for individuals suffering from substance use disorder.

DFS's letter (attached) notifies insurers that the United States Department of Labor and the United States Department of Health and Human Services have jointly issued guidance on compliance with the federal Mental Health Parity and Addiction Equity Act (MHPAEA). The MHPAEA requires health insurance plans to provide the same level of coverage for mental health and substance use disorders as for medical or surgical care, including quantitative limitations, such as copays, deductibles, and limits on inpatient or outpatient visits that are covered by the health insurance plan, and Non-Quantitative Treatment Limitations (NQTL), such as pre-authorizations, providers available through a plan's network, and what a plan considers "medically necessary".

DFS is also directing insurers to evaluate whether the following categories of NQTLs that are applied in a plan or policy are being applied consistently with MHPAEA requirements:

- Preauthorization and pre-service notice requirements;
- Fail-first protocols;
- Probability of improvement requirements;
- Requirement to provide a written treatment plan; and
- Other requirements, such as patient non-compliance rules, residential treatment limits, geographical limitations, and licensure requirements.

DFS is seeking input from consumers, insurers, and providers as part of a comprehensive review of MHPAEA compliance issues. Stakeholders can submit comments directly to DFS at mentalhealthparity@dfs.ny.gov.



Bills Signed by the Governor

Chapter 96 (Sponsored by Senator Hannon/M of A Dinowitz) -- Relates to excused leave to undertake a screening for prostate cancer.

Chapter 98 (Sponsored by M of A Magnarelli/Senator DeFrancisco) -- Enacts "Peter Falk's law" relating to guardianship duties.

Chapter 99 (Sponsored by M of A Rosenthal/Senator Serino) -- Relates to exempting certain basic necessities from sales and use taxes.

Chapter 100 (Sponsored by M of A Rosenthal/Senator Golden) (MS) -- Directs the commissioner of health to cause the distribution of crib safety information to maternity patients.

Chapter 101 (Sponsored by M of A Gottfried/Senator Little) -- Relates to food service in funeral establishments.

Chapter 107 (Sponsored by M of A Gunther/Senator Ort) -- Relates to the authority of the justice center to visit, inspect and appraise the management of out-of-state schools or facilities.

Chapter 124 (Sponsored by M of A Gunther/Senator LaValle) -- Relates to educational requirements for occupational therapists and occupational therapy assistants.

Chapter 139 (Sponsored by M of A Steck/Senator Valesky) -- Relates to electronic filing with the state board of elections of copies of political communications.

Chapter 156 (Sponsored by M of A Peoples-Stokes/Senator Lanza) -- Clarifies the definition of "restricted period" for purposes of disclosure of state contracts.

Chapter 164 (Sponsored by Senator Funke/ M of A DenDekker) -- Relates to the termination without penalty of certain service contracts.

Chapter 194 (Sponsored by Senator DeFrancisco/M of A Magnarelli) - Extends provisions relating to limited license for clinical laboratory technology.

Chapter 233 (Sponsored by Senator Amedore/M of A Abbate) -- Relates to compensation, benefits and other terms and conditions of employment for certain state officers and employees.

Chapter 234 (Sponsored by Senator Gallivan/ M of A Ceretto) -- Relates to compensation and benefits of certain members of the state police.

Chapter 236 (Sponsored by M of A Magnarelli/Senator DeFrancisco) -- Requires insurers to provide and retain a signed notice to claimants in relation to insured's right to have a vehicle repaired in the shop of his/her choice.

In the News – New York City



Comptroller Stringer Releases Analysis of NYC's Budget

***Comptroller Projects a \$3.6 Billion Gap in Fiscal Year 2018
Tax revenues are still growing – but slower than the average growth***

Economic risks and slowing tax revenue growth jeopardize the City's financial footing, according to City Comptroller Scott Stringer's analysis of City's annual spending plan.

City-funded expenditures in New York City's \$84.6 billion FY 2017 Adopted Budget will increase by 5.4 percent in the coming year, above the projected 1.6 percent growth in tax revenues, according to the Comptroller. In addition, the City remains more than \$750 million short of the minimum amount to be fully prepared for an economic downturn.

"Tax revenues have grown for seven years in a row, but the rate of growth is slowing," Comptroller Stringer said. "With our budget cushion still below optimal levels, now is the time to act and build up our reserves. We must do more to find agency efficiencies while revenue growth is still moving in the right direction."

While the City has been adding to its budgetary cushion, it is still \$762 million short of the bottom of the optimal range of 12 percent of adjusted expenditures and \$5.8 billion below the top of the optimal range of 18 percent. The City will begin FY17 with a cushion of \$9.4 billion, equal to 11.1 percent of adjusted FY17 expenditures.

The analysis found that the greatest risk to the City's finances remains Health + Hospitals, which faces significant roadblocks to achieving its deficit reduction goals. Additional risks include under-budgeted overtime costs, increased homeless shelter spending, and low federal Medicaid reimbursements for special education services.

Health and Hospital Corp.: The Comptroller's Office estimates that subsidies to Health & Hospitals Corporation (H+ H) will likely exceed projections by \$365 million in FY 2017 growing to \$515 million by FY 2020. The City will likely have to cover H + H's medical malpractice claims and fringe benefits costs projected at \$165 million annually as it has reimbursed the City for these expenses in only one out of the four years spanning FY 2013 to FY 2016. In addition, because a significant portion of H + H's revenue actions in its deficit reduction plan requires Federal and State approvals which are not certain and require a city funding match, it is likely that the City will need to increase its subsidy by \$200 million in FY 2017 growing to \$350 million by FY 2020.

Overtime. The City has budgeted \$1.3 billion for overtime spending in FY 2017, \$435 million below the FY 2016 overtime spending through June. If overtime remains at the FY 2016 level, City expenses would be higher by \$302 million in FY 2017. In the outyears, the Comptroller's Office estimates that overtime spending could be above Plan by \$250 million annually.

Pension Investments: Preliminary estimates indicate that pension investments will earn a combined return, net of fees, of 1.46 percent in FY 2016 against the actuarial interest rate assumption (AIRA) of 7.0 percent. The preliminary shortfall against the AIRA would require estimated additional pension contributions of \$122 million in FY 2018, \$244 million in FY 2019, and \$366 million in FY 2020.

DOE's Assumption of Federal Medicaid Reimbursement for Special Education Services: The DOE's assumption of Federal Medicaid reimbursement is significantly above actual collections over the prior two years. While the DOE plans to improve and upgrade the reporting/tracking capabilities in its Special Education Student Information System, until the DOE can demonstrate that the improvements can accelerate the pace of Medicaid revenue collection, the Comptroller's Office is projecting risks of \$30 million in FY 2017, and \$80 million in each of FYs 2018 – 2020.

Funding of Homeless Shelters and DOE Students in Shelters: The FY 2017 shelter expense budget includes the addition of \$160 million in the Executive Budget to meet prior funding shortfall. However, the additional funding did not extend to the outyears and the current Plan has left the funding unchanged. Therefore, the Comptroller's Office projects a risk of \$130 million annually beginning in FY 2018. Similarly, DOE budgeted \$10 million in FY 2017 to provide enhanced support to students living in homeless shelters, but did not extend the funding to the outyears of the Plan, thereby posing a risk of \$10 million in each of FYs 2018 through 2020 as the support is expected to continue in the outyears.

MTA's Subway Car RFP to Include U.S. Employment Opportunities and Job Retention Plans

The Metropolitan Transportation Authority (MTA) this week issued its much-publicized Request for Proposals for 1,025 new and redesigned subway cars. As part of the RFP process, proposers will be required to submit a U.S. Employment Plan (USEP) outlining the number and description of U.S. jobs that would be created and/or retained, as well as access to available jobs in connection with certain requirements of the contract.

“Taxpayer dollars that are used to buy equipment like subway cars should create good quality manufacturing jobs here, not overseas,” John Samuelsen, Transit Workers Union Local 100 President, said. “Other agencies will likely follow the MTA’s lead. It is the largest transit agency in the country and often sets the standard for others.”

Last week, Governor Andrew Cuomo unveiled designs of the new subway cars which include innovative enhancements to the exteriors and interiors, wider doors, and the addition of up to 750 “Open Car End” designed-cars. The new designs will reduce wait times and increase capacity.

Under the RFP, the proposer must describe in the USEP the quality and range of U.S. employment opportunities expected to be created and retained in connection with the production, delivery, acceptance, testing, and warranty coverage requirements of the contract. The proposer must also describe the direct dollar value and the fringe benefit costs for those jobs, and the commitment the proposer will make to achieve that level of job creation/retention.

The proposer will also be required to submit a workforce impact analysis. The analysis identifies the workforce skills needed to complete the contract and the minimum requirements for each job/skill category, including the percentage of jobs by each job category and the proposer’s plans to develop skills of new hires necessary to meet the basic job qualifications. The analysis will also identify the proposer’s plans to provide career pathways, connecting training completion, on-the-job performance, and advancement through the organizational structure, and the extent to which such skills would be transferrable to other manufacturing positions after the end of production of the railcars.

A pre-proposal conference is scheduled for September 8, 2016. The RFP response is due October 18, 2016. Source: <http://web.mta.info/nyct/procure/contracts/R34211sol.pdf>.

Briefs

State Assembly to Hold Hearing on STARTUP NY & Buffalo Billions (and other Economic Development Programs)

The Assembly Economic Development Committee, chaired by Buffalo Assemblyman Robin Schimminger, will hold a public hearing next week in Albany to review the overall impact of the 2016-2017 budget on the State's economic development efforts. The hearing is scheduled for 10 a.m. on Wednesday, August 3rd.

“There was a broad report in very large print, which covered a range of programs including Start-Up. The information regarding StartUp NY was very ambiguous and much of it was contained in a footnote,” Assemblyman Schimminger said in published reports. “Transparency is not about a treasure hunt.

The Committee on Economic Development, Job Creation, Commerce and Industry provides oversight for the State’s economic development agencies and programs. According to the hearing notice, there are numerous State economic development programs, which include the START-UP NY Program, the Regional Economic Development Councils Program, the Excelsior Jobs Program, the Centers for Advanced Technology, the Regional Technology Development Centers, the Buffalo Billion Initiative, the Upstate Revitalization Initiative, the Downtown Revitalization Initiative and the Business Incubator and Innovation Hot Spot Program.

The State Fiscal Year 2016-2017 Department of Economic Development budget appropriation was \$88.15 million and the Urban Development Corporation (also known as the Empire State Development Corporation) budget appropriation was \$2.16 billion.

State Supreme Court Strikes Down ESCO Regulations

A State Supreme Court judge this week struck down the State Public Service Commission’s (PSC) regulations to restrict the activities of independent energy service companies (ESCOs). Albany State Supreme Court Justice Henry Zwack, of Albany, vacated the new regulations, calling them "arbitrary" and "irrational."

Earlier this year the PSC ordered all ESCOs to stop selling electricity and natural gas to residential and small commercial customers unless the ESCO offered renewable energy or guaranteed a price no higher than the utility. The companies were given 10 days to comply.

Justice Zwack found that the PSC's restriction "appears to be irrational, arbitrary and capricious." In addition, he found that the 10-day compliance requirement was “impossible.”

State Unveils Draft List of 2017-2020 Road Projects

The State Department of Transportation (DOT) this week released the Statewide Transportation Improvement Program which includes its draft list of road projects to receive federal funding from 2017 through 2020.

According to DOT, the list was developed with the expectation of receiving some \$12.5 billion in federal aid for the work. With state and local contributions, some \$33.4 billion in projects would be funded. All federally funded projects planned for federal fiscal years 2017 through 2020 must be included in the plan, which is updated every two years.

The draft will be available for public review and comment through August 26, 2016 and is accessible at <https://www.dot.ny.gov/programs/stip/draftstip/repository/R1-proposed.pdf>. Comments and questions can be submitted via email to STIP@dot.ny.gov or in writing to: New York State Department of Transportation, Policy and Planning Division, 2017 Through 2020 STIP Comments, 50 Wolf Road, 6th Floor, Albany, NY 12232.

Comments received will be incorporated into the draft submitted to the Federal Highway Administration and the Federal Transit Administration. The document is expected to be submitted in September for final approval by October 1.

Oscar to Raise Premiums, Cut Provider Network in Half

Health insurer Oscar announced this week that it will cut its provider network in half for 2017, according to published reports.

In 2017, the health plan will cover 20,000 providers, according to the blog post by Mario Schlosser, Oscar's chief executive. In addition, the network will include 31 hospitals (a decrease from 77 in 2016). According to published reports, it has agreements with Mount Sinai Health System, Montefiore Health System and the Long Island Health Network.

"Our new network will not contain every hospital or doctor we have today, but this is a good and necessary change," Mr. Schlosser wrote. "Nevertheless, there will be some healthcare critics, entrenched in their views on an outdated system, who will say we are only changing our network to improve our bottom line."

Oscar showed a \$38.7 million loss in the first quarter of 2016. In 2015, the insurer lost \$92.4 million. According to the State Department of Financial Services, Oscar intends to raise premiums 18.4% on average.

City Creates Early Childhood Mental Health Network

Network will provide new clinical support alongside social-emotional learning programs in Pre-K for All and EarlyLearn

The de Blasio Administration this week announced the creation of the Early Childhood Mental Health (ECMH) Network, owned and operated by the Department of Health and Mental Hygiene, which will provide new mental health services and support for families who have young children with mental health needs. The network was developed to work alongside the introduction of new social-emotional learning support that will also be offered at Administration for Children's Services' (ACS) EarlyLearn sites and Department of Education (DOE) Pre-K for All sites across the city.

The Early Childhood Mental Health Network (ECMH) creates new clinics for treating children age five and younger and their parents. Pre-K for All and EarlyLearn programs will have preference in referring their students under five to these clinics. This initiative also establishes a new Training and Technical Assistance Center for ECMH. This Center will support ACS' and DOE's skill-building efforts in social-emotional learning, as well as provide clinical training and practice in evidence-based, relational treatment approaches.

Currently, over 100,000 children under the age of five are served by EarlyLearn and Pre-K for All programs. The ECMH Network will support the system of EarlyLearn and Pre-K for All in NYC by providing specialized mental health supports for EarlyLearn and Pre-K for All children and their families.

Coming Up

New York State

Wednesday, August 3rd

Oversight of the 2016-2017 State Budget and the Agencies and Programs that are Under the Purview of the Assembly Committee on Economic Development, Job Creation, Commerce and Industry
Assembly Standing Committee on Economic Development, Job Creation, Commerce and Industry
Roosevelt Hearing Room C, Legislative Office Building, 2nd Floor, Albany, 10 a.m.

New York City

No Legislative Meetings Scheduled.

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