



This Week in New York

Covering New York State and City Government

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June 15, 2018 Edition



Today we remember Governor Mario M. Cuomo

June 15, 1932 – January 1, 2015

“We believe in the idea of family, mutuality, the sharing of benefits and burdens for the good of all, feeling one another’s pain, sharing one another’s blessings--recognizing that at the heart of the matter we are bound to one another.” — Mario M. Cuomo.

In the News – New York State



PSC Rules Charter in Violation of PSC’s Buildout Requirement

Cable Company Ordered to Pay \$2M for Missing Network Expansion Milestones

PSC Demands Company Unconditionally Accept Conditions Set Forth in 2016 Merger Order or Face Potential Revocation of Merger Approval

The New York State Public Service Commission (PSC) this week ordered Charter Communications Inc., known as Spectrum, to pay \$2 million to the State after the company failed to meet its obligations to expand its cable network, which provides high speed broadband, cable and telephone services, in the time allotted.

In addition, the PSC — concerned about Charter’s insistence that it is not bound by the terms of the Commission’s 2016 approval of the company’s acquisition of Time Warner Cable — ordered that Charter unequivocally accept the terms set forth in that approval order or face the risk of having the merger revoked, according to the PSC.

“As a condition of our approval of Charter’s merger two years ago, we required Charter to make significant investments in its network,” said PSC Chair John B. Rhodes. “Our investigation shows that Charter failed to meet its obligations to expand the reach of its network to unserved and underserved customers at the required pace and that it failed to justify why it wasn’t able to meet its obligations... since the company has taken the unfortunate position of refusing to adhere to all conditions set forth in our initial decision two years ago, we now demand the company unconditionally accept all of the conditions as the Commission unambiguously required in 2016, or run the risk of more severe consequences.”

In its order regarding Charter's failure to meet its buildout obligations, the PSC rejected 18,363 addresses — in New York City, Buffalo, Rochester, Syracuse, Schenectady, Albany, and Mt. Vernon —which Charter claimed it expanded network as part of its required buildout requirement. Charter must now file a revised buildout plan for going forward within 21 days.

According the PSC, when it became evident last year that Charter was not meeting its expansion targets, the PSC approved a settlement requiring the company to meet six-month targets or else pay up to \$1 million for each miss, and up to \$1 million should the company fail to correct any miss within three months.

Earlier this year PSC staff determined Charter failed to meet its December 2017 target. Charter argued that not all of the PSC's 2016 merger order applies to the company.

According to Commissioner Rhodes, given the company's "continued intransigence," the PSC this week ordered that the company unconditionally accept all of the conditions and requirements spelled out in its 2016 order or face subsequent PSC action.

With this week's decision, the PSC ordered Charter to pay \$1 million in accordance with the settlement agreement for failing to satisfy the December 2017 target and failing to demonstrate that it missed the target due to circumstances beyond its control. The PSC similarly found that Charter did not "cure" this miss by March 16, 2018, nor did it demonstrate that it had good cause for its failure to do so, requiring an additional \$1 million payment to the State.

"Regrettably, rather than honor its commitment, Charter, doing business in the state under the name Spectrum, has repeatedly failed to meet its obligations, particularly to rural areas, where building out broadband is more expensive," Governor Andrew Cuomo's Press Secretary Dani Lever explained. "It has also engaged in a campaign to deceive the public into believing that it is exceeding its commitment to the state through misleading advertising about its performance. The Public Service Commission represents and serves the people of New York. It should not be intimidated by a media giant interested only in its profits rather than the well-being of the people."

Governor Takes to the Streets to Promote Red Flag Gun Protection Bill

***Governor Launches Statewide Bus Tour of Schools in Solidarity of Students, Teachers,
and School Administrators in Support of Common Sense Gun Reform***

Governor Andrew Cuomo this week kicked off a statewide campaign to pass the Red Flag Gun Protection Bill, also known as the Extreme Risk Protection Order Bill.

The legislation, which was passed by the State Assembly this week, would prevent individuals determined by a court to have the potential to cause themselves or others serious harm from purchasing, possessing, or attempting to purchase or possess any type of firearm, including hand guns, rifles, or shotguns.

"New York will not stand by and wait for Washington to take action against the gun violence and school shootings that have become all too common in this country," Governor Cuomo said. "Parents should not have to fear sending their children to school every day and teachers should not have to wonder if they will return home from work..."



Extreme Risk Protection Orders (S7133A/A8976B) is sponsored M. of A. Jo Ann Simon and Senator Brian Kavanagh. The legislation would allow family members, household members, police officers, district attorneys and educators to petition a judge for an order preventing someone from possessing or purchasing weapons if the court finds they are likely to harm themselves or others. Ten other states — Connecticut, California, Florida, Indiana, Maryland, New Jersey, Oregon, Rhode Island, Vermont, and Washington — have similar laws.

The legislation faces an uphill battle in the State Senate. As the bus tour and the rhetoric progressed across the State, the response from the Senate Majority devolved from a pledge to review the legislation to the assertion that "the hard work of governing actually requires a dialogue."

"Where has he been for three months since Senate Republicans passed a comprehensive school safety package to improve security at our schools, provide an armed resource officer for districts who choose to have one and to finally address the mental health issues that have contributed to most of the senseless school shootings that have occurred throughout our nation?" Senate Majority John Flanagan stated, according to published reports. "Instead, the governor made only perfunctory outreach to me and then hit the road to attack the character and integrity of every member of our Senate Majority. He travels the state on the taxpayer dime performing a monologue, when the hard work of governing actually requires a dialogue."

The State legislative session is scheduled to close Wednesday, June 20th.



State Health Department Paid over \$1 Billion for Medicaid Patients Covered by Private Insurance

The state Department of Health (DOH) paid \$1.28 billion in unnecessary Medicaid managed care premiums over a nearly six-year period for enrollees who already had private insurance, according to an audit released this week by State Comptroller Thomas DiNapoli. The audit covered the period October 1, 2010 through September 30, 2016.

"Glitches in the state Department of Health's payment system and other problems led to over a billion dollars in unnecessary spending," Comptroller DiNapoli said. "The department needs to improve its procedures and stop this waste of taxpayer money."

For the State fiscal year ended March 31, 2016, New York's Medicaid program had approximately 7.4 million enrollees and Medicaid claim costs totaled about \$56 billion, of which managed care accounted for over \$30.7 billion. The federal government funded about 53.2 percent of New York's Medicaid claim costs; the State funded about 30.6 percent; and the localities (the City of New York and counties) funded the remaining 16.2 percent.

Under managed care, Medicaid pays managed care organizations (MCOs) a monthly premium for each enrolled Medicaid recipient and the MCOs arrange to provide medical services. However, many Medicaid recipients have additional sources of health care coverage. DOH often learns of enrollees' third-party coverage after the coverage has taken effect.

DOH's policy is to exclude Medicaid recipients from mainstream managed care when they have concurrent comprehensive third-party health insurance. When the Medicaid managed care provider and the third-party provider are the same, the state can remove the recipients from managed care retroactively and recover the unnecessary premiums paid to the MCO, according to rules in the Medicaid Managed Care Model Contract. Auditors found that was the case for \$26.9 million of the premium payments.

Comptroller DiNapoli's auditors noted however that \$1.17 billion (about 3.2 million premiums), which represented about 91 percent of the unnecessary premiums paid during the audit period of Jan. 1, 2012 to Sept. 1, 2017, are not recoverable (according to the model contract) because the MCO and third-party insurer are not related. Medicaid also paid more than \$591 million (of the \$1.28 billion) in inappropriate managed care premiums despite knowledge of the enrollees' third-party coverage.

Since June 2016, DOH has improved payment controls that use third-party insurance information to prevent such improper premium payments; however, these efforts only target NYSOH-enrolled recipients. DOH has not put similar controls in place with regard to non-NYSOH-enrolled recipients.

Comptroller DiNapoli recommended DOH:

- Improve monitoring efforts to assist in the prevention, detection and recovery of inappropriate managed care premiums.
- Implement controls to remove non-NYSOH-enrolled recipients with comprehensive third-party health insurance from managed care.
- Review the managed care premiums identified and recover unnecessary payments.
- Change the model contract language to allow the recovery of unnecessary premiums from all MCOs regardless of the relationship with recipients' third-party insurer.

DOH officials generally agreed with most of the audit recommendations and indicated that certain actions have been and will be taken to address them.



Bills Passed by Both Houses



- A467A – Sponsored by M of A Paulin (MS) / Senator Griffo** -- Relates to reporting requirements for various classifications of gas leaks by utility corporations.
- A1339 – Sponsored by M of A Rozic / Senator Avella** -- Requires applicants for all-night liquor licenses to notify local community boards of their intent to apply for such licenses.
- A2835A – Sponsored by M of A Englebright / Senator Serrano** -- Requires the conducting of public hearings and reports thereon prior to the closure of any real property by the office of parks, recreation and historic preservation.
- A2857D – Sponsored by M of A McDonald (MS) / Senator Funke** -- Relates to authorizing pharmacy interns to administer immunizations.
- A3076 – Sponsored by M of A Cymbrowitz (MS) / Senator Sanders** -- Relates to the qualifications of members of the gaming commission.
- A3137 – Sponsored by M of A Abbate / Senator Golden** -- Prohibits use of placement agents and intermediaries in the common retirement fund.
- A6823C – Sponsored by M of A Paulin / Senator Paulin** -- Establishes the crime of sex trafficking of a child.
- A7976 – Sponsored by M of A De La Rosa / Senator Hamilton** -- Directs the autism spectrum disorders advisory board to improve outreach to minority group members relating to children with such disorders.
- A9667 – Sponsored by M of A Paulin / Senator Gallivan** -- Relates to optional disability coverage for county probation officers.
- A9909 – Sponsored by M of A Abbate / Senator Golden** -- Relates to accidental disability retirement for uniformed court officers and peace officers employed in the unified court system.
- A9910 – Sponsored by M of A Abbate / Senator Golden** -- Relates to age and service eligibility requirements for ordinary retirement for members of the unified court system.
- A10100 – Sponsored by M of A Dinowitz / Senator Bonacic** -- Relates to limitations on powers and immunities of executors and testamentary trustees.
- S4019A – Sponsored by Senator Hamilton / M of A Perry** -- Directs the commissioner of motor vehicles to issue "Jamaican bobsled team" distinctive plates.

S4375A – Sponsored by Senator Funke / M of A Cusick -- Relates to permitting certain physicians to practice medicine in New York state if they are licensed to practice in another state or territory.

S5337 – Sponsored by Senator Hannon/M of A Cusick – Permits the use of low dosage ionizing scanners on inmates in local correctional facilities.

S5593A – Sponsored by Senator Golden / M of A Abbate -- Relates to repayment of loans by members of the New York state and local employees' retirement system.

S6683A – Sponsored by Senator Golden / M of A Abbate -- Relates to the certification of a deputy sheriff as a police officer.

S6886D – Sponsored by Senator Funke / M of A Buchwald -- Relates to fee assessments for security freezes following consumer credit reporting agency data breaches.

S7158B – Sponsored by Senator Golden / M of A Joyner -- Relates to special accidental death benefits.

S7398A – Sponsored by Senator Valesky / M of A Fahy -- Relates to mandatory continuing education for psychologists.

S7797A – Sponsored by Senator Golden / M of A Niou -- Relates to participants in the World Trade Center rescue.

S8066 – Sponsored by Senator Golden / M of A Abbate -- Relates to accidental disability retirement for deputy sheriffs.

S8175 – Sponsored by Senator Marcellino / M of A Cusick -- Relates to the calculation of nonpublic schools' eligibility to receive aid.

S8389B – Sponsored by Senator Jacobs / M of A Morelle -- Expands protections afforded to renters of motor vehicles.

S8821A – Sponsored by Senator Persaud / M of A Rosenthal L -- Relates to providing feminine hygiene products at no cost to individuals in correctional facilities.

In the News – New York City

Council Approves City's \$89 Billion Budget Plan

Mayor de Blasio & Speaker Johnson Reached Early Budget Agreement

The New York City Council this week approved the City's \$89.1 billion budget for Fiscal Year 2019. The spending plan includes \$106 million for Fair Fares, a program that cuts the price of MetroCards in half for low-income New Yorkers; expansion of 3-K for All; and Fair Student Funding for

New York City schools. Additionally, the budget will boost supportive housing production by 40 percent to 700 apartments per year.

“Today marks an important milestone as we take bold steps to continue creating the fairest big city in America...,” said Mayor Bill de Blasio. “...All this while adding to our reserves to protect the important investments we’ve made over the last five years, including in this budget.”



Mayor de Blasio & Council Speaker Johnson share first Balanced Budget Handshake.

The FY19 Budget also accounts for \$1.125 billion in General Reserve, an increase of \$125 million; \$4.35 billion in Retiree Health Benefits Trust Fund, an increase of \$100 million; and \$250 million in the Capital Stabilization Reserve.

“This is my first budget as Speaker, and I am very proud of what it says about this Council’s priorities... This budget is the result of the Council working together and prioritizing big ticket items that we know will help New Yorkers in all five boroughs,” said Speaker Corey Johnson.

The Fair Fares program, one Speaker’s Johnson’s budget priorities, will be modeled after the Human Resource Administration's Cash Assistance and SNAP programs, will be administered directly by the City. In its first year, the program will be analyzed to ensure it is receiving the appropriate levels of funding. The City is currently working on eligibility requirements for the program. Fair Fares is set to launch in early 2019.

The FY2019 budget will include:

Fair Fares: This program will make nearly 800,000 New Yorkers living at or below the federal poverty level eligible for half-price MetroCards, thereby saving them more than \$700 per year in transportation costs. In addition, 12,000 veterans enrolled in New York City Colleges will also be eligible for the discount MetroCards. According to the City Council, agreement includes \$106 million for Fiscal Year 2019 and the commitment by the Administration to continue to fully fund the program in the out years.

Direct Education Dollars To Schools: The Mayor and Council have agreed to baseline \$125 million for Fair Student Funding.

School Accessibility: \$150 million will be added to the Adopted Budget for capital projects to increase accessibility in the City’s school buildings.

COMPASS: \$14.2 Million to continue supporting elementary after school programs citywide.

Summer Youth Employment Program: \$10.3 Million to increase the number of available jobs to 75,000 as well as to raise the minimum wage for those in the program.

Work, Learn, Grow Jobs Program: \$19 Million restored in Fiscal Year 19 to provide in-school career readiness training and paid employment opportunities to teens and young adults.

Adult Literacy Program: \$12 Million to fund Adult English literacy programs citywide.

Maintain Services for Parks: \$12.3 Million to increase the number of Park Maintenance Workers, extend the open period of City pools and beaches, finance tree stump removal.

Funding for Libraries: \$60 Million for new libraries in capital funds, and \$16.7 million in expense funding.

Picking Up More Trash: \$3.5 for extra sanitation services.

NYCHA: \$40 Million for increased infrastructure funding.

Supportive Housing: Increase the amount of supportive housing units created annually from 500 to 700.

Briefs

Title Insurance Industry Argues Against New Regulations

Oral arguments were presented this week in New York State Supreme Court on behalf of the New York title insurers. Attorneys for the insurers requested that the New York State Supreme Court reject the Department of Financial Services' (DFS) new regulations, arguing the regulations adversely impact the industry and are an overreach of DFS's authority. The New York State Land Title Association, Great American Title Agency and Venture Title Agency filed the suit against the DFS earlier this year. Supreme Court Judge Eileen Rakower presided over the arguments. She will rule on issue within the next 30 days.

Ban on Single-Use Styrofoam Products in NYC Effective in 2019

New York City's styrofoam ban will go into effect by January 1, 2019, following the dismissal of a lawsuit preventing the implementation of the ban, according to Mayor Bill de Blasio. Under the ban, food service establishments, stores, and manufacturers may not possess, sell, or offer for use single service Expanded Polystyrene (EPS) foam food service articles or loose fill packaging, such as "packing peanuts" in New York City beginning in 2019.

There is a six-month grace period from when the ban goes into effect on January 1, 2019 before fines can be imposed. DSNY, the Department of Health and Mental Hygiene, and the Department of Consumer Affairs will conduct outreach and education in multiple languages to businesses throughout all five boroughs beginning now and during this period.

Local Law 142, passed by the City Council in December 2013, required the DSNY Commissioner to determine whether EPS single service articles can be recycled in an “economically feasible” and “environmentally effective” way. Under the law, if the Commissioner found that EPS was not recyclable, foam food service items and packaging peanuts were then banned.

Non-profits and small businesses with less than \$500,000 in revenue per year may apply for hardship exemptions from the Department of Small Business Services (SBS) if they can prove that the purchase of alternative products not composed of EPS would create undue financial hardship. SBS will begin accepting applications for hardship waivers in the fall.

Coming Up

New York State

The Legislature is in session Monday June 18th through Wednesday June 20th

New York City

Monday June 18th

Committee on Civil and Human Rights, Committee Room – 250 Broadway, 14th Floor, 1 p.m.

Tuesday June 19th

Subcommittee on Zoning and Franchises, Committee Room – 250 Broadway, 16th Floor, 9:30 a.m.

Committee on Veterans, Committee Room – 250 Broadway, 14th Floor, 10 a.m.

Subcommittee on Landmarks, Public Siting and Maritime Uses, Committee Room – 250 Broadway, 16th Floor, 12:00 p.m.

Committee on Women, Council Chambers – City Hall, 1 p.m.

Committee on Governmental Operations, Council Chambers – City Hall, 1 p.m.

Committee on Sanitation and Solid Waste Management, Committee Room – City Hall, 1 p.m.

Subcommittee on Planning, Dispositions and Concessions, 250 Broadway, 16th Floor, 2 p.m.

Wednesday June 20th

Committee on Land Use, Committee Room – City Hall, 11 a.m.

Committee on Fire and Emergency Management, Council Chambers – City Hall, 1 p.m.

Committee on Hospitals, NYC Health + Hospitals/Metropolitan 6th Floor Auditorium, Main Building – 1901 First Avenue, 1 p.m.

Committee on Mental Health, Disabilities and Addiction, NYC Health + Hospitals/Metropolitan 6th Floor Auditorium, Main Building – 1901 First Avenue, 1 p.m.

Thursday June 21st

Committee on Aging, Council Chambers – City Hall, 10 a.m.

Committee on Economic Development, Committee Room – City Hall, 10 a.m.

Subcommittee on Zoning and Franchises, Committee Room – City Hall, 10 a.m.

Committee on Contracts, Council Chambers – City Hall, 1 p.m.

Committee on General Welfare, Council Chambers – City Hall, 1 p.m.

Committee on Consumer Affairs and Business Licensing, Committee Room – City Hall, 1 p.m.

Committee on Justice System, Committee Room – City Hall, 1 p.m.

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