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STATE HOUSE NEWS

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STATE MEDICAL EXAMINER SYSTEM

On July 3rd, Governor Murphy signed into law as P.L. 2018, c.62 **SENATE, NO. 976** *(Vitale D-19),* which would establish the "Revised State Medical Examiner Act."

In summary, the new law establishes the Office of the Chief State Medical Examiner in the Department of Health to replace the Office of the State Medical Examiner in the Department of Law and Public Safety. The measure abolishes the existing Office of the State Medical Examiner in the Department of Law and Public Safety and transfers all of its functions, powers, and duties to the newly established Office of the Chief State Medical Examiner. The Governor must appoint for a term of five years, the Chief State Medical Examiner with the advice and consent of the Senate. The Chief State Medical Examiner will then report directly to the Commissioner of Health and will function independently within the Department with respect to the medical examiner system and conducting of medicolegal death investigations.

The law also requires the Chief State Medical Examiner to ensure that the entire medical examiner system is adequately equipped and staffed to deliver medicolegal death investigation services throughout the State, including the establishment of advisory standards of funding for staff, equipment, and facilities for all medical examiner offices. Additionally, the measure empowers the Chief State Medical examiner to: appoint persons to the position of Deputy Chief State Medical Examiner and to appoint and to prescribe the duties of such other employees as may be necessary; provide advice to the governing body of a county or counties concerning the appointment of county or intercounty medical examiners; establish minimum training and experiential requirements of eligibility for those persons appointed as Deputy Chief State Medical Examiner or as a county or intercounty medical examiner or assistant county or intercounty medical examiner; retain supervisory power over personnel employed by the Office of the Chief State Medical Examiner; provide direct supervision and oversight of any county or intercounty medical examiner facility that the Chief State Medical Examiner reasonably determines is experiencing problems that preclude its effective functioning; and, provide professional oversight concerning the operations of the county and

intercounty medical examiner offices as they relate specifically to the conduct of medicolegal death investigations and the performance of autopsies.

The new law furthers require the Chief State Medical Examiner to adopt certain rules and regulations that would include the establishment of uniform procedures for conducting medicolegal death investigations, and minimum performance and operating standards for, and standards of professional conduct for personnel of, the Office of the Chief State Medical Examiner and the office of each county or intercounty medical examiner. The legislation would provide the Chief State Medical Examiner with direct supervision and oversight authority over any medical examiner facility operating under State jurisdiction; and would authorize the Chief State Medical Examiner to intervene in, and to assume control over, any ongoing medicolegal death investigation in the State, regardless of whether the Chief State Medical Examiner has received permission from, or a request for intervention by, a county or an intercounty medical examiner performing the investigation.

As county governments are responsible for paying for the salaries, equipment, facilities and other operating expenses incurred by the medical examiner offices through the collection of the general county purpose tax, NJAC contended throughout the legislative process that counties should retain jurisdiction to oversee county medical examiner operations and should not be subject to the direct supervision of the new Chief State Medical Examiner. NJAC further submitted that if the Chief State Medical Examiner is to have direct supervision and oversight over county or intercounty medical examiner offices, then the Department of Health should assume the costs associated with the operation and maintenance of the county medical examiner offices. The Legislature eventually amended the bill to eliminate the need for direct supervision by the new Chief State Medical Examiner provided the county or intercounty medical examiner office attains national accreditation.

With respect to county and intercounty medical examiner offices, the law requires each county to establish and maintain an office of the county medical examiner; and, permits the governing bodies of two or more counties to jointly establish and maintain an intercounty medical examiner office. The law also requires two or more counties seeking to jointly maintain an intercounty medical examiner office on a cooperative or regional basis to seek the advice of the Chief State Medical Examiner concerning such an arrangement before establishing and maintaining a joint office. The measure would provide that each county or intercounty medical examiner office would continue to be directed by a county or intercounty medical examiner, who would be appointed by the governing body of the county or counties for a term of five years. The measure further specifies that in appointing persons to the position of county or intercounty medical examiner, the governing body of a county or counties must seek the advice of the Chief State Medical Examiner regarding the appointment. The law also provides that the Chief State Medical Examiner may

remove a county or intercounty medical examiner from office for certain enumerated causes, in consultation with the governing body of the county or counties that appointed the county or intercounty medical examiner.

Additionally, the law now requires the governing body of a county or counties that appointed a county or intercounty medical examiner to consult the advisory funding standards adopted by the Chief State Medical Examiner when establishing county budgets for medical examiner services. The law additionally mandates that the budgets for and spending by each county and intercounty medical examiner office are to be made available for review by the Chief State Medical Examiner, must be published and made available to the public as part of the county budget, and must detail certain costs associated with the operation of the office.

The law also requires the Office of the Chief State Medical Examiner to maintain and supervise a State toxicology laboratory. The measure specifies that the laboratory will provide necessary toxicology services to the Chief State Medical Examiner, Deputy Chief State Medical Examiner, each county or intercounty medical examiner, and each assistant county or assistant intercounty medical examiner in the performance of medicolegal death investigations in this State. The new law specifies that the Chief State Medical Examiner, Deputy Chief State Medical Examiner, county or intercounty medical examiner, and assistant county or assistant intercounty medical examiner requiring the services of a toxicology laboratory must enlist the services of the State laboratory unless the Chief State Medical Examiner provides permission for use of another.

Although NJAC very much appreciates Senator Vitale working with us on this comprehensive reform to the medical examiner system, we remain concerned with the fact that the new law does not contain a funding mechanism to offset the costs associated with implementing new standards and protocols. At a time in which all local governments are struggling to make ends meet in the wake of the expiration of the 2.0% cap on binding interest arbitration awards, county officials will find it very difficult to allocate the necessary resources to comply with new standards. This regulatory unfunded mandate would be similar to the one imposed by the Administrative Office of the Courts through the "Court Securitization Act." Although the Act through regulations and directives attempted to create a uniform standard for security at county judicial and prosecutorial facilities across the State, it significantly increased the costs associated with the operation and maintenance of these facilities.

PRIVATE PUBLIC PARTNERSHIPS

On June 25th, both houses passed and sent to the Governor **SENATE, NO. 865** *(Sweeney D-3/Oroho R-24)(Greenwald D-6/Coughlin D-19),* which would permit private public partnership agreements for certain building and highway infrastructure projects.

In general, the permissive measure would allow local governing bodies to enter into a public-private partnership agreement under which the private entity assumes financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity. The bill would require that workers employed in the construction, rehabilitation, or building maintenance services of a project by a private entity that has entered into an agreement with a government entity be subject to the applicable provisions of the "New Jersey Prevailing Wage Act;" that building construction projects undertaken pursuant to an such agreement contain a project labor agreement; and, that the general contractor, construction manager, design-build team, or subcontractor for a project is registered and classified by the State to perform work on a project.

Under the bill, a public-private partnership project may be structured using availability payments as a financing method. However, the bundling of multiple projects would be prohibited. In addition, roadway or highway projects must include an expenditure of at least $10 million in public funds or any expenditure in private funds. A private entity would be required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor is precluded from engaging in a project having an expenditure of under $50 million if the contractor contributed more than 10 percent of the project's financing. All projects would be required to undergo a procurement process established under the bill. All applications for agreements authorized under the bill would be submitted to the EDA for its review and approval prior to commencing the procurement process. The EDA would have the power to cancel procurement after a short list of private entities is developed, if deemed in the public interest. The bill also requires the EDA to post on its official website the status of each public-private partnership agreement subject to its consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project. Governor Murphy is expected to sign the bill into law.

INCLUSIVE PLAYGROUNDS

On June 25th, both houses unanimously passed and sent to Governor Murphy **ASSEMBLY, NO. 2187** *(Greenwald D-6/Lampitt D-6)(Beach D-6/Cruz-Perez)* as Jake's Law, which would incentivize counties to design and construct inclusive playgrounds as a priority for State funding for recreational and conservation purposes. Special thanks to Assembly Majority Leader Lou Greenwald, and to the New Jersey Parks and Recreation Association, for working with NJAC early in the legislative process to craft a measure that enhances the accessibility for individuals with disabilities at our county parks and establishes a fair and equitable process to secure important grant funding.

In summary, this legislation would require that the Department of Environmental Protection (DEP) prioritize any application submitted by a county seeking to acquire or develop lands for recreational and conservation purposes using Green Acres funds, provided that the Green Acres funds requested by the county are to be used for the design and construction of an inclusive playground. The Committee further amended the bill to require that the Commissioner grant additional prioritization to the applications submitted by counties that do not currently operate and maintain an inclusive playground, in an effort to ensure at least one such playground is operated and maintained by each county.

The bill would also clarify that the Department of Community Affairs (DCA) would be required to: promulgate rules and regulations specifically for inclusive playgrounds that generally exceed current State and federal standards within 90 days of the effective date of the bill; consult with nonprofit organizations with a demonstrated expertise in the design and construction of inclusive playgrounds; and, promulgate rules and regulations mandating that inclusive playgrounds would be designed to facilitate access by adults and children with disabilities. Governor Murphy is expected to sign the measure into law.

VOTE BY MAIL-IN BALLOT
Beach (D6); Cruz-Perez (D5); Jones (D5); Lampitt (D6);

On June 21st, both houses passed along partisan lines **SENATE, NO. 647** *(Beach D-6/Cruz-Perez D-5)(Jones D-5/Lampitt D-6),* which authorize qualified voter to vote by mail-in ballot in all future elections.

In general, the measure would provide that a voter who requested a mail-in ballot for all future elections, including future general elections, will continue to receive a mail-in ballot for such elections until the voter notifies the appropriate county clerk in writing that he or she no longer wishes to receive such a ballot, or is no longer eligible to vote. Additionally, the bill would provide that a sample ballot for an election would not be mailed to any voter who has been sent a mail-in ballot for that election and whose voted ballot has been received by the county board of elections prior to the transmission of sample ballots to voters required by current law; would permit a county board to send an acknowledgement to a voter when his or her mail-in ballot has been received; and, would require the Secretary of State to update the Statewide Voter Registration System to allow the postal tracking of mail-in ballots using Intelligent Mail barcodes, or a similar successor tracking system, upon the finding by the Secretary of State that such technology is viable;

The measure would also require the reformatting of the text of the public notice concerning the use of mail-in ballots that appears in newspapers before an election; would permit the clerk of each county to use an alternative mail-in ballot certification that permits the voter to certify the correctness of the identifying information contained

on the label of the ballot instead of requiring the voter to provide the voter's name and address on the certification; would provide that every mail-in ballot that bears a postmark date of the day of an election and that is received within 48 hours after the time of the closing of the polls for that election is to be considered valid and canvassed; and, would add two days to the deadline by which county and State canvassers boards must meet after an election, a recount may be requested, and a petition challenging any nomination or election to elective office may be filed; and

Finally, the measure would provide that the clerk of each county must add to the list of registered voters receiving a mail-in ballot for all future elections without further request each voter in the county who requested and received a mail-in ballot for the 2016 general election. Each voter so added would have the option to inform the clerk in writing that the voter does not wish to receive a mail-in ballot automatically for all future elections. The county clerks are to transmit to each such voter a notice that he or she will automatically receive a mail-in ballot for all future elections unless the voter informs the clerk in writing that he or she does not wish to receive such a ballot. Governor Murphy is expected to sign the measure into law.

COUNTY OPTION HOSPITAL FEE PILOT PROGRAM

On June 22nd, both houses passed along partisan lines **SENATE, NO. 2758** *(Vitale D-19/Ruiz D-29)(Coughlin D-19),* which would establish a five-year County Option Hospital Fee Pilot Program.

In general, the bill would authorize the Commissioner of Human Services to allow no more than seven participating counties in the State to impose a local health care-related fee on hospitals within in the borders of participating counties. Under the bill, a "participating county" would mean a county with a population greater than 250,000; and, contain a municipality that is classified as a First or Second Class municipality or a Fourth Class municipality whose population exceeds 20,000, and has a current Municipal Revitalization Index score that exceeds 60 as calculated by the Department of Community Affairs. Counties must of course choose to participate. According to these factors and the NJAC abacus, Atlantic, Burlington, Camden, Gloucester, Essex, Hudson, Mercer, Middlesex, Monmouth, and Passaic counties are eligible for the program.

The bill would require a participating county to submit a proposed fee and expenditure report to the Commissioner to ensure that the proposed fee and expenditure plan satisfies certain goals. The bill would also require that the affected hospitals be consulted and permitted to provide comments during this process. Following the approval of a proposed fee and expenditure plan by the commissioner, the board of chosen freeholders of a participating county may adopt an ordinance providing for the imposition of a fee on hospitals located within its borders. The fee must be implemented in accordance with federal law and may be collected only to the extent, and for the period, that the Commissioner determines that the revenues generated

qualify as the State share of Medicaid program expenditures eligible for federal financial participation.

The measure would allow a participating county to transfer funds collected from the imposition of the fee to the Commissioner. The Commissioner must use these funds, and any matching amount of federal Medicaid funds or other federal funds generated therefrom, for the following purposes: to increase Medicaid payments to hospitals in the jurisdiction from which the funds are received; for payments to managed care organizations that have contracted with Medicaid serving the jurisdiction from which the funds are received for increased hospital or hospital-related payments; and for direct costs related to administrative purposes to implement the pilot program. A participating county may also retain the funds collected from the imposition of the fee, in which case the participating county must generate the same level of funding, in addition to the funds collected from the imposition of the fee, that would be generated by the department through any matching amount of federal Medicaid funds or other federal funds, and use the total funding amount to satisfy the purposes of the pilot program. At least 75 percent of the funds collected from imposition of the fee must be used by a participating county or the department for the benefit of local hospitals or local hospital-related providers within the participating county's borders to ensure that the hospitals or hospital-related providers continue to provide necessary services to low-income citizens.

The legislation would prohibit hospitals subject to the fee o pass on the cost of the fee to any patient, insurer, self-insured employer program, or other responsible party, nor list it separately on any invoice or statement sent to a patient, insurer, self-insured employer program, or other responsible party. In addition, unless otherwise prohibited by the federal government, no managed care organization operating in the State that has contracted with Medicaid is authorized to retain any funds generated by the fee, other than to offset any increased administrative costs incurred as a result of the pilot program. Finally, funds generated by the fee are not to supplant or offset any current or future State funds allocated to a county participating in the pilot program. In addition, payments distributed to hospitals pursuant to the bill are not to supplant or offset any current or future funds paid to hospitals through other State or federal funding mechanisms or pools.

NJAC generally supports the measure as it may provide participating counties with new revenues and may increase financial resources through the Medicaid program to support local hospitals and to ensure that they continue to provide necessary services to low-income citizens. It's unclear if Governor Murphy will sign the measure into law.

MURPHY TO UNDO CONTINUOUS CHRISTIE MAKEOVER OF MENTAL HEALTH, ADDICTION SERVICES
Lilo H. Stanton, NJ Spotlight, June 21, 2018

Just eight months after a controversial government reorganization of an array of mental health and addiction services, oversight of those programs will return to the Department of Human Services, under a plan the Murphy administration is expected to unveil today. Gov. Phil Murphy will call for much of the work of the Division of Mental Health and Addiction Services to be shifted from the Department of Health back to the DHS, which ran these programs for nearly a decade, according to several people briefed on the pending announcement.

However, the DOH will retain control of the state's four psychiatric hospitals, which care for some 1,300 severely mentally-ill residents; the department has already launched several efforts to improve operations and outcomes at these facilities. But the DHS will again manage all community-based mental health and addiction programs, and other services, they said. DMHAS has a $1.16 billion budget and employs more than 4,300 people, many of whom work at the state psychiatric hospitals. It was not immediately clear how these resources would be reallocated under Murphy's plan. Administration officials did not respond to a request for comment, or declined to discuss the move and the reasons in advance.

Former Gov. Chris Christie confounded many mental health and addiction providers, lawmakers and community members when he announced his plan to move the entire division from Human Services to Health a year ago, during a somewhat similar budget battle with legislative leaders as Murphy is now embroiled in. The goal was to create a more integrated system of care, in which behavioral health services were better coordinated with primary care, which is overseen by the DOH. While many agreed with the former governor's intention, he received significant criticism for the timing of the move — just six months before he left office — and the lack of public input in advance of the massive change. Lawmakers tried to stop the shift but were unable to pass legislation blocking the move before the deadline Christie set.

Sen. Joseph Vitale (D-Middlesex), the longtime health committee chairman, who worked with former Human Services committee chairwoman Assemblywoman Valerie Vainieri Huttle (D-Bergen), to avert Christie's plan, said Murphy's move is the right one. "I have always advocated for (DMHAS) return to the DOH after opposing its removal at the start," Vitale said when asked about the change late Wednesday. "Its return is best for those the division serves and that should have always been the motive. It wasn't," he said, without elaborating. Once the Christie plan was in action, the DOH led conference calls and meetings with providers and held town halls in all 21 counties to inform stakeholders of their intentions and get feedback on the process, which was completed by November. In addition, legislation adopted in December and signed by Christie before he left office in January provided for additional changes to the way the health

department licenses certain providers, which supporters said was an important aspect of better integrating care.

But a number of stakeholders have continued to advocate for Christie's reorganization to be reversed. Social service experts who advised Murphy during the transition urged him to return most of the DMHAS functions to the human services department within the first 100 days, except for some aspects of facility licensing, which they said should remain under DOH. The report estimated reorganizing these services again would cost the state about $100,000; it is not clear how much has been spent on these changes to date. While it has been under his purview, Health Commissioner Dr. Shereef Elnahal has repeatedly said he is working closely with DHS Commissioner Carole Johnson to ensure that services reach patients in need. But Elnahal also said at legislative hearings this spring that the Murphy administration was actively reviewing the Christie move and that "all options are on the table."

3RD CIRCUIT SHACKLES CONSTITUTIONAL CHALLENGE TO NJ BAIL REFORM LAW
Charles Toutant, New Jersey Law Journal, July 9, 2018

A constitutional challenge to New Jersey's Criminal Justice Reform Act by a bail bonds underwriter and a criminal defendant was rejected Monday by the U.S. Court of Appeals for the Third Circuit. The appeals court, in a precedential ruling, said the plaintiffs were not entitled to a preliminary injunction halting implementation of the law.

The panel ruled that Lexington National Insurance Co. lacked standing to challenge New Jersey's 2017 reform of its cash bail system. It also said that plaintiff Brittan Holland, who is under electronic monitoring while awaiting trial on an aggravated assault charge, does have standing to challenge the law, but failed to demonstrate a likelihood of success on his assertion that bail reform violates his rights under the Fourth, Eighth and 14th amendments of the U.S. Constitution. Because of the procedural posture, the Third Circuit ruling does not bring an end to the litigation, but opens the door for the state to file a motion to dismiss. According to the decision, Lexington National underwrites bail bonds in New Jersey, and acknowledged in court papers that its business in New Jersey has dwindled under the new law. Holland, a Sicklerville resident, was arrested in April 2017 and placed on home detention after he was charged for his involvement in a bar fight, the court noted.

Monday's decision came after Holland and Lexington National appealed a ruling by U.S. District Judge Jerome Simandle that denied their application for a preliminary injunction to halt implementation of the bail reform law, which has been in effect since January 2017. Judges Thomas Ambro, L. Felipe Restrepo and Julio Fuentes said Simandle correctly denied Holland's motion for a preliminary injunction. Simandle ruled that Lexington National lacks standing to bring a claim on its own behalf, or to bring a claim on behalf of third parties. Lexington National did not challenge the denial of first-party standing, but argued on appeal that it should be granted third-party standing to bring

claims on behalf of criminal defendants on home detention and electronic monitoring because those individuals face obstacles in bringing claims.

Ambro, writing for the panel, rejected that assertion, finding that Holland "appears to have the unfettered ability" to pursue litigation. Holland raised the issue of whether there is a federal constitutional right to deposit money or obtain a corporate surety bond to ensure a criminal defendant's future appearance in court as an equal alternative to nonmonetary conditions of pretrial release. The appeals court, affirming the judge below, said there is no such right. The panel rejected Holland's reasoning that the revamped bail system violates the Fourth Amendment's prohibition on unreasonable searches and seizures because home detention and monitoring intrude on his privacy and are not needed to promote the state's legitimate interest. Ambro rejected Holland's claim that placing an electronic monitor on a person and tracking his whereabouts necessarily constitutes a search and seizure, or that home detention is a seizure.

The appeals court conceded that home detention and wearing an electronic monitor are "at least somewhat intrusive" but found that the intrusion is "lessened by Holland's reduced expectation of privacy." When a person is arrested on probable cause for a dangerous offense, his expectations of privacy and freedom from police scrutiny are lessened, Ambro wrote. The American Civil Liberties Union submitted an amicus curiae brief to the Third Circuit on behalf of itself, its New Jersey chapter, Drug Policy Alliance, Latino Action Network, and the National Association for the Advancement of Colored People. "This important decision confirms what bipartisan lawmakers in New Jersey have known for years: there is no reason—legal or otherwise—why the thickness of anyone's wallet should dictate their liberty and freedom," Alexander Shalom, senior supervising attorney at the ACLU-NJ, said in a statement.

In a phone interview, Shalom added that the defendants' next steps might be to seek review by the entire court, or to ask the U.S. Supreme Court to take the case. But barring that, the state is likely to file a motion to dismiss the case, according to Shalom. Both the District Court and the Third Circuit "have made it clear they don't think there's a 'there' there on the legal theory the bail industry has put forth," that a defendant awaiting trial has the constitutional right to buy his freedom, Shalom said. "I think the bail industry had an uphill battle before. They have a Sisyphean task now," he said.

Paul Clement of Kirkland & Ellis in Washington, D.C., who served as U.S. solicitor general under President George W. Bush, represented Holland and Lexington National before the Third Circuit. He did not return a call about the ruling. Co-counsel Michael Williams, also of Kirkland & Ellis, and local counsel Justin Quinn, of Robinson Miller in Newark, also did not return calls. The state's case was argued at the Third Circuit by Assistant Attorney General Stuart Feinblatt. A spokesman for the Attorney General's Office, Lee Moore, declined to comment on the ruling or to address whether the state would next file a motion to dismiss.

UPCOMING NJAC EVENTS AND THE ANNUAL CELEBRATION OF COUNTY GOVERNMENT

We look forward to seeing you at NJAC's Annual Night at the Ballpark set for 7:00 p.m. on July 26th to watch the Portland Sea Dogs take on the Trenton Thunder at Arm & Hammer Park in Trenton. This event is free for county officials, but space is limited, so check out our website at www.njac.org for additional details.

STATE HOUSE TRIVIA: *Did you know that* according to Rolling Stone, the top 10 best summer songs of all time include: 1) Dancing in the Street by Martha & the Vandellas 2) Summertime Blues by Eddie Cochran 3) School's Out by Alice Cooper 4) California Girls by the Beach Boys 5) Rockaway Beach by the Ramones 6) Hot Fun in the Summertime by Sly & the Family Stone 7) Summer in the City by Lovin Spoonful 8) Vacation by the Go-Gos - a horrible song. 9) Summertime by DJ Jazzy Jeff & The Fresh Prince 10) Cruel Summer by Bananarama – another terrible song.

"I can't change the direction of the wind, but I can adjust my sails to always reach my final destination." Jim Dean