

## **NYSOH Announces 2018 QHP Open Enrollment Dates**

The NY State of Health (“NYSOH”) [announced](#) that the Open Enrollment Period for 2018 Qualified Health Plan (“QHP”) coverage will begin **November 1, 2017** and end **January 31, 2018**. Individuals currently enrolled in a plan through NYSOH will receive renewal notices in October. The NYSOH has indicated that details about 2018 plan options will be released later this month.

## **VBP Update**

### **VBP Innovator Program Webinar Slides and FAQs Posted to Website**

The [PowerPoint presentation](#) and [Frequently Asked Questions](#) documents for the VBP Innovator Program have been posted to the DOH website [here](#), under the VBP Innovator Program Section.

### **VBP Bootcamps Continue**

The Department of Health has announced the next installment of Value Based Payment bootcamps. The newest installment of the VBP bootcamps will be a one-day session held in five regions across the State. The same subjects and content will be covered in every region. The bootcamps will consist of breakout sessions and workshops on the following subjects:

- VBP Financing
- VBP Contracting
- VBP and the Social Determinants of Health/Community Based Organizations
- VBP Quality Measures
- VBP for Managed Long Term Care

### **The schedule and locations for VBP bootcamps are as follows:**

<b>Date</b>	<b>Region</b>	<b>Location</b>	<b>Address</b>
October 10, 2017**	Capital Region**	The Egg-Swyer Theater**	1 Empire State Plaza, S Mall Arterial, Albany, NY 12203
October 18, 2017	New York City	The New York Academy of Medicine	1216 5th Ave, New York, NY 10029
October 23, 2017	North Country	High Peaks Resort	2384 Saranac Ave, Lake Placid, NY 12946
November 3, 2017	Central New York	Rochester Radisson Riverside	120 E Main St, Rochester, NY 14604

November 15, 2017	Long Island	The Long Island Marriott	101 James Doolittle Blvd, Uniondale, NY 11553
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The above bootcamps are tentatively scheduled for **9:00AM-5:00PM**. All of the sessions for the Capital Region VBP bootcamp will be webcast live and recorded.

**Registration for each region will open approximately 3 weeks in advance of the session and close 1 week before the event. The registration link will be sent out to this listserv when it becomes available.**

## Update on the 2017-18 Medicaid Drug Cap

DOH recently provided [a status update on the new Medicaid Drug Cap](#) that was enacted as part of the 2017-18 State Budget. The Medicaid Drug Cap sets a floor for permissible drug spending in the Medicaid program. For 2017-18, this cap was limited to 8.2% (the Consumer Price Index (3.2%) plus 5%), minus an annual savings target that for this year was \$55 million.

According to DOH, drug spending for the current fiscal year is projected to exceed the cap by \$119 million (State share). As a result, on August 25, 2017, DOH communicated to specific drug manufacturers that they are seeking additional supplemental rebates from them for specific drugs. If the State does not receive the \$119 million to make up the shortfall, these drugs will be referred to the DOH Drug Utilization Review Board (DURB) for review and recommendation of a targeted supplemental rebate. The state announced that 30 drugs from 12 manufacturers were selected for possible DURB review.

DOH is planning to hold DURB meetings in October and December to review and recommend supplemental rebates. DOH will post an agenda on its website 30 days prior to the DURB meetings with the names of drugs to be reviewed by the DURB.

## Assembly Public Hearing on Adult Care Facilities

The Assembly Committees on Health, Social Services, and Aging has [announced](#) two public hearings examining the safety and quality of residential units and public spaces in residential adult care facilities, including: enforcement of health and safety standards; privacy of residents; and residents' access to supportive and social services, health care, meals, and transportation. The public hearing announcement also suggests that the Committees will be examining the impact of an increase in New York State Supplement Program ("SSP") support on the residents of these homes.

The hearing schedule is as follows:

- **New York City:** Tuesday, September 19, 2017, 11:00 A.M. Assembly Hearing Room, 19th Floor, 250 Broadway
- **Syracuse:** Thursday, September 28, 2017, 11:00 A.M. Hearing Room, 1st Floor, Senator John H. Hughes State Office Building, 333 East Washington Street

Persons wishing to present pertinent testimony to the Committees at the hearings should complete and return the [reply form](#) as soon as possible. Oral testimony will be limited to ten (10) minutes.

## Stakeholder Workgroup Meetings on the Future of Integrated Care in NYS

The Department of Health Division of Long Term Care and CMS have scheduled additional dates in the series of stakeholder meetings on the future of integrated care in New York State. From September through December, DOH will host a series of sessions designed to facilitate the conversation on how to plan for the State’s Medicare-Medicaid integrated care programs after the conclusion of the Fully-Integrated Duals Advantage (“FIDA”) program in 2019.

At the July 20, 2017 kick-off meeting, DOH and CMS presented on the value of integrating Medicare and Medicaid services. As the next step in the process, the Future of Integrated Care Stakeholder Workgroup will meet four times over the next few months for topic-specific discussions with stakeholders about various elements of program design. The schedule and proposed agenda of topics for each session are as follows:

<b>Date</b>	<b>Location</b>	<b>Topics</b>
September 7, 2017 11:30am-2:00pm	Albany	1) Target Population 2) Covered Services 3) Care Coordination/Care Management Elements 4) Assessment and Service Planning Requirements
October 16, 2017 11:30am-2:00pm	New York City	1) Network Adequacy and Access 2) Participant Rights and Protections 3) Marketing Rules and Flexibilities 4) Quality Standards and Measures
November 16, 2017 11:30am-2:00pm	Albany or Rochester, TBA	1) Payment and Rate Considerations 2) Outreach, Education, and Engagement of Participants and Providers 3) MCO/Plan Requirements and Qualifications 4) Enrollment
December 8, 2017 11:30am-2:00pm	New York City	1) Geographic Scope 2) Consolidation of Existing Programs 3) Platform for Integrating with Medicare

Due to space constraints, the Department has limited in-person attendance to only two representatives from each organization. Stakeholders will also be permitted to attend via webinar/conference call.

Organizations planning to attend the **September 7<sup>th</sup>** session in person should **RSVP no later than September 5<sup>th</sup>** with the first and last names of attendees to [FutureofIntegratedCare@health.ny.gov](mailto:FutureofIntegratedCare@health.ny.gov). Only those individuals listed on the building's security sheet will be permitted to enter the building. The Department has cautioned that substitute attendees will not be permitted.

To register for the online event, click [here](#).

## **Justice Center Has Third Criminal Case Dismissed as Courts Question Its Authority to Prosecute**

For the third time this year, the New York State Justice Center for the Protection of People with Special Needs has had its felony rape charges against employees of State-licensed treatment facilities dismissed by an Albany County judge.

In each of the three dismissed cases, the Justice Center – a State agency granted the power to prosecute criminal cases by the New York State Legislature – charged employees of various treatment facilities with felony rape and other offenses against service recipients. All three cases were dismissed by State Supreme Court judges on the grounds that prosecution by the Justice Center is unconstitutional.

The courts reasoned that the New York State Constitution only empowers **elected officials** such as the Attorney General, district attorneys, and their delegates to prosecute criminal offenses. These elected officials must retain ultimate prosecutorial authority over criminal prosecutions. The Justice Center's special prosecutors are State employees who are **not elected**. Notably, State Attorney General Eric Schneiderman argued in all three cases that the Justice Center lacks the necessary prosecutorial authority. The judges considered the fact that the Attorney General took this position very persuasive.

All three dismissed cases were decided by the New York State Supreme Court for Albany County, so the limitation on the Justice Center's criminal prosecutorial powers applies only in Albany County, at least until courts in other counties address this issue or until the Justice Center successfully appeals these decisions. The Justice Center stated that it intends to appeal at least two of the dismissed cases, but it has not yet filed formal court documents to do so.

## **NHTD/TBI Waiver Update**

The Department of Health has announced that the State's request to renew the Traumatic Brain Injury ("TBI") Waiver application has been approved by CMS effective **September 1, 2017**.

The Department is planning to host a series of webinars to discuss a number of issues moving forward, including: changes in the application content and how it will impact participants and providers, mechanisms to review upcoming systems changes with waiver participants, and amendments to the TBI Housing Program Manual and the NHTD/TBI General Program Manuals.

The Department is planning to host the first webinar this month. In the meantime, questions regarding the TBI waiver may be directed to the TBI mailbox at: [tbi@health.ny.gov](mailto:tbi@health.ny.gov)

The Nursing Home Transition and Diversion ("NHTD") waiver remains on temporary extension until **October 19, 2017** and the application for renewal is pending formal CMS submission. Questions regarding the NHTD waiver may be directed to [NHTDwaiver@health.ny.gov](mailto:NHTDwaiver@health.ny.gov)

## **OMIG Posts Compliance Alert**

The New York State Office of the Medicaid Inspector General ("OMIG") has published [Compliance Alert 2017-01- Mandatory Compliance Programs' Risk Assessments: Changes in Medicaid Reimbursement Systems](#) to remind the state's Medicaid provider community to consider new and developing reimbursement program requirements in their compliance program risk assessments.

Risk assessments must be part of any compliance program required under New York State's Medicaid program. New and developing Medicaid reimbursement and payment systems (e.g., capitation, value based payments, etc.) create the potential for additional program integrity concerns regarding Medicaid billing and payment. OMIG recommends that those risks be considered as part of an operating compliance program.

Questions may be directed to OMIG's Bureau of Compliance at (518) 408-0401 or [compliance@omig.ny.gov](mailto:compliance@omig.ny.gov).

## **Health Home Update**

### **Children's Medicaid System Transformation Webinar**

The NYS DOH, OASAS, OCFS, OMH, and OPWDD will be hosting a joint WebEx presentation on **Monday September 18 from 1:00pm – 2:30pm**, which will focus on the Medicaid Children's System Transformation. The presentation will provide a

refresher course on the key elements of the children's transformation including timeframes, expansion of services, transition to Medicaid Managed Care and important readiness activities providers should be engaged in now.

To register for the webinar, click [here](#).

## Regulatory Update

### Department of Health

#### Residential Health Care Facility Quality Pool

The Department of Health recently extended [emergency rulemaking](#) that provides for the creation of a quality incentive pool intended to improve the quality of care among nursing home residents in Medicaid-certified facilities, and to reward facilities based on their performance compared to their peers. Failure to achieve satisfactory progress in accomplishing specified benchmarks and goals would be a basis for declining to award quality incentive dollars to a facility.

**Important Update:** Although the Department continues to extend the above emergency regulation, which has been in place since October 12, 2016, the Department has also issued a notice of [revised proposed rulemaking](#) that, if adopted would significantly alter the RHCF Quality Pool currently in place.

The revised proposed rulemaking no longer contains the specified quality, compliance, and efficiency measurement criteria that were previously used to calculate each facilities quality score. Instead, financial awards to facilities would be determined by their performances in the Nursing Home Quality Initiative (“NHQI”). The measures included in the NHQI are decided upon with input and advice from the workgroup based on expert opinions, industry standards, and quality measure outcomes being assessed at the national level. The revised proposed rulemaking would also, among other changes, eliminate per diem transition adjustments and provisions for reserve bed days and facilities in receivership. The Department’s assessment of public comment on the original proposed rule, which was published in the [October 12<sup>th</sup>, 2016](#) edition of the New York State Register, can be found [here](#).

The Department will be accepting comments on the revised proposed regulation through **September 22<sup>nd</sup>, 2017**.

#### Updating Certificate of Need Thresholds

The Department recently issued a notice of adopted rulemaking that would amend the Certificate of Need (“CON”) process for general hospital construction projects. The proposed amendments would: (1) raise the monetary thresholds impacting the level of review for “general hospital” construction projects; (2) eliminate the requirement that

notice be provided for non-clinical infrastructure projects that do not exceed \$6 million; (3) eliminate the requirement for Department approval of HIT projects, instead requiring notice which, for HIT projects impacting patient care, will include certification as to interoperability and compliance with other applicable requirements; and (4) update language to require that construction applications be submitted electronically.

## Legislative Update

Here are notable pieces of legislation that were recently signed into law by the Governor.

- [\*\*A.4703/S.3293 \(Jenne/Hannon\)\*\*](#): This bill expands the definition of "originating site" for telehealth to include public, private and charter elementary and secondary schools, school age childcare programs, and child day care centers.
- [\*\*A.7796/S.6681 \(Lupardo/Valesky\)\*\*](#): This bill requires State Office for the Aging (SOFA) to develop materials and guidelines on the development of community-based older adult programs for use by local area agencies on aging, not for profits, and community-based organizations that wish to establish programs for seniors in their local communities.
- [\*\*S.5723/A.7737 \(Seward/Cahill\)\*\*](#): This bill amends the time-period for not-for-profit (NFP) health insurers and health maintenance organizations (HMOs) to provide members with notice of the discontinuance of an individual insurance product from 5 months to 90 days. Previous law required NFP health insurers and HMOs to issue a notice of discontinuance of an individual insurance product 5 months prior to the termination of that product. However, commercial insurers and all payers (commercial, NFP and HMO) offering group coverage were required to issue a notice of discontinuance of an insurance product 90 days prior to the termination of that product. This Bill establishes a consistent 90-day notice period for all individual and group insurance products.
- [\*\*S.6676/A.8258-A \(Serino/Lupardo\)\*\*](#): This Bill requires the State Office for the Aging (SOFA), in conjunction with the Department of Health (DOH) and the Office of Children and Family Services (OCFS) to develop guidelines for to assist healthcare providers in the identification of suspected self-neglect, abuse and maltreatment of individuals aged sixty (60) years or older.
- [\*\*A.7279/S.5294 \(Dinowitz/Ranzenhoffer\)\*\*](#): This bill authorizes the Dormitory Authority of the State of New York (DASNY) to finance stand-alone clinical facilities for certain human services organizations for whom DASNY is currently authorized to issue bonds and notes.
- [\*\*A.7584-B/S.2114-B \(Crespo/Seward\)\*\*](#): This bill amends the long term care triggers for qualification for an accelerated death benefit under a life insurance policy by removing the reference to the issuer being a qualified long term care insurance carrier. The bill enables life insurers who are not also long term care insurers to offer an accelerated death benefit rider with a nonpermanent confinement trigger in New York. The previous NYS standard for triggering payment of an accelerated death benefit for long term care services under a life

insurance policy offered by a life insurer that is not also a long term care insurer is requires permanent confinement.

- [A.117-A/S.1314-A \(Cahill/Seward\)](#): This bill amends the insurance law to eliminate the need for insurance agents and brokers to take duplicate continuing education courses for both their individual and agency insurance licenses.

## Calendar

<p><b>Monday, September 18, 2017</b></p>	<p>Regulatory Modernization Initiative Post-Acute Care Management Models Workgroup Meeting #2</p> <p>10:30 am-3:00 pm</p> <p>Meeting Room 6, Empire State Plaza in Albany</p>
<p><b>Tuesday, September 19, 2017</b></p>	<p>Assembly Public Hearing on Adult Care Facilities</p> <p>11:00 am</p> <p>Assembly Hearing Room, 19th Floor, 250 Broadway, New York, NY</p>
<p><b>Thursday, September 28, 2017</b></p>	<p>Assembly Public Hearing on Adult Care Facilities</p> <p>11:00 am</p> <p>Hearing Room, 1st Floor, Senator John H. Hughes State Office Building, 333 East Washington Street, Syracuse, NY</p>
<p><b>Friday October 13, 2017</b></p>	<p>Regulatory Modernization Initiative Integrated Primary Care and Behavioral Health Workgroup Meeting #2</p> <p>10:30 am-3:00 pm</p> <p>Meeting Room 6 of the Empire State Plaza in Albany</p>