

VBP Update

VBP Issues Addressed at Medicaid Policy & Planning Meeting

A number of issues impacting Value Based Payments were addressed at last Thursday's DOHs Health Plan Policy & Planning Meeting. These include:

MLTC VBP Updates

- DOH announced that the only contracts that need to be amended for an MLTC to meet the 12/31/17 deadline for Level 1 VBP (pay for performance) arrangements are contracts between MLTCs and LHCSAs, CHHAs, and SNFs. At least for the time being, dental, vision and DME contracts are not subject to the VBP requirement. In addition, DOH is putting together a separate workgroup to focus on VBP for PACE, MAP and FIDA which are also not subject to the 12/31 deadline.
- The State also announced it would provide an estimated \$5-\$10 million in "new" stimulus funding for VBP. These funds will be included in the October MLTC partial cap rate package to cover plan related contracting expenses. According to DOH, plans that fail to effectuate Level 1 VBP contracts by the January 1, 2018 deadline will have this funding recouped.

VBP Efficiency Adjustments for Mainstream MMC Plans

Last Friday, DOH held a meeting with 3M to discuss how they will provide plans with baselines for efficiency adjustments that will be made to develop premium rates. . DOH mentioned they may reconsider their approach to efficiency adjustments if they are unable to give plans efficiency data with enough time for it to be useful on a prospective basis before efficiency adjustments are made to premiums. This decision does not appear to impact other scheduled VBP rate adjustments, including VBP quality adjustments and VBP stimulus funding.

Social Determinants of Health (SDH) and Community Based Organizations (CBOs)

DOH indicated that they would work on providing some guidance for SDH contracting and contracting with CBOs. DOH is still working on preparing an FAQ document following the SDH and CBO webinar that took place August 24. Liza Misa is the point person at DOH responsible for this initiative.

VBP Workgroup Meeting

The next VBP Workgroup meeting will take place October 2 in Albany.

VBP Measure Feasibility

Meeting materials from VBP Measure Feasibility Task Force have been posted to the VBP webpage, [here](#).

Children’s Clinical Advisory Group Recommendations Posted for Public Comment

The Department of Health has posted of Children’s Clinical Advisory Group Recommendations for public comment. The draft report is available on the DOH website, [here](#).

Comments and questions on the recommendations should be submitted to vbp@health.ny.gov by **September 25, 2017**.

Draft Managed Long Term Care Clinical Advisory Group Report Posted for Public Comment

The Department of Health has posted the Managed Long Term Care (“MLTC”) Clinical Advisory Group Report Draft for 2017 for public comment. The draft report is available in the VBP MLTC folder on the Value Based Payment Resource Library, [here](#).

Comments and questions on the draft should be submitted to mltcvbp@health.ny.gov by **September 25, 2017**.

Medicaid VBP Approaches and Key Design Considerations National Learning Webinar

On **Thursday, October 5, 2017**, from **3:00-4:30 pm**, the Centers for Medicare & Medicaid Services’ (“CMS”) Medicaid Innovation Accelerator Program (“IAP”) will be hosting a state learning webinar on Medicaid value-based payment (“VBP”) approaches, including key considerations when selecting and designing a VBP approach. The Center for Health Care Strategies and NORC will be presenting on the webinar, which will:

- Review the goals of VBP strategies and the Health Care Payment Learning and Action Network’s Alternative Payment Models Framework.
- Detail common Medicaid VBP approaches, such as pay for performance, bundled payments, shared savings/shared risk approaches, and global payments.
- Outline design elements and factors for consideration, such as measure selection, risk adjustment, and attribution, before implementing an approach.
- Describe features of and considerations for implementing VBP in Medicaid managed care programs.

To register and learn more, click [here](#).

Managed Care Policy and Planning Meeting

On Thursday, the Department of Health held the monthly Policy and Planning Meeting with the State's Medicaid Managed Care plans. Some highlights from the meeting include:

- **Mainstream Enrollment**: Statewide enrollment for August was 4,381,873, with 2,594,412 in NYC and 1,789,461 upstate. Statewide enrollment decreased 29,396 since July, with decreases both upstate (12,872) and in NYC (14,524). Only 10% or roughly 3,000 of the decrease can be explained by MMC enrollees transitioning to HARP. DOH speculated about possible causes but was unaware of the specific reasons for the decline. Plans are concerned because they are witnessing a continuation of the decline in their September enrollment. DOH said they would do additional analysis to determine causes.
- **MLTC Enrollment**: Total partial cap enrollment is now at 205,895, an increase of 2,074 from the enrollment reported at last month's meeting (203,5821). Enrollment continues to steadily climb after leveling off in January, February and March, when monthly growth was closer to 1,500 members per month, compared to 2,500 members per month for most of 2015 and 2016. However, this month's increase was 1,000 less than the month prior (3,231), so the rate of growth could be slowing once again. Virtually all new enrollment continues to be in the MLTC partially capitated program, which has 186,626 members, up from 184,843 a month ago and 181,914 just two months prior. Most of this growth continues to be in NYC and Long Island. All MLTC programs experienced month-to-month growth with the exception of FIDA, with MAP (8,356 vs. 8,020), PACE (5,705 vs. 5,686) FIDA (4,610 vs. 4,683) and FIDA IDD (598 vs. 589).
- **Behavioral Health VBP Readiness Program**: \$60 million dollars is being made available to Article 31 and Article 32 community based behavioral health providers to form a select number of behavioral health care Collaboratives (BHCC) and provide infrastructure and capital funds needed to get these providers ready for VBP. The first applicant's webinar was held September 11 and a follow up webinar is scheduled for this Friday to walk through the application. The BHCC application package was finalized and distributed September 15. All VBP Readiness Program funding will be paid through Health First (NYC and LI) and Fidelis (ROS).
- **New Telehealth Incentive for Managed Care Plans**: DOH is in the process of developing a new waiver template to allow mainstream MMC plans to provide telehealth services as an in lieu of benefit. Plans will be required to submit the template waiver within 60 days of its release, outlining their strategic plan to use telehealth services to improve outcomes and reduce costs. To incentivize greater use of telehealth, DOH will award 5 QARR points to plans that implement a meaningful telehealth program. An additional point (6 points total) will be awarded to plans that use telehealth for children less than 3 years of age or for high-risk pregnant women to align with DOH's new "1,000 days initiative". Plans

will be required to report quarterly on the telehealth program and their implementation progress. DOH said they are open to expanding the program to HARP and MLTC.

- Future of Integrated Care Stakeholder Meeting: The next stakeholder meeting is scheduled for October 16 in NYC. A transcript of the first meeting, which took place September 7, will be made available.
- Assisted Living Program (ALP) Transition to Managed Care: The carve-in date has been modified. The new scheduled transition date to bring the ALP population and ALP package of services into mainstream MMC and MLTC is now October 1, 2018 in NYC, Nassau, Suffolk, and Westchester Counties; and January 1, 2019 ROS.
- CDPAS Wage Parity and Authorization Updates: The Division of Long Term Care expects to have the Fiscal Intermediary Authorization process completed by next month. All fiscal intermediaries will have to complete the authorization.
- Cost Reports for LHCSAs and Fiscal Intermediaries: Plans asked about the status of this deliverable. DOH said they are still working on developing these cost reports.
- MLTC Workforce Investment Program: DOH expects to announce approved Workforce Investment Organizations (WIOs) by September 28.

Appellate Court Rejects "13 hour rule" for Non-Residential 24-hour Home Care Attendants

A number of recent court cases have arisen relating to the New York State Department of Labor's ("NYS DOL") interpretation and enforcement of New York's minimum wage law as applicable to 24-hour "live in" home care attendants. The primary issue is the applicability of the NYS DOL residential exception, which provides that residential employees need only be paid for 13 hours of every 24-hour shift ("13 hour rule"), to home care attendants who maintain their own residence and therefore might not actually "live in" the home of his or her employer ("non-residential").

Last week, the Appellate Division, Second Department, in *Andreyeva v. New York Health Care, Inc.* and *Moreno v. Future Care Health Services, Inc.*, rejected the NYS DOL "13 hour rule" as applicable to home care attendants who maintain their own residence, concluding that it is inconsistent with the plain language of DOL regulations requiring payment of at least the minimum wage for all 24-hours of a live-in shift for aides who are not "residential" employees. The court concluded that to the extent the home care attendants are not residential employees who "lived on the premises of the employer", they are entitled to be paid the minimum wage for all 24 hours of their shifts, regardless of whether they were afforded opportunities for sleep and meals. The decision also affirmed the lower court's decision to grant class certification, authorizing a class action lawsuit to move forward.

The Second Department's decisions followed the decision by the First Department, Appellate Division, in *Tokhtaman v. Human Care, LLC*, further undermining the

continued reliance on a 2010 DOL Opinion Letter (RO-09-0169) permitting agencies to pay all “live in” home care attendants for 13 hours of every 24–hour shift. While it is expected that both decisions will be appealed to the New York Court of Appeals, the decisions may require a sea change in home care costs as home care attendants, depending on their living arrangement, may have to be paid for all 24 hours of a "live-in" shift. If upheld, the decision could expose home care agencies to claims for minimum wage, overtime and “spread of hours” pay from all employees that qualified as non-residential while employed as a 24-hour home care attendant. At the moment, both DOH and DOL have preliminarily indicated that current law shall remain in place until the Court of Appeals decides whether to hear either of the cases.

Home Care Agency Minimum Wage Survey Webinar

The Department of Health will be hosting a webinar on the new Home Care Provider Minimum Wage Reconciliation Survey on **Monday, September 18**, from **10:00 – 11:00 am**. To register for the webinar, click [here](#).

The Department has indicated that the purpose of the annual survey is to "reconcile actual Medicaid minimum wage costs to actual Medicaid minimum wage funding distributions. While minimum wage projections have been included in current rates, effective Dec. 31, 2016, those figures will be reconciled using data from the survey. Data from the survey will also be used to assist in determining funding to include in future Medicaid Managed Care and Fee-for-Service rates."

The survey will capture worker wage details, the number of employees impacted by title grouping, contractual relationships between home care agencies and managed care plans, as well as contractual relationships among the home care agencies.

The survey must be completed by Certified Home Health Agencies (“CHHAs”), Licensed Home Care Services Agencies (“LHCSAs”), Long Term Home Health Care Programs (“LTHHCPs”), and Consumer Directed Personal Assistance Service Fiscal Intermediaries (“FIs”)

The Department is requiring that agencies complete a registration process with the state [Office of Pool Administration \(“OPA”\)](#) before providers will be able to complete and submit the new survey.

Health Home Update

MAPP HHTS Release 2.2 Update

Major MAPP HHTS System Issues and Enhancements will be implemented in the upcoming MAPP HHTS Release 2.2 on **October 1, 2017**.

A MAPP HHTS Release 2.2 review session is scheduled for **Tuesday, September 19, 2017** from **2:00 p.m. to 3:00 p.m.** To register for the webinar, click [here](#).

Approved Providers for Enrollment of Early Intervention Children in the Health Home program

The following agencies have been approved for enrollment of Early Intervention children within the Health Home program and the lead Health Home(s) they will be working with.

Approved Provider:	In the Approved Health Home Network of:
Baker Hall Inc dba Baker Victory Services	CHHUNY
Blythedale Children's Hospital	BAHN
Building Blocks Learning Center, LLC	CHHUNY; CNYHHN
CHDFS, Inc	CCF; Mt Sinai
Erie County dba Heritage Centers - NYSARC	OHK ; Encompass
Liberty Resources LLC	CCF; CHHUNY
NY Foundling	CCF
Ohel Children's Home and Family Services	CBC
People, Inc.	OHK
St Mary's Hospital for Children/EI - Extraordinary Pediatrics	CCF; CCMP; HRHCare; Mt Sinai; Northwell

Regulatory Update

Department of Health

All Payer Database (APD)

The Department recently issued a notice of [adopted rulemaking](#) implementing the All-Payer Database (“APD”) data collection and reporting requirements for third-party health care payers. The adopted regulation also establishes DOH audit authority in relation to the quality, timeliness and completeness of APD data submissions. The adopted regulations also outline broad principles for data release.

A number of clarifying amendments were made to the rulemaking originally proposed in the [August 31st, 2016 edition of the NYS Register](#). Amendments include the addition of language making data submission effective on January 1, 2018 to allow the Department additional time to develop the information technology needed to collect data from commercial third party payers. The Department has indicated that, if it does not have

the infrastructure in place to accept submission from commercial payers, it will issue guidance indicating the anticipated implementation and the required compliance date.

Additional amendments incorporated based on public comments include:

- Adding language that allows the collection of APD data in other formats as designated by the Department.
- Adding language clarifying that “post adjudicated claims data” includes payment data.
- Adding language clarifying that, unless permitted by federal law, third party healthcare payers do not include self-insured health plans regulated by ERISA (though self-insured plans may voluntarily participate as a third party healthcare payer)
- Extending the compliance date for submission from 90 days to 120 days.
- Adding language clarifying that a third party healthcare payer must submit 95% of data within 60 days from the end of the month in which the claim was paid.
- Adding language requiring that the Department respond to requests for extensions, variances, or waivers of APD data submission specification requirements as soon as practicable.

Calendar

<p>Monday, September 18, 2017</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>Tuesday, September 19, 2017</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>Wednesday, September 20, 2017</p>	<p>Public Health and Health Planning Council Committee Day</p> <p>10:00 am</p> <p>NYS OASAS Office Building, 501 7th Avenue, 8th Floor, CR 8A and 8B, New York, New York 10018 (located between 37th and 38th Street)</p>
<p>Thursday, September 28, 2017</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>Friday October 13, 2017</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>