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NY State of Health ("NYSOH") Update

Updated Enrollment Figures

The NY State of Health recently provided an update on enrollment in Qualified Health Plans ("QHP") and the Essential Plan. According to the announcement, more than 66,000 **new** enrollees have enrolled in 2018 coverage, including over 23,000 in a QHP and nearly 43,000 in the Essential Plan ("EP"). Total QHP and EP enrollment stands at 876,000, with over 166,000 consumers enrolled in a QHP for 2018 and nearly 710,000 in the Essential Plan.

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Full Meeting of the Public Health and Health Planning Council ("PHHPC")

Assembly Health Committee Updates

NYS Division of Budget

On December 7, the Public Health and Health Planning Council held a full council meeting in NYC. In addition, the PHHPC committees on Public Health, Health Planning, and the Ad Hoc Committee to Lead the Prevention Agenda held meetings on December 6. A copy of the full PHHPC agenda can be found here. Copies of the December 6 meeting agendas can be found here and here.

During the joint meeting of the Public Health Committee and the Health Planning Committee, Department staff presented a proposal to incorporate public health provisions into the certificate of need ("CON") process. The draft proposal was developed from recommendations provided during the September 2017 PHHPC retreat.

The proposal would require that CON applications that are subject to full PHHPC review (with the exception of ambulatory surgery centers and end stage renal dialysis centers) describe how their projects advance the local Prevention Agenda ("PA") priorities identified by the most recent Community Health Improvement Plans ("CHIP") or Community Service Plan ("CSP"). Additionally, CON applications would include provider-type specific questions related to public health activities. For example, hospitals would be required to explain how they are investing community benefit dollars into community health improvement and in DSRIP Domain 4 to support local PA goals. Nursing home, home care, and hospice providers would be required to explain how they are promoting age friendly policies. Primary and Specialty Care clinics would be required to explain their role in the local PA coalition and specific actions taken to support local PA goals.

During the meeting of the Committee on Codes, Regulation, and Legislation, the Department presented on two proposed regulations for adoption (Trauma Centers & Public Water Systems) and two proposed regulations for information only (Revisions to Incorporate the Federal Revised Total Coliform Rule & Hospital Policies for Individuals with Substance Abuse Disorders). The full Council elected to approve both regulations submitted for adoption.

Dr. Ruggee provided that Council with a summary of new policy presented by DOH at the November meeting of the Public Health Committee. The new policy would add eleven additional factors that may be considered in the establishment of end stage renal dialysis ("ESRD") centers. The Department is adding these factors in order to incorporate into the Department's policies and procedures a process for consideration of local factors presented by applicants. This would allow applicants to put forth compelling arguments in support of additional ESRD stations in instances where calculated need projections do not support a recommendation for approval. The Department's proposed modifications were approved by the full Council.

The full Council elected to approve all applications on the EPRC agenda.

The next PHHPC meeting is scheduled for Thursday, January 25, 2018 in NYC.

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VBP Updates

MLTC VBP Finance Update

On Friday, the Department of Health hosted a webinar to discuss Managed Long Term Care (MLTC) VBP finance topics. The presentation focused on MLTC VBP stimulus funding, penalties, and the new MLTC VBP Quality Fund.

As previously announced, DOH is providing $10 million in stimulus funding to MLTC plans to assist plans in achieving 100% VBP contracts with their SNFs, CHHAs and LHCSAs by December

31, 2017. However, stimulus funds will be "clawed back" by DOH if plans do not achieve 100% VBP Level 1 within these contracts. The percentage of plan stimulus that is clawed back will equal the total percentage of plan payments that are not at VBP Level 1, so a plan that reports 90% of their contracts with SNFs, CHHAs, and LHCSAs are at VBP Level 1 will have 10% of their stimulus funding recouped by DOH.

In addition to potential stimulus clawbacks, DOH discussed VBP penalties that will apply if at least 10% of MCO expenditures are not captured in Level 1 arrangements by April 1, 2018. If applicable, a .5% penalty would be applied to the difference between the expenditure amounts not at Level 1 and the target percentage. Both the target percentage and penalty increase next year to a 50% overall VBP Level 1 target and a 1% penalty.

The MLTC VBP Quality Fund is a fixed fund with $50 million tied to performance on the PAH measure that is intended to fund CY 2018 MLTC pay-for-performance through rate adjustments that will not go into effect until the SFY 2020-21 rates. Plans will be placed into tiers based on their PAH scores and the tiers will determine the PMPM adjustment a plan is to receive. DOH said in future years additional measures will be weighted to determine MLTC VBP Quality Funding.

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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:

- Managed Care Plan Rate Reductions: DOH is reducing managed care plan premiums for Mainstream, HARP, and HIV SNP by $75 million gross across the three lines of business for the 6-month period October 2017-March 2018. The stated reason for the reduction is to reflect the new lower cost of Hepatitis C agents and declining utilization. The state has until March 31, 2018 to close out the Medicaid Drug Cap for the current fiscal year, and while it continues to maintain that negotiations are active and progressing, they have yet to refer any drugs to the DURB, despite initial plans to schedule DURB meetings in both October and December.
- Mainstream Enrollment: Statewide enrollment for November was 4,380,595, with 2,588,549 in NYC and 1,736,439 Upstate. Statewide enrollment increased by 1,147. Statewide enrollment is still down 30,853 since July.
- Mandatory Provider Enrollment into MMC: DOH is in the process of obtaining the enforcement date from CMS regarding the Mega-Rule's requirement that all Managed Care network providers enroll in FFS by January 1, 2018. DOH anticipates the enforcement date will be April 1, 2018 but plans should not begin terminating providers until DOH provides guidance on the enforcement date.
- MLTC Enrollment: Now at 214,298, an increase of 2,394 from the enrollment reported at last month's meeting (211,904). 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. This growth continues to eclipse DOH's projections, as so far this year. Virtually all new enrollment continues to be in the partially capitated program, which has 194,455 members, an increase of 2,182 members and 5,384 members just two months ago. 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 (8,928 vs. 8,725), PACE (5,746 vs. 5,737) and FIDA IDD (701 vs. 662). FIDA enrollment continued its decline, with 39 less members than a month ago, and 98 less members than September (4,468 vs.

4,566). There are currently 61 actively enrollment plans statewide, including 29 partial cap plans, 9 PACE plans, 8 MAP, 14 FIDA, and 1 FIDA-IDD.

- FIDA: One plan is moving through the CMS approval process to begin enrollment in Westchester and Suffolk County with an expected target date to begin opt-in enrollment of January 1, 2018. DOH expects to meet with CMS and then stakeholders to begin discussions on the Future of Integrated Care once the stakeholder comment period ends January 12.
- MLTC Workforce Investment Organization: The Department is working on funding allocations for the Workforce Investment Program and anticipates dividing funds among the six DSRIP planning regions. The PowerPoint presented at the meeting indicates that program funds are to be used to "establish and executive enhanced workforce training programs in the home care field" only, though this limitation does not appear to be consistent with the workforce development initiatives or other program parameters as set forth in the WIO applications and recent FAQs.
- Minimum Wage: MCOs were notified on December 1 that the Department is disseminating a weekly survey to ensure plans are reviewing home care provider network contracts and CDPAP FI agreements to account for wage adjustments related to minimum wage.

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Influenza Declared Prevalent, Regulations Implemented

On December 13, 2017, New York State Department of Health Commissioner Dr. Howard Zucker declared that influenza has become prevalent in New York State. As a result, facilities subject to the New York State influenza prevention regulations (Part 2.59 of Title 10 NYCRR) must implement their policies and procedures to ensure that all non-vaccinated personnel wear a surgical or procedure mask ("masks") while in areas where patients or residents are typically present and engage in activities in which they could expose patients to the flu if infected. The requirement for non-vaccinated personnel to wear "masks" remains in effect until the Commissioner declares that influenza is no longer prevalent in New York State.

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UHF Publishes Report on NYS Small Group Market

The United Hospital Fund recently published a report suggesting that New York's small group insurance market is showing signs of distress. Enrollment dropped from about 1.7 million enrollees in 2007 to 1.1 million in 2016. In that time, average monthly premiums ($600) were 39% higher than in 2014, and 35% higher than the national average ($440). The report suggests that the decline in enrollment was, in part, due to declining offer rates by smaller private sector employers, while the higher premiums may be the result of the declining health status in the small-group risk pool.

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Home Care and Adult Day Health Universal Billing Codes Delayed

The NYS Office of Health Insurance Programs ("OHIP") recently sent a letter informing health plans and providers of the Department of Health's decision to delay the implementation of universal billing codes for home and community based long term care services claims until **April 1, 2018**.

The universal billing requirement was established in the SFY 2015-16 budget, which requires that universal billing codes be approved by the Health Department and be consistent with any codes developed as part of the uniform assessment system ("UAS") for long term care established by the Department.

The letter includes a listing of the final set of universal codes for Long Term Care Services with respective modifiers (Attachment A) and Adult Day Health Care with respective modifiers (Attachment B).

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Managed Care Minimum Wage Guidance

The Department of Health has issued a brief guidance on minimum wage coverage for managed care organizations ("MCOs"), mainstream and managed long term care ("MLTCs"), and providers. The guidance notes that directives from previously released minimum wage guidance for SFY 2016-17 apply for SFY 2017-18 and reiterates that, pursuant to statute, Minimum Wage funding may be utilized only to pay providers to meet their Minimum Wage obligations (including the direct salary costs and related fringe benefits of minimum wage and wage parity amounts).

The guidance also notes that the Department has added increased funding for minimum wage compliance uniformly to MCO regional rates for SFY 2017-18. Accordingly, it directs that the additional funds flowing to MCOs be paid out entirely to providers and subsequently to workers for appropriate statutory wage obligations.

Additionally, the guidance directs MCOs and providers to finalize at contract negotiations **one week before December 31, 2017**, when the required increased wage levels go into effect. In anticipation of this deadline, contract negotiations should commence as soon as possible.

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LTC Workforce Investment Organization Update

The Department of Health has published a Long Term Care Workforce Investment Organization ("LTC WIO") & Plan draft agreement language document and related Appendix. The Department has advised that these documents should not be considered a template, but an outline that includes the essential elements to be incorporated in the agreements executed by LTC WIOs and Plans.

A list of designated LTC WIOs by region, along with the point of contact for each can be found here. MLTC Plans should consider LTC WIO diversities in determining the LTC WIOs best suited for the needs of their workforce when developing partnerships. **MLTC Plans may form partnerships with multiple LTC WIOs and are encouraged to reach out to the LTC WIOs of interest directly.**

Questions and comments should be sent to MLTCWorkforce@health.ny.gov. More information about this program can be found here.

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November 2017 Medicaid Update

DOH has released the November 2017 edition of its monthly Medicaid Update publication.

Some of the highlights include:

- A New Tool for Healthcare Providers Who Prescribe Antibiotics: NYSDOH Issues Antibiotic Pocket Guide during "US Antibiotic Awareness Week": The Department of Health issued a new pocket guide to help healthcare providers optimally prescribe antibiotics. The pocket guide explains clinical treatment guidelines and includes recommendations for both adult and pediatric patients. Adult conditions include acute rhinosinusitis, acute uncomplicated bronchitis, common cold/non-specific upper respiratory tract infection (URI), pharyngitis, and acute uncomplicated cystitis. Pediatric conditions include acute rhinosinusitis, acute otitis media, pharyngitis, URI, bronchiolitis, and urinary tract infections (UTI).
- Medicaid Pharmacy Prior Authorization Programs Update: On October 19, 2017, the New York State Medicaid Drug Utilization Review ("DUR") Board recommended changes to the Medicaid pharmacy prior authorization programs. The Commissioner of Health has reviewed the recommendations of the Board and has approved changes to the Preferred Drug Program (PDP) within the fee-for-service (FFS) pharmacy program. Effective **December 14, 2017**, prior authorization (PA) requirements will change for some drugs in the following PDP classes: Anti-Emetics, Glucocorticoids – Oral, and Hepatitis C Agents – Direct Acting Antivirals. Also, effective **December 14, 2017**, the fee-for-service pharmacy program will implement parameters recommended by the DUR Board regarding Atopic Dermatitis and Rosacea management. For more information, click here.
- Reminder: Authorized Agents for Prior Authorizations of Prescription Drugs: Health care providers are required to complete the prior authorization (PA) process for various reasons including prescribing a drug for which there is an equally effective lower cost alternative, safety concerns, and/or a potential for inappropriate use. In all cases, prescribers will need to provide their clinical rationale for why the drug should be covered. Only the prescriber or the authorized agent may request a PA. PA requests need to be approved and validated through the Clinical Call Center at 1-877-309-9493. Prescribers may not contract with or assign authority to dispensing pharmacists to handle his/her PA requests. This would be considered "patient steering." The patient must be given a choice of where to get their medications or supplies. Federal law prohibits limiting a Medicaid beneficiary's freedom of choice except under certain circumstances including but not limited to recipient restriction. For more information, click here.
- New York State Medicaid Reimbursement for Pasteurized Donor Human Milk: The July 2017 Medicaid Update advised providers that in accordance with the 2017-2018 state budget, pasteurized donor human milk ("PDHM") is a covered Medicaid benefit for inpatient use. NYS Medicaid fee-for-service ("FFS") and Medicaid Managed Care ("MMC") will begin reimbursing for PDHM, outside of the inpatient bundled payment, **effective December 1, 2017** for FFS and **February 15, 2018** for the MMC plans. For more on information on how to bill Medicaid for the inpatient use of PDHM, click here.
- New York State Medicaid Will Begin Covering Tisagenlecleucel: NYS Medicaid FFS and MMC will begin covering tisagenlecleucel (brand name KYMRIAH™) for members who have a diagnosis of acute lymphoblastic leukemia ("ALL") when the member meets the criteria outlined here. The coverage policy is effective **December 1, 2017** for FFS and **February 15, 2018** for MMC. To view the coverage policy and billing guidelines, click here.
- Compliance Certification Reminder: Federal Deficit Reduction Act of 2005: The NYS Office of the Medicaid Inspector General ("OMIG") is reminding all providers subject to the compliance certification requirements that Federal Deficit Reduction Act (DRA) certification begins **December 1** for the federal fiscal year ending September 30, 2017.

The DRA Certification Form and Frequently Asked Questions pertaining to the DRA certification obligation are available on OMIG's website, here. A webinar detailing compliance certification obligations can be found here.

- Self-Disclosure of Medicaid Overpayments: The NYS Office of the Medicaid Inspector General ("OMIG") has updated the information on its website regarding the self-disclosure of Medicaid overpayments to better assist providers with the reporting of Medicaid overpayments. To view these updates or learn more about how to self-disclose a Medicaid overpayment, visit the site, here. Updates include:
    - A comprehensive overview of what a self-disclosure is, and the statutes and regulations that require the reporting of Medicaid overpayments;
    - A new, convenient, easy-to-complete self-disclosure form;
    - Easy-to-follow self-disclosure submission information and secure file transfer instructions; and
    - A submission checklist with Frequently Asked Questions.

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Final Draft Transition Plan for the Children's Medicaid System Transformation

The presentation from the December 4, 2017 webinar reviewing the Final Draft Transition Plan for the Children's Medicaid System Transformation has been posted to the transformation webpage for public viewing.

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HCBS Training Webinar

Last month, the Department of Health conducted a training session for provider staff to provide information on "Achieving Community Integration." This training included an overview of the foundational beliefs of person-centered thinking, staff roles in person-centered thinking, and planning and the LifeCourse framework.

A recording of this webinar can be accessed here.

Public Consulting Group ("PCG") has collected follow-up questions on behalf of DOH and will conduct a follow-up webinar on **Wednesday, December 20, 2017,** at **2:30 p.m**. to address these questions.

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New Bureau of Social Determinants of Health

The Office of Health Insurance Programs ("OHIP") has announced the establishment of the Bureau of Social Determinants of Health within the Division of Program Development and Management (DPDM).

According to the Department, the Bureau of Social Determinants of Health will focus on special social determinants of health ("SDH") initiatives including but not limited to supportive housing, nutrition, and education. The bureau will work closely with Performing Provider Systems ("PPSs"), VBP contractors, Health Plans, and Providers. It will also enhance the role of Community Based Organizations ("CBOs") within the health care sector.

The eleven-person bureau will be led by Denard Cummings, and will report to Elizabeth Misa, Deputy Medicaid Director.

Questions may be sent to mrtsupportivehousing@health.ny.gov.

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Regulatory Updates

Department of Health

The New York State Department of Health announced the filing of regulations for adoption that will expand the state's Medical Marijuana Program in a number of ways. Modifications to the Program will include:

- **Expansion the Variety of Medical Marijuana Products:** The new regulations will allow registered organizations ("ROs") to expand the variety of medical marijuana products produced to include topicals, such as ointments, lotions and patches; solid and semi-solid products, including chewable and effervescent tablets and lozenges; and certain non-smokable forms of ground plant material. All products will be subject to testing, and the Department reserves the right to exclude inappropriate products or those which pose a threat to public health.
- **Enhancement of Dispensing Facility Experience:** The new regulations will also allow prospective patients and practitioners to enter dispensing facilities to speak directly with RO representatives, learn about products and get information about the medical marijuana program. In addition, people other than designated caregivers may accompany patients to dispensing facilities.
- **Streamlined Training Program for Practitioners:** Under the new regulations, practitioners will be able to take a two-hour version of the currently available four-hour courses required to certify patients for medical marijuana.
- **Other Regulatory Actions:** The new regulations will streamline the manufacturing requirements for medical marijuana products, broaden the capability of registered organizations to advertise, amend security requirements, and clarify laboratory testing methods.

According to the announcement, these regulations will go into effect on December 27, 2017.

The Department previously announced the introduction of these regulations in August, and they were published in the August 23, 2017 edition of the *NYS Register*.

Department of Financial Services

Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets

The Department of Financial Services recently extended emergency rulemaking creating a supplemental risk adjustment mechanism for the small group market. The changes, which relate to family tiers and using MLR instead of statewide average premium in determining risk adjustment, will result in those plans receiving federal small group risk adjustment funds receiving approximately 25-30% less in RA funds and those payers of risk adjustment funds paying 25-30% less into the RA pool. The extended emergency rulemaking contains no changes from the initial emergency adoption published in the September 28, 2016 edition of the *New York State Register*.

The Department intends to adopt the provisions of this emergency rule on a permanent basis, and previously published a notice of proposed rulemaking in the May 3, 2017 issue of the *NYS Register*.

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Legislative Spotlight

Bills that have passed both houses of the Legislature continue to be delivered to the Governor. Once a bill has been delivered to the Governor, he has 10 days (excluding Sundays) to either sign the bill into law or veto the bill.

The following bill was recently **signed into law** by the Governor:

- **A.2702/S.787-A (Gottfried/Alcantara):** This Bill requires an operator of an adult home, enriched housing program or assisted living residence to report to the Department of Health any death or attempted suicide of a resident, as well as any incident that the operator believes or reasonably should believe would constitute a felony, within 24 hours of its occurrence. The bill is a near codification of current regulatory requirements.

The following bills are scheduled to be acted on by the Governor by midnight tonight:

- **A.7727-A/S.5840 (Lupardo/Hannon):** This Bill creates a certificate of need ("CON") process for assisted living program ("ALP") beds based on demonstrated community need. The Bill allows existing ALP providers to add up to nine (9) beds/ 5 years through an expedited review process. The Bill also allows the Director of Budget to place a moratorium on the issuance of new beds if it is determined that additional ALP beds would result in a net negative fiscal impact to the Medicaid program.
- **S.5544/S.7216 (Hannon/Gottfried):** This Bill amends the effective date of the authorization process for fiscal intermediaries (FIs) under the Consumer Directed Personal Assistance Program ("CDPAP") established in the 2017-18 state budget. The Bill would establish the effective date as January 1, 2018 for the requirement that all FIs be authorized by the Department in order to operate as an FI. The Bill authorizes FIs operating as of April 1, 2017 to continue to operate until April 1, 2018 without authorization.
- **S.5661-B/A.7763 (Little/Gottfried):** This Bill establishes an Enhanced Safety Net Hospital Program that requires the Department of Health to adjust Medicaid rates for enhanced safety net hospitals to support critically needed health care services and the continued operation of such hospitals. The definition of "enhanced safety net hospital" is based on ratios of patients served who are either enrolled in Medicaid or uninsured, as well as public hospitals, State University hospitals, and federally designated sole community and critical access hospitals.
- **S.5662-A/A.6408-A (Valesky/Dinowitz):** This Bill codifies the current Medicaid payment rate for hospice residences be equal to ninety-four percent (94%) of the weighted average of the weighted average medical assistance fee for service rate reimbursed to nursing homes in the managed long-term care ("MLTC") region that the hospice residence is located. The Bill further provides for an efficiency factor enhancement (10%) to the rate.
- **S.6012/A.7866 (Seward/Gottfried):** This Bill permanently excludes school-based health centers (SBHC) from Medicaid Managed Care. The "carve-in" is currently scheduled for July 1, 2018.
- **S.6496-A/A.8141-A (O'Mara/Cymbrowitz):** This Bill prohibits insurers and managed care plans from including any financial or other benefits related to dental

services that are not expressly covered benefits under the contract. Specifically, the Bill prohibits insurers from including discounts or specific prices for dental services that are not covered under the policy.

- **S.6559/A.8338 (Hannon/Gottfried):** This Bill reinstates the nursing home reimbursement for "reserved bed days" when a nursing home is required to hold a resident's bed while they are temporarily hospitalized. The Bill repeals the elimination of reimbursement of hospital bed holds which was scheduled to go into effect in 2017.
- **S.6689/A.7922-A (Amedore/Steck):** This Bill requires Medicaid managed care providers to offer to include in its pharmacy network any not-for-profit (NFP) pharmacies operated by a college that serves low income individuals and is located in a zip code in which the managed care provider has enrollees. The Bill requires that the NFP pharmacy be paid the same reimbursement amount as other pharmacies participating in the pharmacy network.
- **S.6732/A.6715-B (Serino/Brindisi):** This Bill increases the Supplemental Social Security Income (SSI) rate adult care facilities receive for eligible individuals receiving enhanced residential care by $20.00 per day. The increase will be phased in $4.00 per day increments over five-year period beginning April 1, 2018.
- **S.6768/A.1842-B (Flanagan/Morelle):** This Bill requires all Registered Nurses (RNs) to receive a bachelor's degree in nursing (or higher) within 10 years of initial licensure as RN in order to continue to be licensed as an RN in New York. The requirements of this Bill do not apply to currently licensed RNs, all current students enrolled in, or on a waiting list for, a baccalaureate or higher degree nursing program.
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Upcoming Calendar

Monday December 11, 2017,	Assembly Public Hearing on Housing For Individuals With A Mental Illness Or Developmental Disability 10:00 a.m. Legislative Office Building, Hearing Room C, Albany, NY
Tuesday, December 12, 2017	Assembly Public Hearing on Adequacy of Funding for Prevention, Treatment, and Recovery Services 1:00 p.m.

	Assembly Hearing Room, 19th Floor, 250 Broadway, New York, NY
Tuesday, December 12, 2017	Regulatory Modernization Initiative – Long Term Care Need Methodologies and Innovative Models Workgroup 11:00 a.m. to 1:30 p.m. Empire State Plaza, Meeting Room 6, Albany, NY

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