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## Budget Update

### Executive Budget 30 –Day Amendments

On February 15, Governor Cuomo released formal amendments to his 2018-19 Executive Budget, referred to as “30-day amendments”. The Governor has included a number of substantive revisions in the amendments, the most significant of which relate to the voluntary payroll tax, municipal charitable contributions and uncoupling of state and federal tax deductibility all of which are designed to provide some relief to New Yorkers who are negatively impacted by the new federal cap on the deductibility of State and local taxes (“SALT”). In relation to the health care industry, the Governor included a number of amendments to proposals contained in the Executive Budget and four new proposals that have recently been announced. The following amendments and proposal affect the health care industry:

- **Health Insurance Windfall Profit Fee.** The Governor has amended the Executive Budget proposal to: (1) expressly include Medicaid Managed Care (MMC) plans under the proposal; and (2) move responsibility for processing the surcharge from the Department of Financial Services (DFS) to the Department of Taxation and Finance while authorizing Tax and Finance to delegate responsibilities to DFS.
- **Child Health Insurance Program (CHP) Funding.** The Governor has amended the appropriation language for CHP to remove federal contingency language, which is no longer necessary as CHP has been funded by the federal government through September 2027. The appropriation language had authorized the Commissioner of Health to identify programmatic changes needed to align the program with funding levels.

- **Care at Home Waiver.** The amendments remove the proposal contained in the Executive Budget that would have extended the authority of the Department of Health to continue the Care at Home waivers, which allow disabled children with nursing home level of care to receive services at home, through December 31, 2024.
- **Authorize Pharmacists to Administer Flu Vaccines to Children Ages 2 to 18.** The amendments include a proposal that would codify in statute the recently adopted Executive Order that temporarily allows pharmacists to administer flu vaccines to children ages 2 to 18. The legislation would permanently repeal the section of the state Education Law that limits the authority of pharmacists to administer immunizing agents to anyone under age 18. The proposal also extends through 2019 the authority of pharmacists to administer vaccines for acute herpes zoster, meningococcal, tetanus, diphtheria, and pertussis.
- **Provision of Flu Vaccines to Children Regardless of Ability to Pay.** The amendments include a new proposal that would enable pharmacies to enroll in the New York State Vaccines for Children Program, which is a federally-funded program that provides vaccines at no cost to children that are eligible. Vaccines for Children providers must screen each child for eligibility to receive VFC vaccine and document the results at each immunization visit. VFC vaccine may not be administered to children who are not VFC-eligible.
- **Physician Misconduct Crackdown.** The amendments include a new proposal that would authorize the Commissioner of Health to order those charged with a felony related to their medical practice whose alleged conduct may present a public risk to immediately stop practicing medicine, and to obtain a warrant to search an accused physician's home, office and belongings. The order to stop practicing medicine would remain in place until the conclusion of a hearing, which must occur within 90 days of the suspension. The proposal also reduces the time period for physicians to respond to the Commissioner's request for relevant information from 30 days to 10 days in relation to a complaint about professional misconduct.
- **List of Controlled Substances.** The amendments include a new proposal to expand the State's controlled substance list to include Synthetic Cannabinoids (K2) and Synthetic Fentanyl.
- **Collaborative Drug Therapy Management.** The amendments remove the existing sunset provision for the definition of the practice of pharmacy to include collaborative drug therapy management provided in accordance with the provisions of the Collaborative Drug Therapy Management Demonstration Program. However, the amendments retain the sunset provision for the authorization and structure of the Collaborative Drug Therapy Management Demonstration Program, which establishes the parameters for pharmacists to provide collaborative drug therapy management under the definition of the practice of pharmacy (expiring in 2018).

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## New York State of Health (“NYSOH”) Update

### Special Enrollment Period for Hurricane Victims

The NYSOH recently [announced](#) a special enrollment period (“SEP”) for individuals who relocated to New York State from Puerto Rico and the U.S. Virgin Islands because of a hurricane. The special enrollment period will run through **March 31, 2018**.

In order to establish eligibility for the SEP, individuals must attest that:

- They relocated to New York State from an area affected by a 2017 hurricane-related weather event;

- They were unable to complete a 2018 Exchange enrollment during the 2018 Annual Open Enrollment Period.

### **2018 Open Enrollment Figures**

The NYSOH has published a [press release](#) touting open enrollment numbers through the conclusion of the 2018 Open Enrollment Period, which ended on January 31<sup>st</sup>.

As of January 31, 2018, the NYSOH enrollment breakdown is as follows:

- Qualified Health Plan: 253,102
  - 149,000 (59%) enrolled with financial assistance
  - 104,000 (41%) enrolled without financial assistance
- Essential Plan: 738,851
- Child Health Plus: 374,577
- Medicaid Enrollment through NYSOH: 2,965,863

The NYSOH has indicated that additional demographic and health plan specific information for the 2018 Open Enrollment Period will be available in the coming weeks.

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## **Full Meeting of the Public Health and Health Planning Council (“PHHPC”)**

On February 8, the Public Health and Health Planning Council held a full council meeting in NYC. A copy of the full PHHPC agenda can be found [here](#).

During the Health Planning portion of the meeting, the Committee recommended for approval an application by St. Joseph’s Hospital Health Center for a stroke center designation. Representatives from the Department of Health were on hand to inform members of the Committee that they are considering an update to the stroke center qualifications. The Department indicated that the current qualifications are not adequate to keep up with the evolving stroke care clinical guidelines. Many hospitals in the state are, instead, electing to achieve stroke certifications from various other national bodies which have more stringent program requirements. New stroke center qualifications may require that designated stroke centers maintain accreditation with an outside agency.

Department of Health Commissioner Zucker provided the PHHPC with an update on Departmental activity, which included various health related items included in the Governor’s State of the State address. He highlighted the proposal to implement the women’s agenda as it relates to maternal mortality. The Department will be launching a new maternal mortality review board, which will analyze each maternal death and develop actionable recommendations to reduce mortality and morbidity rates. Dr. Zucker also noted that while the Governor’s proposal to consolidate a number of public health programs into broader pools to achieve efficiencies, many programs will not be impacted by the reductions. Dr. Zucker also informed the PHHPC that \$700 million in capital has been awarded to a new unified health system, One Brooklyn Health, which is made up of three hospitals (Brookdale, Interfaith, and Kingsbrook Jewish) to modernize all health services in the area.

Dan Sheppard, from the Office of Primary Care and Health Systems Management (“OPCHSM”), highlighted a number of items that were included in the Governor’s Executive Budget Proposal. Budget proposals that originated from recommendations of the Regulatory Modernization Initiative include the integration of primary care, mental health, and substance use disorder

services under a single license, the expansion of telehealth to include the home as an originating site, and the establishment of a community paramedicine program. Other items related to health systems reform included in the budget include the establishment of retail clinics in NYS, the expansion of Assisted Living Program (“ALP”) beds, and another round of healthcare system transformation capital funding with a focus on long-term care.

Members of the PHHPC had a number of questions related to the community paramedicine budget proposal. In response Mr. Sheppard clarified that the proposal would not expand the scope of services that emergency medical technicians (“EMTs”) are authorized to provide. Instead, it would simply allow them to perform already authorized services in a non-emergent setting, subject to collaboration arrangement with local hospitals and medical providers. While Mr. Sheppard was not able to expound on how EMTs would be reimbursed for their services, Dr. Bennett suggested that most insurers would likely be in support of such a proposal, as it would serve to reduce unnecessary hospitalizations and reduce costs. He did caution, however, that the proposal should be shared with other stakeholders to avoid any unintended consequences.

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

The next PHHPC meeting is scheduled for Thursday, March 22, 2018 in Albany.

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## **DSRIP Updates**

### **Opt-Out Mailing to Resume February 2018**

The Department has indicated that it will resume a mailing to new Medicaid members explaining the DSRIP program and the option to “opt out” of PPS sharing of member data with provider partners. The last mailing of this nature was done in August 2016 and did not continue due to vendor procurement processes. Any new members since that time have been marked to not have their data shared until a new mailing to notify them of the choice to opt-out could be completed.

The [mailing](#) will begin the week of February 19, 2018. Approximately 2 million Opt-Out letters will be sent to Medicaid members who became eligible since August 2016. Smaller mailings to new members as they become eligible for Medicaid will continue monthly through 2019.

More information on the “opt out” process can be found in the Department produced [webinar](#) and [FAQ document](#).

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## **VBP Updates**

### **2018 PPS Tier 1 CBO Survey Results**

The [results](#) from the 2018 PPS Tier 1 Community Based Organization (“CBO”) Surveys have now been posted [here](#).

PPSs were asked to complete the survey to provide updated information regarding contracting with organizations meeting the Tier 1 definition of a CBO. The survey includes 1<sup>st</sup> level distribution of funds to CBOs (PPS-to-CBO funds flow) and 2<sup>nd</sup> level distribution of funds to CBOs (PPS to “hubs” or other contracted entities that then contract and/or distribute funds to CBOs) for DSRIP purposes.

## **VBP Measurement Year 2018 Quality Measure Sets for MAP, FIDA, and PACE**

The VBP quality measure sets for Medicaid Advantage Plus (“MAP”), Fully Integrated Duals Advantage (“FIDA”), and Programs of All-Inclusive Care for the Elderly (“PACE”) programs for measurement year 2018 have been posted. These documents contain the quality measures recommended for use in VBP.

The quality measure sets can be found in the VBP Quality Measures folder of the VBP Resource Library [here](#).

### **2018 VBP Arrangement Fact Sheets**

The 2018 VBP Arrangement Fact Sheets for the Total Care for the General Population ([TCGP](#)), Integrated Primary Care ([IPC](#)), Health and Recovery Plan ([HARP](#)) Subpopulation, [HIV/AIDs](#) Subpopulation, and [Maternity Care](#) Arrangements have been posted.

The Measurement Year 2018 Fact Sheets provide an overview of the New York State Medicaid Value Based Payment Arrangements, including a high-level description of:

- Types of care included in the arrangement,
- Method used to define the attributed population for the arrangement,
- Calculation of associated costs under the arrangement, and
- Quality measures recommended for use in the arrangement.

The quality measure sets can be found in the VBP Resource Library under the “VBP Arrangement Fact Sheets” tab, [here](#).

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## **NYS Medicaid DURB Board Meeting**

On Thursday, the Drug Utilization Review (“DURB”) Board met in Albany. The purpose of the meeting was to recommend clinical criteria and/or interventions for second-generation antipsychotic duplicative therapy, sedative hypnotic therapy duration, codeine/tramadol safety evaluation, and Methadone evaluation in pain management.

The final DURB recommendations are below for your review.

<b>Class</b>	<b>Criteria/Intervention</b>
<b>Sedative Hypnotics</b>	Duration limit for zolpidem IR products: 30-day supply with 5 refills (180 days)
<b>Codeine Tramadol</b> <b>and</b>	Educational letter to provides(s) through retrospective drug utilization review (RetroBUR) highlighting the updates to the prescribing information for codeine- and tramadol-containing products
	Prescriber involvement required for all tramadol and codeine-containing products for members younger than 12 years of age
<b>Methadone</b>	For members initiating methadone: Confirm diagnosis for chronic non-cancer pain
	Step Therapy: Trial with a long acting opioid prior to the initiation of methadone therapy for the management of chronic non-cancer pain

<b>Second Generation Antipsychotics (SGA)</b>	Informational intervention letter: Targeted letter to providers with history of prescribing 3 or more different oral SGAs for greater than 90 days
	Duration limit: Prescriber involvement required for utilization of 3 or more different oral SGAs for greater than 180 days

### **Medicaid Drug Cap Update**

Representatives from the Department of Health were on hand to provide the DURB with an update on the status of the Medicaid Drug Cap for 2018. Projections through the second quarter suggest that the cap will be exceeded by approximately \$119 million. Despite this projection, Department officials indicated that overall spending for 2018 is likely remain under the cap. The Department has identified 30 drugs from 15 manufacturers that are at risk for DURB referrals for supplemental rebates. The Department initiated negotiations with these manufacturers to achieve necessary savings to remain under the cap. To date, six new drug cap rebate agreements have been reached and twelve new drug cap rebate agreements are currently in negotiation. Spending for the remaining 12 drugs is projected to be decreased through other market changes, such as moving volume to new lower prices drugs, driving down costs, or increased OBRA rebates.

The next meeting of the DURB will take place in April. Agendas for DURB meetings are usually posted 30 days in advance on the [DOH website](#). The Medicaid Drug Cap requires thirty days publication notice before a drug can be reviewed by the DURB for a recommendation for supplemental rebates.

A fourth set of Medicaid Drug Cap Frequently Asked Questions (“[FAQs](#)”) have been posted to the DOH website, [here](#). The new FAQs address general questions as well as those related to statutory provisions and the August 31st, 2018 [Drug Cap webinar](#).

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### **Managed Care Policy and Planning Meeting**

The Department of Health recently held the monthly Policy and Planning Meeting with the State’s Medicaid Managed Care plans. Some highlights from the meeting include:

- **Mandatory Provider Enrollment into MMC:** DOH is in the process of developing guidance for MCOs regarding mandatory provider terminations and other actions that may be taken with respect to network providers who fail to enroll in FFS in accordance with the Medicaid Managed Care Federal Regulation 42 CFR 438 (“Mega Rule”). Federal financial participation will continue to be made by CMS for dis-enrolled providers until July 1, 2018, which makes this DOH’s “drop dead” date for termination or non-payment. DOH will be hosting a call with State Provider Associations to share information about this requirement and the consequences for not enrolling in FFS.
- **Mainstream Enrollment:** Statewide enrollment for December was 4,367, 924, with 2,587,145 in NYC and 1,780,779 Upstate. Statewide enrollment decreased December to January by about 24,000 enrollees.
- **MLTC Enrollment:** Now at 219,392, MLTC enrollment continues to outpace projections. Enroll growth from December to January was 2,626. Virtually all new enrollment continues to be in the partially capitated program, which has 199,442 members, an increase of 2,583 members. All MLTC programs experienced month-to-month growth with the exception of FIDA, with MAP (9,243 vs. 9,057), PACE (5,733 vs. 5,726) and FIDA

IDD (737 vs. 719). FIDA enrollment continued its decline, with 168 less members than a month ago with 4,237 members.

- CFCO: The Community First Choice Option (CFCO) carve-in is still scheduled for April 1, 2018, although DOH indicates that this implementation includes only the identification of CFCO eligible members. However, questions were raised about current coverage of supervision and oversight services. DOH said they would take this issue back for review and provide additional guidance to plans.
- MLTC VBP: The State shared that as of January 31<sup>st</sup>, 88% of LHCSA, 67% of SNF, and 57% of CHHA contracts statewide had been successfully converted to VBP Level 1 arrangements.

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## January 2018 Medicaid Update

DOH has released the January 2018 edition of its monthly [Medicaid Update](#) publication.

Some of the highlights include:

- Patient Centered Medical Home Statewide Incentive Payment Program: Revised Incentive Payments and Updated Billing Guidance: Effective **May 1, 2018**, in accordance with the 2018-2019 proposed State budget, NYS Medicaid is proposing to change the reimbursement amounts for providers working at practices that are recognized as a Patient Centered Medical Home (PCMH) by the National Committee for Quality Assurance (NCQA). If the proposed budget is adopted as proposed, changes will be made to the MMC per member per month (PMPM) amounts and the FFS 'add-on'. For a summary of these changes, click [here](#).  
Also, beginning **July 1, 2018**, the PCMH incentive payments will be modified (increased from the temporary two-month reduction) to align with the principles of Value Based Payments (VBP). The Department anticipates that later this year, the incentive will be tied to whether providers have a VBP contract (Level 1 or higher). Projected rates for the MMC PMPM range from \$5.00-\$6.00 for providers with a VBP contract, and around \$2 for those without. For more information, click [here](#).
- New York State Medicaid Will Begin Covering Axicabtagene Ciloleucel (YESCARTA™): Medicaid fee-for-service ("FFS") and Medicaid Managed Care ("MMC") will begin covering axicabtagene ciloleucel (brand name YESCARTA™) for members who have a diagnosis of B-cell lymphoma, when the member meets certain criteria. This coverage policy is effective **February 1, 2018** for FFS and **April 1, 2018** for MMC. For the Medicaid coverage policy and billing instructions, click [here](#).
- Reminder: Payment Policy for Global Surgery Periods: NYS Medicaid follows Medicare rules on billing and payment during global surgery periods, also known as follow-up days or post-operative periods. For an overview of global surgery billing practices, click [here](#).
- Medicaid FFS Pharmacy Change in Early Fill Edit for Controlled Substances: **Effective February 22, 2018**, the pharmacy early fill edit will be adjusted for controlled substances and will decrease early fill parameters based on days' supply on hand in an effort to further reduce overutilization, stockpiling and/or diversion of drugs. This more stringent edit will deny a claim for a controlled substance, if more than a 7-day supply of the medication is remaining of the cumulative amount that has been dispensed over the previous 90 days. This supersedes previous guidance in the [March 2015 Medicaid Update](#), for early fills of controlled substances only. For more information, click [here](#).
- Changes to Medicaid FFS Pharmacy Reimbursement to Be Implemented February 22, 2018: Starting February 22, 2018 there will be three notable changes to Medicaid FFS pharmacy reimbursement. First, the FFS ingredient cost and professional dispensing fee will be updated as per the 2017-2018 enacted budget. Once these changes have been implemented, a determination will be made on how to process retroactive adjustments

back to April 1, 2017. Secondly, 340B drug claims submitted via the Medicaid FFS National Council for Prescription Drug Programs (“NCPDP”) D.o 340B format need to be properly identified as 340B and submitted at the 340B acquisition cost. Effective February 22, 2018, editing will be put in place that will require a pharmacy to submit three fields when identifying an NCPDP pharmacy drug claim as 340B. Additionally, editing will check the ingredient cost submitted against the drug’s 340B ceiling price as defined by the Health Resources and Services Administration (HRSA). Thirdly, effective February 22, 2018, the Department will be implementing changes to improve the submission of Medicaid FFS pharmacy claims for Long Term Care (LTC) pharmacy providers with the addition of supplementary Submission Clarification Codes in field 420-DK. For more information on the above changes, click [here](#).

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## **eMedNY Update**

### **New Address for Submitting Additional Information for Claims**

Effective **February 7, 2018**, the below request types should be mailed to New York State Department of Health, 431B Broadway, Menands, NY 12204-2836

- Requests for waiver of the regulation regarding submission of claims greater than two years from the date of service. (Attn: Two Year Claim Review)
- Dental Reviews (Attn: Dental Review)
- Pended claims (edits 00127, 01283, 02015 & 02255) waiting for remittance advice (Attn: Medical Pended Claims)

For more information on these processes, refer to the [Information for All Providers General Billing Guidelines](#) available on the [eMedNY webpage](#).

### **Training Seminars and Webinars**

The eMedNY [Training Schedule](#) for February and March is now available and registrations for seminars and webinars are currently being accepted.

Some of the topics offered include:

- ePACES for Dental, DME, Free Standing and Hospital Based Clinics, Institutional, Professional (Real-Time), Physician, Private Duty Nursing, and Transportation
- Medicaid Eligibility Verification System (MEVS)
- eMedNY Website Review
- New Provider/ New Biller

eMedNY training seminars are being held at the following locations:

- Canandaigua
- East Syracuse
- Hauppauge
- Poughkeepsie
- Rensselaer
- Utica
- Warsaw

eMedNY also offers training webinars. Click [here](#) to view the training schedule and register.

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## Regulatory Updates

### Department of Health

#### Medicaid Reimbursement of Nursing Facility Reserved Bed Days for Hospitalizations

The Department of Health recently issued a notice of [proposed rulemaking](#) that would clarify that the obligation to reserve a bed during a Medicaid recipient's temporary absence due to hospitalization applies to the same bed the resident had prior to the hospitalization and such reserved bed is not dependent on the availability of a payment from the Medicaid program. The regulation also clarifies that payment is provided when the resident is receiving hospice services in the nursing home and is temporarily hospitalized. Medicaid reimbursement for these reserve bed days would be paid at 50% of the Medicaid rate otherwise payable to the facility with, and would be available for 14 days in any 12-month period. For patients on a therapeutic or other leave of absence, Medicaid reimbursement would continue to be paid at 95% of the Medicaid rate, and would be available for 10 days in any 12-month period. This language clarifies the intent of the change in statute reflected in last years enacted Budget.

The Department is accepting comments on the proposed rulemaking until April 16, 2018. Comments may be submitted to the Department by mail or [electronically](#).

### 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

The Senate and Assembly are on February break and will return to session on Tuesday, February 27, 2018.

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## Grants/Funding Opportunities

### Medicaid Redesign Team Health Home Supportive Housing Program

The Department of Health has released the [Health Home Supportive Housing Program \("HHSHP"\) Request for Applications](#) ("RFA").

The RFA solicits applications from community based organizations ("CBOs") to provide rental subsidies and non-medical services to homeless Medicaid members who are enrolled or enrolling in the Health Home Program. HHSHP is a prior funded program that is in effect from October 1, 2014 to September 30, 2018. The program will serve participants that are currently enrolled in the program and single individuals who are enrolled/enrolling in a Health Home and may include a certain number of families with minors under the age of 18 years old.

The total anticipated amount available for this procurement is up to \$500,000 annually, for up to approximately 16 awards. The contracts will run from October 1, 2018 to September 30, 2023.

#### Key Dates/Timeline

- Applicant Conference Registration Deadline: February 20, 2018
- Applicant Conference: February 21, 2018, 11:00 a.m. – 1:00 p.m.
- Questions Due: February 23, 2018
- Questions, Answers, and Updates Posted: February 28, 2018
- Applications Due: March 16, 2018 by 4:00 p.m.
- Anticipated Award Date: June 14, 2018

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## Upcoming Calendar

<b>Wednesday, April 18, 2018</b>	NYS Board of Examiners of Nursing Home Administrators  10:30 a.m.  Department of Health, 875 Central Avenue, Main Conference Room, Albany, NY
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