

In this Issue

[Full Meeting of the Public Health and Health Planning Council \(PHHPC\)](#)

[VBP Updates](#)

[DSRIP Update](#)

[Proposed 2019 Health Insurance Premium Rates For Individual and Small Group Markets](#)

[Age-Friendly Health Systems Webinar](#)

[Department Issues ACF Guidance on New Wheelchair Regulations](#)

[ACF Resident Safety Plan Checklist](#)

[Special Needs Assisted Living Residence \(SNALR\) Voucher Demonstration Program Webinar](#)

[Attorney General Reports on Enforcement of Mental Health Parity Laws](#)

[Health Home Updates](#)

[Regulatory Updates](#)

[Legislative Spotlight](#)

[Upcoming Calendar](#)



[Quick Links](#) (External Sites)

[NYS Department of Health](#)

[NYS DOH – Meetings, Hearings & Special Events](#)

[Medicaid Redesign Team](#)

[Senate Health Committee Website](#)

[Assembly Health Committee Updates](#)

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

On June 7, the Public Health and Health Planning Council held a full council meeting in Albany. A copy of the full PHHPC agenda can be found [here](#).

During the special meeting of the Committee on Codes, Regulation and Legislation, the Committee heard reports from the Department of Health on two regulatory proposal for information only (“[Sepsis Protocols](#)” & “[Advanced Home Health Aides](#)”). It is important to note that the proposed Advanced Home Health Aide (“AHHA”) regulations would only implement provisions of the AHHA law applicable to supervision of AHHAs in healthcare settings. The proposed regulations would define tasks for AHHAs and set forth provisions for AHHA supervision and care when employed by certified home health agencies (“CHHAs”), long term home health care programs (“LTHHCPs”), licensed home care services agencies (“LHCSAs”), hospices, and assisted living residences (“ALRs”). It would also add workers employed by hospice programs and AHHAs employed by EALRs to the Home Care Services Worker Registry. Regulations applicable to the *practice* of AHHA fall under the purview of the state Education Department, which will be issuing its own proposed regulations. The Department also noted that

the proposed DOH regulations would be presented again to the PHHPC in the August cycle after public comments are received.

During the report of the Committee on Establishment and Project Review (“EPRC”), two related applications for establishment/construction of dialysis services ([True North IV DC, LLC](#) & [True North V DC, LLC](#)) were tabled so that the Department of Health could analyze issues raised by PHHPC members. These applications, which would transfer a portion of ownership in each facility from DaVita Inc. to Northwell Health and a group of independent nephrologists. PHHPC members had reservations regarding the character and competence of DaVita Inc. Specifically, there was concern over DaVita’s billing practices, relationships with pharmaceutical companies, use of drug formularies, and transplant rates. A proposal to approve a 3-year limited life was rejected, as was a proposal to affirmatively disapprove the applications.

Also of note, the PHHPC elected to defer for two cycles a Certified Home Health Agency (“CHHA”) application (Shining Star Home Health Care) for permanent life. During last month’s EPRC meeting, the Committee, due to questions related to the applicant’s financial feasibility, recommended that the application be deferred until an updated financial report is available. The PHHPC elected to approve all other applications on the EPRC agenda.

During the report of the Department of Health, Commissioner Zucker provided an update on the prevalence of influenza, tick-borne disease management, the NYS Health Connector, the 2018 NYSOH open enrollment period, and the MRT’s first federal Medicaid review. Brad Hutton provided an update on the Governor’s efforts to address maternal mortality and the Ad Hoc Committee to Lead the Prevention Agenda. Dr. Marcus Friedrck and Dr. Jeanne Alicandro also provided the PHHPC with an update on the New York State Stroke Designation Program. This presentation included a proposal to update the stroke center designation regulations to provide greater DOH oversight and create additional tiers of designation. These recommendations can be reviewed [here](#).

The next PHHPC meeting is scheduled for Thursday, July 19, 2018 in Albany.

[Back to Top.](#)

VBP Updates

Overview of the VBP Quality Adjustment Methodology

The Department of Health provided an update on the managed care plan Quality Incentive (QI) and VBP Quality Adjustment Methodology.

The QI methodology consists of: Quality (33 measures, 100 points); Satisfaction (3 measures, 30 points); Prevention Quality Indicators (2 measures: one for children, one for adults, 20 points), for a total of 150 points. From this total, points may be subtracted for compliance issues like statements of deficiency (8 measures, up to 20 points), and added based on telehealth innovation (up to 6 points), for a maximum final score of 150.

Lindsay Cogan, the Director of the Division of Quality Management at DOH, discussed changes to the 2018 QI methodology.

- **Quality:**
 - **Measurement period:** Points by measure will be awarded by percentiles based on quality performance for the previous measurement year to the current performance year, as opposed to performance within the measurement year, to allow plans to close performance gaps.

- **Earning Points:** For 2018, there will no longer be a set number of plans that can achieve certain points per quality measure. Conversely, for 2017, only 2 plans will obtain the 90th percentile (earning full points for the measure); with another 2 obtaining the 75th percentile (75% of points); and 4 plans obtain the 50th percentile (50% of points).
- **Final Tiers:** For 2018, tiers will be based on the percentage of points earned by the plans in the last year of data available. Thus, cut points for each tier (1-5) will be set ahead of time.

VBP Rate Adjustments

DOH also discussed VBP rate adjustments. The Department's intent is that these adjustments be passed down to VBP contractors. It appears DOH's plan is now to keep the QI methodology separate from the VBP Quality adjustment, preserving both processes, and not blend QI into the VBP adjustment as was once discussed.

DOH discussed that there will be "improvement modifiers" in the adjustment, allowing plans that demonstrate substantial quality improvement within a tier to mitigate the rate reduction. They also noted that for the first year of implementation (rate adjustments effective April 1, 2020) there will be no plans in tier 5 subject to a 1% quality adjustment. Plans that would have fallen in tier 5 will be placed in tier 4.

There will be a future webinar to discuss efficiency adjustments June 14, though the State said the methodology will be the same.

MACRA and VBP Webinar

The Department of Health will be hosting a webinar focused on The Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act (MACRA) and its relationship to the NYS VBP program. The webinar will serve as an introduction to the Quality Payment Program (QPP) requirements and highlights the alignment between the QPP and the NYS Value Based Payment Program. Additionally, the OHIP would like to engage the participants in a conversation concerning the ways MACRA could impact providers and to discuss future VBP and MACRA alignment efforts

The webinar will be on **Wednesday, June 13, 2018** from **1:00 to 2:00 p.m.** To register for the webinar, click [here](#).

[Back to Top.](#)

DSRIP Update

New York's 1115 Waiver Programs Public Comment Day

The Department of Health has announced that the upstate public comment day for New York's 1115 waiver programs will be held on **June 19, 2018** at the Empire State Plaza, Meeting Room 6, Albany, NY.

The day will begin with a working session of the DSRIP Project Approval and Oversight Panel (PAOP) followed by public comment. Written public comment may be submitted through **June 29, 2018** to 1115waivers@health.ny.gov with "1115 Public Forum Comment" in the subject line. More information on the 1115 waiver and its programs is available [here](#).

This meeting will be webcast live, [here](#), and will be open to the public. The tentative agenda for the day is as follows:

10:30 a.m. - 12:30 p.m.	DSRIP PAOP Working Session
12:30-1:00 p.m.	Break
1:00 – 4:00 p.m.	Public Comment
4:00 - 4:10 p.m.	Wrap-Up

Department of Health Announces Medicaid Redesign Efforts to Transform Healthcare in New York State Reaches Milestone

The Department of Health has released [DSRIP Year 3 Fourth Quarterly Report](#). According to the DOH [announcement](#), the State passed its first federal test of the DSRIP on four key statewide performance measures: statewide metrics performance, success of statewide projects, total Medicaid spending and Managed Care plan expenditures.

The report shows that through DSRIP, New York State has exceeded performance goals on the majority of measures in place, related to the transformation of care. Statewide metrics show several areas of improvement including the following critical measures:

- Preventable hospital readmission
- Preventable emergency room visits
- Patient Connection to Consistent Source of Primary Care
- Access to timely appointments

Additional report highlights include:

- Statewide Medicaid spending for emergency department and inpatient spending came in under target from the previous year.
- New York State has exceeded the 10% goal of Managed Care Organizations' (MCO) service dollars being contracted by (VBP) arrangements instead of Fee for Service. (Under Value Based Payment, MCOs and providers agree that a portion of compensation is dependent on provider performance.)
- Majority of DSRIP performance and quality metrics were achieved.

New York must submit a statewide report card to CMS for each year remaining in the demonstration, which ends on March 31, 2020. Failure to meet any of the four milestones will result in a financial penalty of overall DSRIP dollars from the federal government.

[Back to Top.](#)

Proposed 2019 Health Insurance Premium Rates For Individual and Small Group Markets

Last week, the Department of Financial Services [published](#) the 2019 rate requests submitted by NYS health insurers for the individual and small group markets. The average rate request change in the individual market is 12.1%. The average rate request change in the small group market is 7.5%. The rate applications by each insurer can be viewed [here](#).

According to DFS, with respect to the individual market, the single biggest justification offered by insurers for the requested increases is the Trump Administration's repeal of the individual mandate penalty. According to DFS, insurers have attributed approximately half of their requested rate increases to the risks they see resulting from its repeal.

[Back to Top.](#)

Age-Friendly Health Systems Webinar

The Department of Health, in collaboration with the John A. Hartford Foundation, will be hosting an Age-Friendly Health Systems webinar on **Tuesday, June 20, 2018 from 3:30 p.m. to 4:30 p.m.**

This webinar will cover:

- What an Age-Friendly Health System is and why they are important
- The John A. Hartford Foundation and the Institute for Healthcare Improvement Age-Friendly Health Systems Initiative
- How organizations can take steps to become age-friendly

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

[Back to Top.](#)

Department Issues ACF Guidance on New Wheelchair Regulations

The Department of Health has issued a Dear Administrator Letter ([DAL: 18-16 Amended 18 NYCRR Regulations](#)) to inform adult care facility (“ACF”) administrators that the Department of Health has filed regulations that prevent a provider’s exclusion of an applicant on the sole basis that such individual is a person who primarily uses a wheelchair for mobility.

The regulations state, *“An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act.”*

The regulations also remove provisions prohibiting ACF operators from accepting any person who is *“chronically chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer.”*

These regulations are effective immediately.

[Back to Top.](#)

ACF Resident Safety Plan Checklist

The Department of Health has issued a Dear Administrator Letter ([DAL#: 18-13: Adult Care Facilities Resident Safety Plan Checklist DOH-5265](#)) to inform adult care facility (“ACF”) administrators that the Division of Adult Care Facility and Assisted Living Surveillance has developed a standardized Resident Safety Plan Checklist for use by adult care facilities when submitting a renovation safety plan. The new checklist, which must be completed in its entirety, is designed to streamline the approval process and will allow operators to submit the required information through the use of an electronic fillable form

To access the new Resident Safety Plan Checklist, click [here](#). Once completed, the Resident Safety Plan Checklist should be submitted to the appropriate Regional Office

[Back to Top.](#)

Special Needs Assisted Living Residence (SNALR) Voucher Demonstration Program Webinar

The Department of Health will host a webinar on an Alzheimer's disease and/or dementia in a Special Needs Assisted Living Residence (SNALR) voucher program on **June 11** from **2:30 to 3:30 p.m.** This webinar will provide program parameters and other important information.

The 2018-2019 enacted budget authorized the Department of Health to implement a voucher demonstration program, targeted at those who are living with Alzheimer's disease and/or dementia in a Special Needs Assisted Living Residence (SNALR). The goal of the demonstration program is to provide financial assistance to help residents remain in the SNALR and delay or eliminate discharges to skilled nursing facilities.

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

[Back to Top.](#)

Attorney General Reports on Enforcement of Mental Health Parity Laws

The Attorney General recently released a report ([Mental Health Parity: Enforcement by the New York State Office of the Attorney General](#)) on the office's enforcement of state and federal mental health parity laws over the past five years. According to the report, the AG's work has resulted in over \$2 million in restitution to consumers.

The report primarily summarizes the results of eight national settlement agreements with seven health plans. Four of the settlements required health plans to implement reforms in their administration of behavioral health benefits, in particular relating to medical management practices, coverage of residential treatment, and co-pays for outpatient treatment, and to submit regular compliance reports. Two of the settlements focused on coverage of particular services, and two more addressed the improper imposition of preauthorization requirements for medication-assisted treatment ("MAT").

According to the AG, these agreements have contributed to the transformation of the industry's approach to behavioral health services, including:

- Plans are imposing fewer barriers to necessary mental health treatment:
 - Covering the continuum of care, including residential treatment.
 - More consumers are able to access needed mental health care.
 - Plans are denying care at a lower frequency than in previous years.
- Plans reimbursed nearly 500 consumers over \$2 million for their out-of-pocket costs for previously denied claims.
- Plans paid a total of \$3 million in penalties.
- Plans are letting providers prescribe – without preauthorization – medication-assisted treatment for patients suffering with substance abuse disorder.

[Back to Top.](#)

Health Home Updates

Children's Medicaid Health and Behavioral Health System Transformation Update

The Department has published the second issue of the Children's Medicaid Health and Behavioral Health System Transformation Update. The Update covers trainings around the state, the children's transition timeline, and an HCBS spotlight. To view the update, click [here](#).

[Back to Top.](#)

Regulatory Updates

Department of Health

Criminal History Record Checks

The Department of Health has issued a notice of [proposed rulemaking](#) that would implement statutory changes that add adult homes, enriched housing programs, residences for adults, and hospice programs to the list of entities required to perform criminal history records checks ("CHRCs") for prospective employees.

The Department will be accepting comments on the proposed rule until **July 30, 2018**. Comments may be submitted by mail or [electronically](#).

Medical Use of Marihuana

The Department of Health recently issued a notice of [adopted rulemaking](#) that allow a number of healthcare facilities to become a designated caregiver for a certified patient in NYS's Medical Marihuana Program. Designated caregiver facilities include general hospitals, residential health care facilities, adult care facilities, community mental health residences, private and public schools, psychiatric hospitals, and Article 31, 32, and 16 mental health facilities. The adopted rulemaking includes procedures for the application for issuance and renewal of a registry ID card

The rule, as adopted, contains no changes from the proposal published in the [October 25, 2017](#) edition of the *NYS Register*.

[Back to Top.](#)

Legislative Spotlight

The Legislature will be in session Monday, June 11 through Thursday, June 14. The Assembly Codes and Ways and Means Committees will be meeting on Monday, June 11.

Bills of interest which are set for committee action next week include:

- [A.297/S.2099 \(Stirpe/Ritchie\)](#): This bill would enact the "living donor protection act of 2018". The bill would prohibit insurance corporations from discriminating against and refusing to provide coverage to organ donors, or prohibiting their customers from being organ donors. This bill is on the Assembly Codes Committee Agenda.
- [A.4899-B \(Rosenthal\)](#): This bill would require health insurers to provide coverage of a 30-day supply of opioid addiction prescription drugs prescribed for the treatment of substance abuse disorder. This bill is on the Assembly Codes Committee Agenda.

- [A.7153-A/S.43-A \(O'Donnell/Hoylman\)](#): This bill would require that any insurance policy that provides coverage for prescription drugs must include coverage for the cost of pre and post-exposure prophylaxis for the purposes of HIV prevention. This bill is on the Assembly Codes Committee Agenda.
- [A.7689-A \(Rosenthal\)](#): This bill would prohibit any individual, addiction professional, credentialed professional, health care provider, health care facility or substance abuse program from giving or receiving a commission, bonus, rebate, or kickback to induce the referral for substance abuse services. A violation of this provision would constitute a misdemeanor. This bill is on the Assembly Codes Committee Agenda.
- [A.11011 \(Gottfried\)](#): This bill would add the use of medical marihuana as an alternative to opioids for pain management to the list of eligible conditions for medical marijuana use. This bill is on the Assembly Codes Committee Agenda.
- [A.11043/S.8924 \(Stern/Seward\)](#): This bill would amend “Hannah’s Law,” which mandates coverage of enteral formula. The bill would add additional conditions for which enteral formula must be covered, and removes the limitation that qualifying conditions must lead to malnourishment or chronic physical disability, retardation or death. This bill is on the Assembly Codes Committee Agenda.
- [A.11050 \(Lupardo\)](#): This bill would update the Long-Term Care Ombudsman Program (“LTCOP”) to conform to federal law and regulations. This bill is on the Assembly Codes Committee Agenda.
- [A.11057-A/S.8909-A \(Glick/Lavalle\)](#): This bill would require licensed professionals to report any conviction of a crime, determination of professional misconduct, or adverse employment action to the State Education Department within 30 days. It would also establish a summary suspension process after an Education Department determination that the public health, safety or welfare imperatively requires emergency action against a professional license or registered entity. This bill is on the Assembly Codes Committee Agenda.
- [A.8888-A/S.7173-A \(Gunther/Serino\)](#): This bill would add telepsychiatry to the Geriatric Service Demonstration Program. It would also require the Department of Health to conduct a study on the incidence of geriatric social isolation, mental health consequences, and their treatment and prevention. The study would provide recommendations on effective identification of social isolation, and the development of telehealth, telemedicine, and telepsychiatry programs to meet the needs of homebound and socially isolated geriatric patients. This bill is on the Assembly Way and Means Committee Agenda.

Other insurance bills of potential interest include:

- [A.1568/S.1476 \(Skoufis/Carlucci\)](#): This bill would establish claim investigation and settlement standards for insurance companies to follow in the event of a disaster. This bill is on the Assembly Codes Committee Agenda.

[Back to Top.](#)

Upcoming Calendar

Wednesday, June 13, 2018	<p>Early Intervention Coordinating Council</p> <p>10:15 a.m. to 3:00 p.m.</p> <p>Empire State Plaza Convention Center, Meeting Room 7, Albany, NY</p>
-------------------------------------	---

<i>Thursday, June 14, 2018</i>	Continuing Care Retirement Community (CCRC) Council Meeting 10:00 a.m. to 1:00 p.m. Empire State Plaza, Meeting Room 7, Albany, NY
<i>Tuesday, June 19, 2018</i>	New York State MRT Upstate Public Comment Day 10:30 a.m. to 4:00 p.m. Empire State Plaza, Meeting Room 6, Albany, NY
<i>Monday, June 25, 2018</i>	New York State Council on Graduate Medical Education 10:45 a.m. to 1:15 p.m. New York State Department of Health, 90 Church Street, Floor 4, Rooms A & B, New York, NY
<i>Tuesday, June 26, 2018</i>	State Health Innovation Plan Council Meeting 10:30 a.m. to 2:30 p.m.

[Back to Top.](#)

Plugged in to Health at Hinman Straub is prepared by Hinman Straub P.C. and is intended to keep our clients informed about health news and Legislative and regulatory developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice. If you prefer not to receive these updates, please [alert us](#) so we may remove you from our distribution list. © Hinman Straub P.C. 2018. All rights reserved.