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CMS Approves NYS SPA for Advanced Training Initiative in Nursing Homes

The Centers for Medicare & Medicaid Services (CMS) recently [approved](#) a request to amend the Medicaid State Plan for long term care (LTC) facility services that allows resumption of *Advanced Training Incentive Payments*, as previously approved in SFY 2016 and 2017. These incentive payments are aimed to encourage facilities to train staff on early detection of resident characteristics that may signify clinical complications or declining health.

The State will annually distribute \$46 million to eligible facilities through a series of payments to those nursing homes who provide a training program to direct care staff that is approved by the DOH. Facilities may use previously approved plans or may submit a new plan to DOH for approval. Facilities must have a direct care staff retention rate that is greater than the statewide median and must not be excluded from participating in this program. Payments will be allocated proportionately to eligible facilities based on their relative share of Medicaid patient days.

Letters From the NYS Department of Health

Nursing Home DAL – Pandemic Emergency Plan - The Department of Health (DOH) recently issued a “Dear Administrator Letter” ([DAL – NH 20.09](#)) which requires all residential healthcare facilities to prepare, and make available to the public on their facility’s website and immediately upon request, a Pandemic Emergency Plan (PEP) by September 15, 2020. The DAL outlines the general requirements for each facility’s PEP which must include a communication plan, Infection Protection Plans for staff, residents and families, plan for preserving hospitalized residents’ beds, compliance with the PEP, along with adherence to the PEP format. The DOH will be issuing further guidance on a recommended form for the PEP. Additional resources are available on the [Health Commerce System \(HCS\) website](#).

Letter to Local Health Departments - DOH sent a [letter](#) to heads of Local Health Departments (LHDs) requesting detail about what plans are in place for the upcoming fall in order to provide county residents sufficient availability, access to, and information on both influenza and COVID-19 testing. DOH will use all responses will inform the state’s ongoing effort in building a sufficient testing system. The LHDs are to also provide information as to any foreseen barriers that may hinder sufficient testing capacity in any county, and information on any steps taken by LHDs to implement a robust influenza vaccination plan that will aid in the ongoing challenges of the pandemic.

DOH Letter to Healthcare Providers – In a recent DOH [letter to healthcare providers](#), the DOH now requires laboratories to report additional patient specific information to New York State. New information required includes the *patient’s full residential address and phone number, occupation and employer name, full work address and employer phone number*, in addition to currently reported data which includes the patient’s *race and ethnicity*. Since healthcare providers are typically able to gather this patient information, DOH is instructing this information be gathered and provided to the laboratories of which they are submitting specimens to, retroactively starting from June 29th, 2020.

Executive Order No. 202.57 - Continues Certain Health Provisions

Governor Cuomo issued [Executive Order \(“EO”\) No. 202.57](#) which continues, through September 19, 2020, certain suspensions or modifications of law and directives not superseded by a subsequent order contained in Executive Order #202.53, which includes continuation of certain suspensions,

modifications and directives contained in EO #202.22 through #202.26, #202.32 through #202.35, #202.44, and #202.45, with the exception of the provisions regarding Section 28-66 of the Charter of Buffalo, and any extension of paying property taxes without interest or penalty.

The net effect of this EO includes, but is not limited to, continuation of the following directives or required actions.

- Authorizes DOH Commissioner to suspend or revoke the operating certificate of any skilled nursing facility or adult care facility (ACF) if it is determined that such facility has not adhered to any regulations or directives issued by the Commissioner of Health;
- Authorizes licensed pharmacists to order and administer COVID-19 diagnostic and antibody tests, and designates pharmacists as a qualified healthcare professional for purposes of ordering lab testing for individuals suspected to have COVID-19;
- Authorizes certification of temporary birthing sites, as well as dedicated birthing sites and allows for certain support persons to be present at time of birth and for the duration of the patient's stay;
- Authorizes the performance of elective surgeries at D&TCs and hospitals within a region provided certain metrics are met;
- Allows clinical labs to accept and process COVID-19 specimens and tests from nursing homes and ACFs;
- Allows for physicians to order COVID-19 tests without an initial physician-patient relationship; and
- Affords businesses discretion to deny entry of individuals for non-compliance of state mandated use of face coverings and masks when in public places or unable to practice social distancing.

The above list highlights just a selection of actions and directives, or modifications and suspensions of law which relate to health or health care facilities that are continued by EO #202.57.

In addition, this EO makes modifications to previously issued directives included in:

- EO #202.5, to allow the re-opening of bowling allies throughout the State as of August 17, 2020;
- EO #202.3, to allow the re-opening of gyms and fitness centers or classes no earlier than August 24, 2020, provided that the entities adhere to DOH issued guidance and subject to local postponement;
- EO #202.48 which modified EO #202.28, to prohibit the initiation of a proceeding or enforcement of an eviction or foreclosure of any commercial tenant or mortgagee for nonpayment is continued through September 20, 2020; and

- EO #202.53, to allow the re-opening of low-risk indoor arts and cultural activities as of August 24, 2020, and subject to adherence to the DOH issued guidance.

Regulatory Update

Department of Financial Services (DFS)

Corporate Governance

DFS has issued a [notice of adoption](#) which requires all health insurers to adopt a corporate governance framework that is appropriate for the nature, scale, and complexity of the insurer, and requires the electronic submission to DFS of an initial annual disclosure by December 1, 2020. Additionally, insurers are required to submit one hard copy of the corporate governance annual disclosure in 2020, and any revisions to their corporate governance annual disclosure must be filed by June 1 of each following year, beginning in 2021.

The initial proposed rule was posted in the [March 18, 2020](#) issue of the State Register. This regulation is effective as of September 18, 2020.

Office of Mental Health (OMH)

Clinic Treatment Plans

The OMH has issued a [notice of adoption](#) for regulation that affords certain flexibilities in the development and execution of an individual's treatment plan in accordance with CMS standards.

The initial proposed rule was posted in the [May 6, 2020](#) issue of the State Register. This regulation is effective as of August 19, 2020.

Calendar

Thursday, September
24, 2020

[PHHPC Joint Committee Meeting](#) – via Webcast
9:30 a.m. - Live webcast

QUICK LINKS

[NYS Department of Health](#) --- [NYS DOH –Meetings, Hearings & Special Events](#) --- [Medicaid Redesign Team](#) --- [Senate Health Committee Website](#) --- [Assembly Health Committee Updates](#) --- [NYS Division of Budget](#)

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