

In This Issue:

NYS Medicaid State Plan Amendment Requests

Medicaid Redesign Team II – Initiatives Update

**CMS Issues New Guidance on COVID-19 Testing in
Nursing Homes and Labs**

**National Training Program to Strengthen Nursing
Home Infection Control Practices**

**Executive Order No. 202.59 - Continues Certain
Health Provisions**

Regulatory Update

Calendar

Quick Links

NYS Medicaid State Plan Amendment Requests

The NYS the Department of Health (DOH) recently received the Centers for Medicare & Medicaid Services (CMS) approval for the following State Plan Amendment (SPA) requests.

[Additional 0.5% Nursing Homes Rate Reduction](#) – request to apply an additional across-the-board (ATB) rate reduction of 0.5% for Medicaid fee-for-service (FFS) and Medicaid Managed Care reimbursement rates for nursing homes and specialty care facilities. The additional 0.5% reduction is applied to dates of service on or after April 2, 2020. This reduction is in addition to a previously approved SPA request which applies a 1% ATB reduction for dates of

service beginning on January 1, 2020. The total ATB of 1.5% will be applied to service dates on and after April 2, 2020.

VAP/SNP Enhanced Payments to Nursing Homes - request to provide temporary Vital Access Provider/Safety Net Provider (VAP/SNP) enhanced payments to certain nursing home facilities, effective on and after April 1, 2020

Reduce Nursing Home Capital Reimbursement by 5% - request to reduce the capital component of nursing home rates by 5%, effective on and after April 2, 2020.

Single Statewide Formulary for Opioid Dependence Agents and Opioid Antagonists – On August 25, 2020 the Department of Health (DOH) **submitted** a **SPA request** to CMS to implement a single statewide formulary for opioid dependence agents and opioid antagonists for all Medicaid participating managed care organizations (MCO's) and for Medicaid fee for service, under certain conditions of the National Medicaid Pooling Initiative (NMPI) contract Supplemental Rebate Agreement.

Medicaid Redesign Team II – Initiatives Update

Pharmacy Benefit Carve Out – 340B Drugs - DOH held the second meeting of the 340B Advisory Group on August 26th. The Advisory group is tasked with making recommendations to DOH that will achieve fiscal savings associated with 340B eligible drugs in the Medicaid FFS program. The meetings of the 340B Advisory Group are not subject to the Opening Meetings Act, however the Department has posted the presentation slides from the meeting [here](#). According to the presentation slides, the next scheduled meeting is September 16, 2020.

Private Pay Home Health Care Services Program –DOH held a webcast meeting regarding the implementation of the Private Pay Home Health Care Services Program to be piloted in the counties of Nassau, Suffolk, and Westchester. The model builds off of the State's health insurance "marketplace model" to allow New Yorker's to shop for home care services for themselves or their loved ones. Consumers will be able to search for service providers based on user-generated criteria, which include a level of need, language preference, or other criteria to find a matching personal care worker. Once a match is made, the consumer will schedule a free in-home or telehealth evaluation with the employing Licensed Home Care Service Agency (LHCSA). The LHCSA will determine the care needed and will be paid directly by the consumer for the delivered home care services.

DOH will approve the participating LHCSAs by September 9th, 2020, and the program is scheduled to launch on November 1st, 2020 in time for the State's Open Enrollment Period. A recording of the webcast, along with presentation materials are available on the Department's [MRT II Meetings/Forums webpage](#) under MRT II Stakeholder Meetings.

CMS Issues New Guidance on COVID-19 Testing in Nursing Homes and Labs

Effective immediately, the Centers for Medicare & Medicaid Services (CMS) has issued Interim Final Rule with a comment period (IFC), [CMS-3401-IFC](#), which includes new CMS COVID-19 testing requirements for long-term care facility (“nursing home”) staff and residents. This IFC codifies CMS's previously issued recommendations for COVID-19 testing in nursing homes into regulation for the duration of the public health emergency for COVID-19.

This first [CMS guidance memorandum](#) outlines requirements for the frequency of testing, reporting, specimen collection, documentation and other requirements in nursing homes. According to the guidance, testing frequency of employees will depend on the COVID-19 infections rates of a facility's surrounding community. Nursing homes must also offer tests to residents when there is an outbreak or when residents show symptoms. This memorandum also includes a [revised facility survey tool](#) that identifies operational and programmatic compliance for nursing homes.

A [second guidance memorandum](#) outlines updated Clinical Laboratory Improvement Amendments of 1988 (CLIA) regulations included in this IFC. This update requires all laboratories to report all results when testing for SARS-CoV-2, the virus that causes COVID-19, in a standardized format and at a frequency specified by the Secretary of the U.S. Department of Health and Human Services (HHS). The new and modified CLIA regulations include mandatory citation for failure to report enforce laboratory reporting by imposing civil monetary penalties (CMPs) on all CLIA-certified labs (including those health care facilities using Point of Care COVID-19 testing devices under a CLIA certificate of waiver) for failures to report SARS-CoV-2 test results. CMPs for “condition level violations” will be \$1,000 on the first day and \$500 for each additional day. Exempt States are expected to have an equivalent CMP imposition structure.

Further, this update adds new regulation that codifies an enforcement a process for reporting confirmed or suspected COVID-19 cases by nursing homes as explained in a [previously issued CMS memorandum](#) on May 6th, 2020. CMS will enforce this regulation by imposing CMPs for each week a facility fails

to report data to the CDC National Healthcare Safety Network (NHSN) system. CMPs start with \$1,000 for the first occurrence, and incremental increase by \$500/occurrence, up to a maximum allowable amount of \$6,500 per citation.

National Training Program to Strengthen Nursing Home Infection Control Practices

CMS has launched the “*CMS Targeted COVID-19 Training for Frontline Nursing Home Staff and Management*”, a scenario based training that is designed specifically with COVID-19 in mind. The program is tailored to provide five specific modules designed for frontline clinical staff and ten designated for nursing home management. The training modules build upon results of CMS nursing home inspections and the findings of epidemiological experts from the Centers for Disease Control and Prevention (CDC) who work with nursing homes, as well as influenced by the findings of federal nursing home task force strike teams that were deployed to nursing homes in COVID-19 hotspots. The training will be available on the CMS [Quality, Safety & Education Portal](#). Additionally, [biweekly webinars](#) will be held beginning August 27, 2020 through January 7, 2021 from 4-5 p.m. ET, in which subject experts from CMS and CDC will be available for question and answer sessions.

Additionally, CMS has issued a Medicaid Informational Bulletin (CIB), [Nursing Home Strategies for COVID-19 Only Isolation of COVID-19 Residents](#), which provides guidance to states on flexibilities available to increase reimbursement to nursing homes that implement infection control procedures such as designating a quarantine and isolation wing for COVID-19 patients.

Executive Order No. 202.59 - Continues Certain Health Provisions

Governor Cuomo issued [Executive Order \(“EO”\) No. 202.59](#) continuing through September 27, 2020, certain suspensions of law and directives include in EOs #202.36, #202.37, #202.46, and #202.47 as extended, and EO #202.54 with exception for certain provisions related to any extension of period for paying property taxes without interest or penalties and the directive permitting telephonic or virtual party nominating conventions.

The provisions and directives extended by this EO include, but are not limited to, the following:

- [EO #202.36](#) - allows for practitioner-patient relationship to be established through an electronic questionnaire for purposes of ordering a clinical laboratory test, allowing for re-opening of barbershops and hair

- salons, certain restricted re-opening of racetracks, and allowing for certain outdoor, low-risk recreational activities;
- [EO #202.37](#) - directs that special education services and instruction required under Federal, state or local laws, rules, or regulations, may be provided in person for the summer term within school districts and districts must follow State and federal guidance; and
 - [EO #202.47](#) - authorizes peace officers to enforce provisions of the Alcoholic Beverage Control Law and Public Health Law, or judgements for violation thereof.

Additionally, this EO directs that the Commissioner of Health shall develop by emergency regulations, comprehensive statewide protocols for the timely testing and reporting of all COVID-19 and Influenza cases to continue to ensure, as flu season approaches, the state has the most accurate data to evaluate the number of positive cases and to best ensure timely contact tracing efforts are implemented in all regions. This directive is effective through September 27, 2020.

Regulatory Update

Department of Financial Services (DFS)

Paid Family Leave COVID-19 Risk Adjustment Mechanism

DFS has **re-issued** [emergency regulations](#) which establishes a risk adjustment pool to mitigate the disproportionate adverse risks associated with claims for disability and family leave benefits.

This regulation provides a mechanism where a portion of premiums will be separately pooled by DFS to fully reimburse insurers who issued policies covering disability or family leave benefits, including the State Insurance Fund, for COVID-19 claims paid out which were associated with quarantine or isolation. Insurer's participating in the mechanism will be entitled to payments until 100% of their actual COVID-19 claims paid have been recouped, and allows for emergency relief to those insurers who can demonstrate financial distress as a result of COVID-19, in which claims paid are equal to or greater than 20 percent of the surplus of the insurer.

Payments into the COVID-19 Risk Adjustment Pool are initially the responsibility of the Sate Insurance Fund. However in the event that no further funds are available from the State Insurance Fund, the Superintendent of DFS may require that the remaining participating insurers pay an amount proportionate to their expected COVID-19 claims losses.

This regulation is effective until September 9, 2020, unless extended further.

Department of Health (DOH)

Cooling Tower Inspections

DOH has issued a **notice of adopted** regulation which requires Local Health Departments (“LHDs”) to inspect for non-communicable biological hazards and adds requirements for LHDs to ensure the proper performance standards of cooling towers as stated in Public Health Law and the State Sanitary Code.

The initial proposed rule was posted in the **January 29, 2020** issue of the State Register. This regulation is effective as of August 26, 2020.

Calendar

Tuesday, September 1,
2020

NY Medicaid EHR Incentive Program – Webinars
– **Meaningful Use Stage 3**
11:00 am

Wednesday, September
9, 2020

NY Medicaid EHR Incentive Program – Webinars
– **Public Health Reporting**
11:00 am

Thursday, September
17, 2020

NY Medicaid EHR Incentive Program – Webinars
– **Health Information Exchange**
11:00 am

Tuesday, September 22,
2020

NY Medicaid EHR Incentive Program – Webinars
– **Program Discussion: Payment Year 2020
Soft Opening**
11:00 am

Thursday, September
24, 2020

PHHPC Committee Meeting Day – 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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