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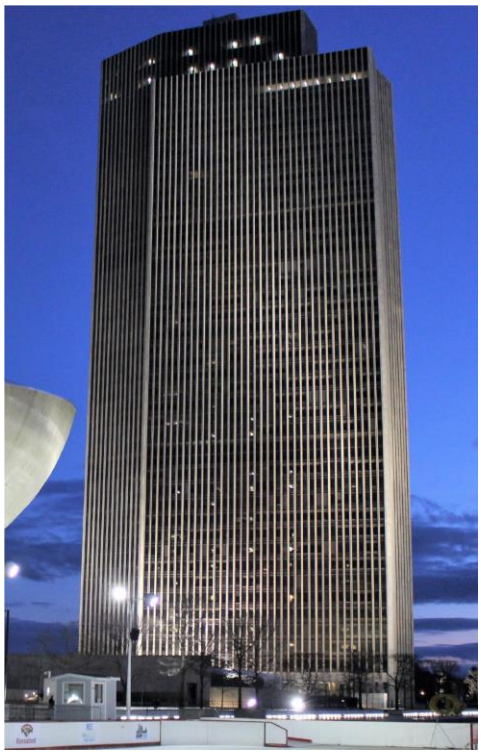

PLUGGED IN TO HEALTH

Healthcare & Policy Coverage Across New York State

February 8, 2021

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Medicaid Update – January 2021

To view the ***January 2021 - Medicaid Update*** in its entirety, click **here**. Below are just a few highlights.

Important Information for All Providers Serving Children – **Effective July 1, 2021** Medicaid-covered children/youth in foster care will be enrolled in Medicaid Managed Care Plans (MMCP), unless otherwise excluded, which can include Mainstream MMCP and HIV-SNP.

State licensure of Voluntary Foster Care Agencies (VFCAs) as Article 29-I Health Facilities will begin in this month. Licensed Article 29-I facilities will be responsible for providing health and behavioral health services to eligible children/youth, with MMC Plans providing coverage beginning July 1, 2021.

All Providers:

Free COVID Alert NY App - This app alerts users if their phone has come into close continuous proximity with a phone of someone who has used the app to indicate that they are positive for COVID-19.

NY State of Health (NYSOH) Special Open Enrollment Period Extended Through March 31st – Consumers will have additional time to enroll in a Qualified Health Plan for coverage in 2021 through **New York's health insurance Marketplace**, or directly through insurers. Eligible individuals may enroll in Medicaid, Essential Plan and Child Health Plus year-round.

Change of Address (and Contact) Notification– Providers must notify Medicaid of any change of address, telephone number, or other pertinent information within 15 days of the change. Updates to provider addresses and telephone information, must be complete by use of the designated forms.

- **Fee-for-Service (FFS) providers** (such as practitioners, DME, laboratories, transportation, etc.): **Practitioners, Businesses and Groups Change of Address Form**

- **Rate-based (Institutional) providers**: **NYS Medicaid Institutional/Rate Based Provider Change of Address Form**

Pharmacy:

Medicaid Pharmacy Prior Authorization Programs Update – **Effective February 4, 2021,** the fee-for-service (FFS) Prior Authorization (PA) requirements will change for management of acute pain.

For opioid-naïve patients, PA is required when initiating therapy with a short-acting opioid (SAO) at equal to or greater than (≥) 50 morphine milligram equivalents (MME) per day. Patients with a cancer or sickle cell disease diagnosis, or who are in hospice care, will not require PA.

Practitioner Dispensing – **Effective April 1, 2021**, parallel with the transition of the pharmacy benefit from MMC to FFS (or the "Pharmacy Carve Out"), the NY Medicaid Pharmacy FFS program will enable claims submission for drugs dispensed by practitioners authorized to prescribe.

Policy and Billing:

Updated Coverage Criteria for Healthcare Common Procedure – For dates of service on or after February 1, 2021, the Coverage Criteria for Healthcare Common Procedure Coding System (HCPCS) code "E0467" have been updated. Providers can refer to the **DME Provider Communication: Updated Coverage Criteria for HCPCS Code E0467- Home Ventilator, Multi-Function Respiratory Device** document for more information.

Dental Procedure Code Changes – **Effective January 1, 2021**, the dental procedure code "D9920" Behavior Management code has been deleted and is not billable for dates of service after January 1, 2021. A new procedure code of "D9997" has been added.

DFS Issues Insurance Industry Circular Letters

The Department of Financial Services (DFS) has issued Circular Letters (CLs) to the insurance industry regarding the following topics.

- Health Insurance Coverage for Preventive Care and Screenings and Maternity Care in Relation to Surrogacy - **Insurance CL No. 1 (2021)** was issued to remind New York State health insurers that maternity care benefits and preventive care and screenings (with certain exceptions for grandfathered health plans) relating to pregnancy must be provided in accordance with the Insurance Law. Specifically, this includes when an

individual is acting as a paid surrogate, as enacted under Part L of Chapter 56 of the Laws of 2020 which is effective on February 15, 2021.

- Cyber Insurance Risk Framework - **Insurance CL No. 2 (2021)** announces the Department's creation of a Cyber Insurance Risk Framework that outlines best practices for managing cyber insurance risk (the "Framework") which applies to all authorized property/casualty insurers that write cyber insurance. The Department recommends the following best practices be employed by authorized insurers to sustainably and effectively manage their cyber insurance risk.
    - Establish a Formal Cyber Insurance Risk Strategy
    - Manage and Eliminate Exposure to Silent Cyber Insurance Risk
    - Evaluate Systemic Risk
    - Rigorously Measure Insured Risk
    - Educate Insureds and Insurance Producers
    - Obtain Cybersecurity Expertise
    - Require Notice to Law Enforcement

Regulatory Update

Department of Health (DOH)

Surge and Flex Health Coordination System Activation - The DOH has **re-issued emergency regulations** authorizing the DOH Commissioner to suspend or modify certain provisions of the State Sanitary Code and other regulations for Article 28 facilities, Adult Care Facilities (ACFs), and assisted living facilities during a declared state of emergency to be consistent with any Executive Order (EO) issued by the Governor during a declared state of emergency. This regulation establishes, and authorizes the Commissioner to activate a Surge and Flex Health Care Coordination System ("Surge and Flex System") in the event of a declared state of emergency which includes the following requirements.

- Increased hospital bed capacity by a minimum of 50%, and up to 100% in some cases, to include service category changes, physical plant changes, as well as the restriction, or postponement, of non-essential, elective procedures to facilitate the increase.
- Enhance staffing capacity, which facilities must establish plans that ensure any increase in hospital bed capacity is met with adequate staffing, where such criteria for staffing is at the discretion of the Commissioner.
- Minimum levels of supplies and personal protective equipment (PPE) must be met, maintained and managed by facilities, with at least a 90-day supply of PPE, where such PPE may be re-distributed under the authority of the Commissioner.
- A statewide coordination of facilities, including the discharge, transfer, and receipt of patients among various facilities, as well as the designation of

trauma centers, and the maintenance of a Statewide Health Care Data Management System.

The regulations also require each Article 28 facility to adopt a detailed emergency Surge and Flex Response Plan ("Plan"), in addition to their standard emergency and disaster preparedness plan. The Plan must be implemented and meet the requirements of the Surge and Flex System among other criteria and emergency preparedness requirements. Faculties must renew and update the Plan as needed, or a minimum of every six months, as well as attest that the plan may be implemented and achieved upon each review.

Lastly, this regulation also authorizes the Commissioner to take necessary action to expand and prioritize clinical laboratory testing during the declared state disaster emergency. This emergency rule will expire on April 14, 2021.

Reduce Hospital Capital Rate Add-on and Reduce Hospital Capital Reconciliation Payment – This adopted rule authorizes a 5% reduction to the inpatient hospital add-on for capital (per diem and APR-DRG case) rates and adjusts the hospital inpatient reconciliations of budgeted to actual rates by 10%.

Revise Requirements for Collection of Blood Components – This ***re-issued*** rule establishes regulatory framework and technical requirements including personnel qualifications, donor screening and care, record keeping, and certain technical specifications, for blood banks collecting "source plasma" and other blood components used for transfusion. This regulation is in line with national standards and is intended to enhance plasma availability.

Legislative Update

The Senate and Assembly will each conduct session remotely on Monday, Tuesday, and Wednesday of this week.

The following bills of interest have been placed on committee agendas:

Assembly Health – (9:00 AM, Tuesday, February 9 - **Virtual**)

- **A103 (Gottfried)** – This Bill requires that the State develop comprehensive autism assessment centers for autism spectrum disorders to be funded by state appropriations through a request for proposal process, and would require each funded entity to meet minimum reporting requirements annually.
- **A179 (Gottfried) / S2543 (Rivera)** – This Bill requires that Medicaid managed care (MMC) and managed long term care (MLTC) plans provide payments to home care agencies and fiscal intermediaries for reimbursement

of expenses related to the provision of personal protective equipment (PPE) for direct care workers, care recipients and an emergency inventory of a ninety-day supply of PPE. These payments are required to be in addition to base rate payments.

- **A191 (Gottfried) / S1451 (Rivera)** – This Bill requires that a health equity assessment be filed as part of a certificate of need (CON) application seeking approval for construction or change to a hospital or health related service.
- **A226 (Gottfried)** – This Bill repeals the State's Medicaid Global spending cap and any related processes. The Medicaid Global cap limits the annual spending growth of State funds for the purposes of the Medicaid program.
- **A244 (Gottfried)** – This Bill places the Health Emergency Response Data System into statute and requires certain data be visible to the public.
- **A273 (Gottfried)** – This Bill requires practitioners treating individuals with neuromusculoskeletal conditions to consider and prescribe non-opioid treatment alternatives.
- **A307-A (Gottfried)** – This Bill extends the Medicaid coverage period, from 60 days to a full year, for pregnant mothers who meet income requirements of up to 223% of the federal poverty level (FPL).
- **A336 (Braunstein)** – This Bill requires that an opioid antagonist be prescribed in conjunction with a patient's first opioid prescription each year.
- **A1585 (Gottfried) / S2549 (Rivera)** – This Bill expands the State's Essential Plan eligibility to include any resident of NYS who earns below 200% of the FPL and has, or has had, a confirmed or suspected case of COVID-19, but however is ineligible due to immigration status. This expansion of eligibility would be repealed with in 60 days of the end of the state disaster emergency under Executive Order No. 202.
- **A2432 (Niou) / S2847 (Kavanaugh)** – This Bill requires a 90 day written notice be submitted to the DOH and local legislative body prior to any closure of a nursing home, which must also include a detailed plan for closure and will be subject to the approval of the DOH and local legislative body.
- **A3132 (Steck) / S1832 (Skoufis)** – This Bill requires the Commissioner of Health to maintain specific reimbursement and billing procedures under the Medicaid program for complex rehabilitation technology products in order to ensure adequate access to such products for patients with complex medical needs.
- **A3470-A (Gottfried) / S2521-A (Rivera)** – This Bill establishes the "Patient Medical Debt Protection Act" which would require the following:
    - hospitals to provide discharged patients with a standard consolidated itemized hospital bill;
    - hospitals and health systems are prohibited from seeking payment from a patient for a facility fee related to the provision of preventive care services or where the fee is not covered by a third party payer;
    - the creation of a uniform patient financial liability form to be used by all hospitals;

- all hospitals to participate in the state's all-payer data-base;
- revisions to the current indigent care pool including standardized policies, applications and appeal procedures;
- a statutory change to the medical debt rate to correspond with the 1 year treasury bill rate; and
- revisions to the independent dispute resolution (IDR) law to strengthen protections for consumers regarding network participation of a provider.

Assembly Codes – (9:00 AM, Tuesday, February 9 - **Virtual**)

- **A2037 (Dinowitz) / S553 (Sanders)** – This Bill requires DOH to post the most recent CMS star rating for every nursing home on the Department's webpage, and each facility is also required to post its overall CMS star rating on the facility's website and conspicuously on premise for public and resident viewing.
- **A2211 (Simon) / S3932 (Savino)** – This Bill establishes specific procedures for the closure of assisted living residences (ALRs), including a prohibition on accepting new residents upon the submission of a closure plan.

Senate Aging – (10:00 AM, Tuesday, February 9 – **Virtual**)

- **S598-A (May)** – This Bill establishes a "Reimagining Long-term Care Task Force" which would be tasked with study the current state of long-term care (LTC) services in New York, along with the options and challenges for older New Yorkers; and to make recommendations for the projected needs for long-term care services which prioritize safety and affordability, and enhance the quality of life of those in care.
- **S612-A (May)** – This Bill establishes the "Long-term Care Ombudsman Program (LTCOP) Reform Act" which allows for volunteers to work as resident advocates within the LTCOP, facilitated by the Office of the State LTC Ombudsman, and operated under the regulation promulgated by the Commissioner of the DOH. Plans for accessing the State LTCOP staff and volunteers would be required to be included in the nursing home pandemic plans submitted to the Department.

Senate Health – (12:00 PM, Tuesday, February 9 – **Virtual**)

- **S484-A (Krueger)** – This Bill requires certain healthcare facilities or ambulance services to obtain express prior written consent before making and/or broadcasting a patient's medical treatment, with limited exceptions.
- **S553 (Sanders / A2037 (Dinowitz)** – This Bill requires DOH to post the most recent CMS star rating for every nursing home on the Department's webpage, and each facility is also required to post its overall CMS star rating

on the facility's website and conspicuously on premise for public and resident viewing.

- **S612-A (May) / A1052-A (Bronson)** – This Bill requires DOH to develop regulations for the visitation of personal caregivers and compassionate caregivers to nursing homes and adult care facilities during declared local or state health emergencies.
- **S1029 (Stewart-Cousins) / A3235 (Sayegh)** – This Bill authorizes the continued care of medically fragile children in pediatric nursing homes beyond age of 21 provided they have resided at the facility for more than 30 days.
- **S1577 (Rivera) / A192 (Gottfried)**- This Bill prevents the State Medicaid program from transitioning individuals who suffer from traumatic brain injury (TBI) and are served by a Medicaid waiver, or individuals who have some other disabilities that qualify them for the Nursing Home Transition and Diversion Waiver (NHTD) to Medicaid managed care. The DOH would be required to seek additional waivers or waiver extensions as needed to maintain Medicaid services to these beneficiaries.
- **S1783 (Skoufis)** – This Bill requires the DOH to establish and implement an infection inspection audit and checklist for all long-term care facilities (LTCFs) (includes nursing homes and ACFs). LTCFs will be required to meet 80% of the audit evaluation criteria or be subject to a penalty framework established by the DOH which may include the revocation of a facility's license.
- **S1784 (Skoufis)** – This Bill requires all adult care facilities (ACFs) to establish and incorporate quality assurance committees into their quality assurance plan, of which the committee must include front-line workers, employees, residents, and resident's family members. This Bill also requires that all ACF quality assurance plans include a focus on infection control.
- **S2191 (Kavanaugh)** – This Bill requires all general hospitals and nursing homes to implement an "anti-microbial stewardship program" that meets federal Medicare and Medicaid requirements, and such program must include an ongoing process for measuring the impact of the program.
- **S3058 (Rivera) / A3919 (Hevesi)** –This Bill establishes transfer and discharge requirements for nursing homes, including, but not limiting to, that the facility use its best efforts to secure appropriate placement arrangements for the resident, other than temporary housing assistance, and requires written notification to the resident's lawful representative, and written consent of the resident prior to discharge and placement in certain circumstances
- **S3060 (Rivera)** – This Bill requires that the Public Health and Health Planning Council (PHHPC) provide notice to nursing home residents, the public and stakeholders within 30 days of receipt of a CON application to allow a 90 day public comment period. PHHPC may make additional determinations regarding whether "a substantially consistent high level of care has been rendered", as well as other additional criteria related to character and competence prior to providing approval. Additionally, this Bill

requires certain prior disclosure of assets and operations and familial ownership relationships, as well as prohibits delegation of certain control to a managing entity.

- **S3061 (Rivera)** – This Bill requires the DOH to update its reporting of COVID-19 related deaths in nursing homes and ACFs to include cases where residents were transferred to a hospital and passed away in the hospital retrospective to March 1, 2020, and to share the aggregate results of information collected on the HERDS.
- **S3185 (Skoufis)** – This Bill requires nursing homes, as part of their admission procedures, to inform residents and their family members with a printed document which includes detailed information as to where to find complaints citations, inspections, enforcement actions, and penalties taken against the facility.

Senate Labor – (12:30 PM, Tuesday, February 9 – **Virtual**)

- **S3470 (Kennedy)** – This Bill requires the Commissioner of the Department of Labor, in conjunction with the Commissioner of the Department of Health, to develop a program which incentivize and provide expedited training and certification processes for unemployed individuals to enter jobs in the field of healthcare.

Senate Mental Health – (11:30 AM, Tuesday, February 9 –**Virtual**)

- **S3476 (Parker)** – This Bill establishes a workgroup to review All Payer Group (APG) rates and commercial insurance rates for behavioral health services that would make recommendations for adequate rate reimbursement and including any potential changes in policy.

Coming Up

Thursday, February 11, 2021 @ 9:00 a.m. to 1:00 p.m. – **The Drug Utilization Review Board (DURB)** – **Webcast**

Thursday, February 11, 2021 - **Public Health and Health Planning Council's Annual Full Council Meeting –** This meeting has been ***CANCELLED*** – due to the ongoing COVID-19 pandemic and the Department's priorities on COVID-19 and vaccination efforts.

Quick Links

NYS Department of Health --- NYS DOH – Quick LinksMeetings, Hearings & Special Events --- Medicaid Redesign Team --- Senate Health Committee Website --- Assembly Health Committee Updates --- NYS Division of Budget

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