
HINMAN STRAUB ATTORNEYS AT LAW

Visit our website



PLUGGED IN TO HEALTH

Healthcare & Policy Coverage Across New York State



February 16, 2021

What's Inside

- **Nursing Home Rates for “COVID-Positive Only Facilities”**
 - **DOH Announces FI RFO Awardees**
 - **VBP Reporting Requirements**
 - **DFS Announces Cybersecurity Fraud Alert**
 - **MRT 1115 Waiver Extension Request – Public Hearings**
 - **Proposal for Health Insurers to Provide Fertility Coverage for Same Sex Couples**
 - **Regulatory Update**
 - **Legislative Update**
 - **Coming Up**
 - **Quick Links**
-

Nursing Home Rates for “COVID-Positive Only Facilities”

The DOH has released the long-term care Medicaid reimbursement rates for **19 nursing homes across the State** which have entered into an agreement with the DOH to be dedicated as “COVID-Positive Only” facilities. According to a **letter to administrators of these facilities**, a Medicaid rate add-on equivalent to 50% of the approved facility’s current operating rate will be provided to cover the incremental and allowable costs associated with operating a COVID-Positive Only Facility. This enhanced rate is effective for COVID-19 positive residents who reside in these approved facility on and after January 1, 2021. The DOH provides that the allowable costs under this agreement include: physical plant modifications (e.g., airflow, ventilation design); deep cleaning; additional clinical care expenses; patient transport; increased staffing levels and associated worker support costs; procurement of additional personal protective equipment (PPE) and other supplies; and related administrative overhead and costs. The Department has also provided **Medicaid billing guidance** for these approved facilities.

DOH Announces FI RFO Awardees

On February 11th, the DOH **announced** the fiscal intermediaries (FI) that will contract with New York State to provide FI services for individuals enrolled in the Consumer Directed Personal Assistance Program (CDPAP). The Request for Offers (**RFO - #20039**) was issued in December of 2019, soliciting offers from entities interested in contracting with the Department to provide FI services to consumers under the CDPAP. DOH reviewed approximately 390 offers submitted, and has selected **68 entities** to enter into state contracts.



The Department also issued a [letter to health plan administrators](#) notifying them of the list of RFO awardees, along with providing next steps for transitioning FIs and their CDPAP consumers to the selected FIs. [MLTC Policy 21.01](#), which is effective immediately, provides detailed guidance primarily to Current FIs, Local Departments of Social Services (LDSS), and Managed Care Plans for required consumer transitions resulting from the Department’s announcement. This policy also outlines the Department’s expectations to facilitate the transition of services from current FIs who will be required to cease operations, to those FIs selected to contract with the State. Dependent on the scenario, the process, timeframes and responsibilities for Current FIs and other entities regarding how to cease operations are different. For more information click [here](#).

VBP Reporting Requirements

The [2021 Value Based Payment \(VBP\) Reporting Requirements Technical Specifications Manual](#) has been provided by the DOH to inform stakeholders of the quality measure reporting requirements for Medicaid Managed Care Organizations (MCOs) who are participating in the NYS Medicaid VBP program. Notably, the 2021 VBP Reporting Requirements refer to the 2020 Measurement Year (MY) data, with the exception for Managed Long Term Care plans, for which the reporting requirements refer to 2021 MY data.

DFS Announces Cybersecurity Fraud Alert

The Department of Financial Services has issued an [Industry Letter](#) to regulated entities alerting them of a systemic and aggressive campaign to exploit cybersecurity flaws in public-facing websites to steal Nonpublic Information (NPI).

According to the DFS letter, “[T]he unauthorized collection of NPI appears to be part of a growing fraud campaign targeting pandemic and unemployment benefits. Specifically, the hacks are focused on stealing NPI from public-facing websites that display or transmit consumer NPI. This includes websites that provide an instant quote such as an auto insurance rate using the consumers’ NPI and displaying redacted NPI back to the consumer, such as a redacted driver’s license number (“Instant Quote Websites”).”

DFS is urging regulated entities using Instant Quote Websites, as well as other public facing websites, to immediately review these sites for evidence of hacking. Based on several complaints already received by DFS, both successful and unsuccessful versions of these cyberattacks have been detected. Additionally, despite redaction protections enabled on these sites, hackers appear adept in stealing the full un-redacted NPI.

Regulated entities should immediately report any security flaws and under regulations are required to report Cybersecurity Events as promptly as possible and within 72 hours at the latest. For a full copy of the alert and additional recommended steps to secure data, click [here](#).

MRT 1115 Waiver Extension Request – Public Hearings

The Department of Health (DOH) has posted the informational slides from the public hearings and public forums regarding New York’s 1115 Medicaid Redesign Team (MRT) Waiver Extension Request that were held on January 21st and 27th.

The presentation includes historical actions and background on the 1115 Waiver program, along with an outline of the State’s current extension proposal and approach which is comprised of the following three components.

1. A three-year extension of the existing STCs and funding authorities under the current MRT Waiver;
2. The transition of the pharmacy benefit from MMMC plans to fee-for-service (i.e., the “Pharmacy Carve Out”) – MRT II recommendation; and
3. The transition of the transportation benefit from MLTC plans to fee-for-service (i.e., the “Transportation Carve Out”) – MRT II recommendation.

The State elected to take this reserved approach in order to preserve current waiver programs during the change in presidential administration and CMS leadership. This will allow additional time to consider the long term impacts of COVID-19 on the health care delivery system, and additional time for CMS’s consideration of the pending and anticipated 1115 waiver amendments related to the MRT II process with respect to the current targeted implementation dates.

Presentations slides, recordings, and transcripts from these public hearings are available on the Department’s - [MRT 1115 Waiver Extension Request webpage](#).

Proposal for Health Insurers to Provide Fertility Coverage for Same Sex Couples

The Governor **announced** he is directing the Department of Financial Services (DFS) to require health insurers to expand coverage for fertility services for same sex couples. The announcement supports a **proposal** by the Governor in his **2021 State of the State Address**. This proposal requires that DFS direct NYS health insurers to provide immediate coverage for fertility services for same sex couples who wish to start a family, eliminating any lag time and out of pocket expenses

that same sex couples could experience as a result of fertility treatments such as testing and therapeutic donor insemination procedures, before qualifying coverage would kick-in.

Regulatory Update

Department of Financial Services (DFS) – Waived Cost Sharing for Essential Workers’ Mental Health Services

The DFS has **re-issued** an **emergency regulation** which requires all health plans to waive cost-sharing for in-network outpatient mental health services delivered to an essential worker, unless the policy or contract is a high deductible health plan, in which such service is subject to the plan’s deductible. This rule, which will be in effect for 60 days, requires insurers to provide written notice to its in-network outpatient mental health providers, and includes a detailed list of essential workers covered under this rule, including, but limited to, various healthcare professionals of various healthcare settings, first-responders, and public safety.

Department of Health (DOH) –

Surrogacy Program and Assisted Reproduction Service Provider Licensing – The DOH has issued an **emergency regulation** which implements provisions of Part L of Chapter 56 of the Laws of 2020 that require DOH to establish a process for the licensing of surrogacy programs, the registration of gestational surrogacy assisted reproduction service providers, and the creation of a surrogacy registry and an ova registry. Additionally, this regulation implements requirements for the DOH to establish gestational surrogacy guidelines and ova donation guidelines. This rule is effective as of February 16, 2021.

Hospital Non-comparable Ambulance Acute Rate Add-on – DOH has **re-issued** an **emergency regulation** which restricts Article 28 hospitals from including ground emergency transportation services costs in their institutional cost reports, when the ground emergency transportation service provider who is servicing the hospital, elects to participate in a supplemental payment program (pursuant to Chapter 56 of the Laws of 2020) in lieu of receiving reimbursement through a hospital.

Name Change for the Physically Handicapped Children’s Program (PHCP) – The DOH has issued a **proposed rule** which will change the name of the Physically Handicapped Children’s Program (PHCP) to the Children and Youth with Special Health Care Needs Support Services Programs. This rule is open to a 60 day public comment period beginning on February 10, 2021.

Hospital Indigent Care Pool Payment Methodology – The DOH has **adopted regulations** which make conforming changes to the payment methodology to hospitals for indigent care pool payments for 2019 through 2022. These amendments are in line with the federal Disproportionate Share Hospital (DSH) reform guidelines as well as amendments to the State’s Public Health Law pursuant to Chapter 56 of the Laws of 2020 to include the elimination of the previously utilized transition collar and its corresponding funding in the amount of \$25 million. This rule implements reductions to the Voluntary Pool in the aggregate amount of \$150 million, while exempting Enhanced Safety Net Hospitals (ESNH) from this reduction, and establishes a new transition collar, funded in the amount of \$64.6 million, to ensure financial stability of ESNHs. Lastly, this rule extends the provision allowing the Commissioner to withhold 1% of total indigent care pool funds for distribution to those hospitals that demonstrate substantial compliance with the Financial Aid Law.

This rule is effective as of February 10, 2021.

Workers’ Compensation Board (WCB) – *Medical Treatment Guidelines (or MTG)*

The WCB has issued a **proposed rule** which addresses medical treatment guidelines for back, neck, shoulder, knee, and non-acute pain to reflect the most effective and modern treatment techniques, to be effective May 24, 2021. This rule is open to a 60 day public comment period beginning on February 10, 2021.

Legislative Update

The Legislature is scheduled to be on a break this week, February 15 - 21, and will resume session on Monday February 22nd.

The Governor has acted on several bills that passed both houses of the Legislature.

The following bills of interest were recently signed by the Governor:

A1250 (Gunther) / S1301 (Brouk) – This Bill directs the Commissioner of the Office of Mental Health to create a workgroup and a report regarding frontline workers who experienced trauma associated with COVID-19. Signed Chapter 33 of the Laws of 2021.

S869 (Hoylman) A986 (Gottfried) - This Bill reduces the increased membership of the Public Health and Health Planning Council (PHHPC) from 26 members back to the current membership of 24 members, while maintaining 2 (rather than 3) members representing health care consumer advocacy organizations. Signed Chapter 42 of the Laws of 2021.

S1303 (Salazar) / A1254 (Bichotte Hermelyn) – This Bill requires that hospitals establish protocols for pre-term labor, including the requirement that hospitals make a determination whether an expectant mother is in pre-term labor and to admit them until they are medically safe to discharge. The discharge must follow the federal Emergency Medical Treatment and Labor Act (EMTALA). This Bill also requires hospitals to provide information regarding pre-term labor at the time of pre-booking for a maternity patient and to also be available to the public, upon request. Signed Chapter 66 of the Laws of 2021.



Coming Up

Thursday, February 18, 2021 @ 11:00 a.m. to 1:00 p.m. – **The Medicaid Managed Care Advisory Review Panel (MMCARP) - Meeting via Conference Call**

Quick Links

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

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. 2021. All rights reserved.