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March 15, 2021

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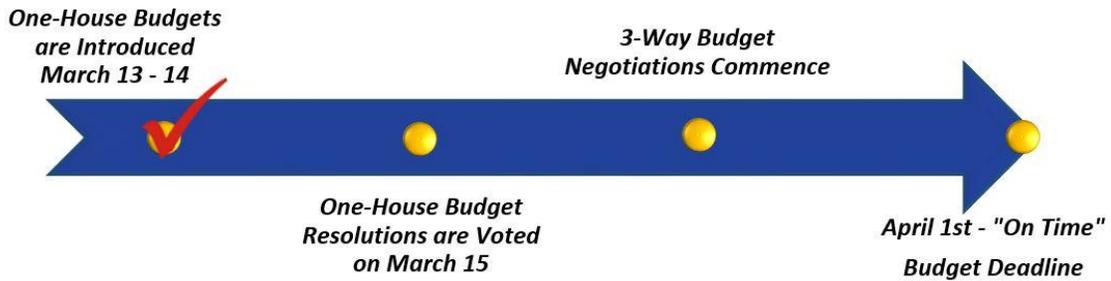
State Budget Update

The Senate and Assembly recently released their respective “one-house” budget bills for the State Fiscal Year (SFY) 2022. These one-house budget bills are comprised of each house’s respective budget priorities and actions with respect to the Governor’s SFY 2022 Executive Budget proposal. The joint legislative budget conference committee process will commence and then continue throughout the week as the two houses work to resolve differences between their respective plans.

As an overview, both the Senate and the Assembly have elected to handle certain policy driven actions outside of the budget process, including the legalization of recreational use of marijuana, nursing home reform which both houses have acted on various legislation, along with various other policy items.

Highlights of the Senate’s one-house budget can be found in the Senate’s [budget resolution](#). Highlights of the Assembly’s one-house budget can be found in their press release, [here](#) (also see the Assembly’s [budget summary](#)).

Now that the one-house budget bill resolutions have been introduced and will pass their respective Houses, 3-Way budget negotiations will commence in efforts to reach an “on time” Enacted Budget deadline of April 1st.



NY State of Health: State Health Insurance Exchange Sees Enrollment Surge

The Department of Health **announced** that there are now a record 5.8 million people who enrolled in health coverage through NY State of Health (NYSOH), the State's official health plan Marketplace. Enrollment through the exchange increased by nearly 885,000 people since the end of the 2020 Open Enrollment Period in February of 2020. This increase includes a concentration of people enrolling in Medicaid and the Essential Plan, which is primarily associated with individuals who may have experienced reduced earnings or job loss as a result of the COVID-19 pandemic.

NYSOH Enrollment, as of February 28, 2021	
Medicaid*	4,312,895
Child Health Plus	391,348
Qualified Health Plans	214,365
Essential Plan	885,012
Total	5,803,620

*Total Medicaid enrollment on and off NY State of Health is 6,815,777 as of December '20.

The **Special Open Enrollment Period** has been extended to May 15, 2021 in alignment with the ongoing federal public health emergency.

Managed Care Policy and Planning Meeting



On Thursday, March 11, the Department of Health held the Managed Care Policy and Planning Meeting with the State's Medicaid Managed Care plans. Highlights from the meeting include:

- Mainstream Enrollment: Total mainstream enrollment through February was 5,046,008, a slight increase from January's enrollment of 5,045,142 enrollees.
- HARP: Statewide HARP enrollment increased by 1,544 enrollees from January to February.
- HIV SNP Enrollment: HIV SNP enrollment experienced a slight decrease in enrollment from January to February of 93 enrollees.
- MLTC Enrollment Update: Enrollment in MLTC Partial Cap is currently 242,852, a decrease of 1,141 members from January. MAP enrollment increased to 25,564 from 24,672 in January. FIDA IDD increased its February enrollees by 2 members, totaling 1,748. MA enrollment continued its downward trend to 3,323 members in February, from 3,406 in January. PACE enrollment is experiencing a similar decline in enrollment with 5,391 members in February, a decrease from 5,508 in January.
- Enrollment Reconciliation Update: The New York State Department of Health is continuing its Child Health Plus enrollment reconciliation efforts to identify mismatches between KIDS and the NYSOH. Since beginning the project in 2017, mismatches existing in KIDS and the NYSOH have decreased by 96.64% and 89.61%, respectively. Essential Plan (EP) reconciliation is also ongoing. DOH plans to provide instructions to issuers in April with an expected submission date for 2020 EP extracts in May. Medicaid premium payment initial reconciliation results for Q3 of 2020 is expected to be shared with all issuers in March 2021.
- HARP: The HARP Quality Withhold Program will be subject to a 2% withhold in State Fiscal Year 2021-2022. Plans are eligible for up to 100 percentage points in the areas of Quality of Care and Experience of Care. Additional bonus points are available for plans that participate in a Performance Opportunity Project (POP). Measurement Year 2021 data will be used to score plans and quality withhold repayments will be determined based on the final percentage of the total plan score.
- New York Independent Assessor (IA): The implementation of the Independent Assessor Program has been delayed and will not be effective April 1, 2021, as initially anticipated. Contingent on four approvals, implementation will begin as soon as possible after April 1, 2021: (1) State Plan Amendment approval for new minimum needs criteria, (2) 1115 waiver amendment approval for the new MLTC enrollment eligibility criteria, (3) promulgation of final regulations governing the IA process and responsibilities, and (4) contract approval with the IA. The

Independent Assessor will evaluate individuals for the Practitioner's Order needed to authorize services by performing both the Community Health Assessment (CHA) and a Clinical Appointment (CA). These assessments will provide the only avenue for an individual to obtain Medicaid funded community based long-term services and supports (CBLTSS), including personal care services/consumer directed personal assistant program (PCS/CDPAP).

DFS Cybersecurity Letter Re: Microsoft Exchange Server Vulnerability

The Department of Financial Services (DFS), Cybersecurity Division has issued an Industry Letter to all regulated entities, informing them of recent report of exploitation of vulnerabilities on Microsoft Exchange Server. According to the **DFS Industry Letter**:

*“On March 2, 2021, **Microsoft** reported that four vulnerabilities were discovered in the Microsoft Exchange servers from 2013 and later (including 2016, 2019). The vulnerable servers appear to host Web versions of Microsoft's email program Outlook on their own machines instead of cloud providers. It also appears that the vulnerabilities were being exploited for some time before March 2, and that widespread exploitation of the vulnerabilities is **ongoing**.”*

Also on March 2nd, Microsoft **released** several security updates (or “patches”) for vulnerabilities affecting the on-premises versions of Microsoft Exchange Server. Microsoft stated that these exploits “*require the ability to make an untrusted connection to Exchange server port 443. This can be protected against by restricting untrusted connections or by setting up a VPN to separate the Exchange server from external access.*”

DFS urges that all regulated entities with vulnerable Microsoft exchange services should immediately patch or disconnect vulnerable servers, and utilize the **tools** provided by Microsoft to identify and remediate any compromise exploiting these zero-day vulnerabilities. The U.S. Department of Homeland Security's CISA, has also provided a **current activity update** outlining how to search for a compromise.

MLTC Policy 21.02 – Implementation of FI Rate Structure

The DOH has issued Managed Long-Term Care Policy ([MLTC Policy 21.02](#)) as an update on the implementation of the fiscal intermediary (FI) rate structure as enacted in the SFY 2019-20 NYS Budget.

Effective April 1, 2021, FIs will be reimbursed for their administrative costs through the Per Member Per Month (PMPM) rate structure now described in regulation and summarized in this referenced guidance. The DOH will reduce the current hourly CDPAP rates to exclude the FI administrative costs included in the FI PMPM.

FIs will submit a claim to the Department for its FI PMPM each month via the standard eMedNY billing process, using the respective rate code relative to tiered measure of authorized direct care hours for the consumer during the respective month of service. Examples for calculating the appropriate FI PMPM Tier are provided in this guidance, along with additional information regarding the timing of claim submissions.

Note: Medicaid Managed Care Plans may either adopt the FFS three-tiered payment structure or an alternative administrative fee payment, as long as the administrative fee is segregated from the direct care services payment.

DOH Extends the EQUAL Program Application Deadline

The DOH has issued an addendum to [DAL 20-17](#) regarding the availability of funding under the Enhancing the Quality of Adult Living (EQUAL) Program for SFY 2020-2021, as well as the application deadline of March 15, 2021.

This [addendum to DAL 20-17](#) informs adult care facilities that the **DOH has extended the original application deadline by seven days to March 22, 2021**. This addendum and instructions on how to apply are available on the Health Commerce System (HCS) website, under the “*Newsroom Highlights...*” section.

Regulatory Update

Department of Health (DOH) –

Drug Take Back – The DOH has issued a notice of [adopted rule-making](#) that implements the requirements of Article 2-B of the Public Health Law, known as the statewide Drug Take Back program, for the safe disposal of unused drugs. This regulation specifically requires program operators to

submit proposals to the DOH which meet a list of specific requirements, and such proposals must be updated every three years. The operators will be required to maintain records of the program details and to submit an annual report to the Department.

Additionally, the regulations include clarifying language outlining the requirements for the transfer of controlled substances by a nursing home to an authorized collection receptacle.

This adopted regulation is effective as of March 10, 2021.

Workers' Compensation Board (WCB) –

Direct Deposit of Compensation Payments – The WCB has issued a notice of **proposed rule-making** which provides a manner for the direct deposit of compensation payments for death benefits from the insurance carrier or self-insured employer. This rule addresses amendments under enacted legislation (**A7579 / S7210**) which was signed into Law on November 11, 2020.

This rule is open to a public comment period of 60-days beginning on March 10, 2021.

Legislative Update

The Legislature will be in session Monday through Thursday this week. The following bills of interest have been placed on committee agendas.

Assembly Codes – (12:30 PM, Tuesday, March 15 - **Assembly Virtual Meeting**)

A5495 (Glick) / S4780 (Stavisky) – This Bill requires licensed medical professionals to report any conviction of a crime, determination of professional misconduct, or employment termination to the State Education Department within 30 days and would establish a summary suspension process after a determination that the public health, safety or welfare imperatively requires emergency action against a professional license or registered entity.

Assembly Insurance – (10:00 AM, Wednesday, March 17 - **Assembly Virtual Meeting**)

A289A (Gottfried) / S2121A (Rivera) – This Bill requires that adverse determinations involving the medical treatment of a medically fragile child, as defined within this legislation, be provided by a physician who possesses a

current and valid non-restricted license to practice medicine and who is board certified or board eligible in pediatric rehabilitation, pediatric critical care, or neonatology, or by such physician with a pediatric subspecialty directly relevant to the patient's medical condition. This Bill also outlines requirements for utilization review agents to adhere to during the health plan utilization review process.

Assembly Labor – (12:30 PM, Tuesday, March 16 - **Assembly Virtual Meeting**)

A2681A (Reyes) / S1034A (Gianaris) – This Bill requires the Commissioner of the Department of Labor in consultation with the DOH create and publish a model airborne infectious disease exposure prevention standard for all work sites, differentiated by industry, to establish minimum requirements for preventing exposure to airborne infectious diseases in a workplace. Additionally, this bill permits workplace health and safety committees which allows employers and employees to work together to stop the spread of airborne infectious diseases.

Senate Aging – (9:00 AM, Tuesday, March 16 – **Senate Virtual Meeting**)

S3932 (Savino) / A2211 (Simon) – This Bill implements certain required procedures be taken in the event of the closure and/or decertification of assisted living residences, specifically increasing the prior notice to residents from the current requirement of 90-days to a 120-day prior notice, and imposes penalties for failure to meet such requirements.

Senate Health – (11:00 AM, Tuesday, March 16 – **Senate Virtual Meeting**)

S2127 (Rivera) / A1587 (Gottfried) – This Bill permits school-based health centers to choose to be reimbursed under alternative reimbursement methodologies, not to preclude reimbursement under Medicaid managed care.

S2528 (Rivera) / A4177 (Lavine) – This Bill extends current insurer/provider contract termination provisions to contract non-renewals, requiring insurers to provide written notice to providers in circumstances of contract non-renewals.

S2998A (Harckham) / A645A (L. Rosenthal) – This Bill makes certified peer recovery advocate services eligible for telehealth reimbursement under Medicaid.

S4102 (Savino) / A5512 (Dinowitz) – This Bill authorizes automated storage and dispensing of controlled substances by use of an automated dispensing device within health care facilities.

S5177 (Biaggi) / A3397 (Kim) – This Bill repeals, in its entirety, the emergency or disaster treatment protection act which limits the liability for healthcare professionals, health care facilities, and organizations that provide treatment and services related to the COVID-19 pandemic response during the duration of the COVID-19 state of emergency.

S5487 (Rivera) – This Bill requires health plans to provide updated information to the DOH regarding physician profiles, including network participation.

S5505 (Rivera) / A6256 (Woerner) – This Bill establishes payment parity for the delivery of telehealth services with respect to the payment for the delivery of in-person of such services. This includes covered services under commercial health insurance as well as Medicaid.

Senate Insurance – (10:30 AM, Tuesday, March 16, - **Senate Virtual Meeting**)

S1291 (Brooks) – This Bill expands industry experience requirements and formal training requirements for independent insurance adjusters, before being eligible to take the licensing examination. Also this Bill requires independent adjusters participate in continuing education and prohibits adjuster from receiving anything of value in exchange for a referral.

S2008 (Jackson) / A1677 (Gottfried) – This Bill requires health insurers to include specific information regarding the partial approval of medical claims and denial of medical claims in the notification to the policyholder upon the dispute of a claim or liability of coverage.

S3566 (Breslin) – This Bill requires health insurers to reimburse retail pharmacies for prescription drugs regardless of whether the retail pharmacy is in the plan's specialty pharmacy network or whether the retail pharmacy can meet the plan's terms and conditions for participation.

S3579 (Breslin) – This Bill waives the examination and character reference requirements for independent insurance adjusters who hold a claims certification issued by a national or state-based claims association with a certification program which meets certain minimum standards.

S4111 (Breslin) / A4688 (Peoples-Stokes) – This Bill prohibits health insurance providers from making alterations to their prescription formulary during a contract year unless directed so by the FDA, as well requires the health insurer to notify the insured of any changes to the formulary in the coming year, 30 days prior to enrollment period.

S4305 (Rivera) / A1733 (Gottfried) – This Bill creates an independent consumer assistance program within the Department of Financial Services (DFS) to assist with complaints and appeals, and requires health plans to provide contact information of program to their consumers.

S5299 (Rivera) / A1741 (Gottfried) – This Bill requires that any policy that provides prescription drug coverage apply any third-party payments, financial assistance, discount, voucher or other price reduction instrument for out-of-pocket expenses when calculating an insured individual's cost-sharing requirement.



Coming Up

Thursday March 18, 2021 at 10:00 a.m. – **Committees of the Public Health and Health Planning Council (PHHPC) – Webcast**

Friday, March 26, 2021 @ 9:30 a.m. – **The New York State Minority Health Council - Webcast**

Thursday, April 29, 2021 @ 10:30 a.m. to 1:00 p.m. – **New York State AIDS Advisory Council Meeting**

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](#)

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Hinman Straub, PC | 121 State Street, Albany, NY 12207

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