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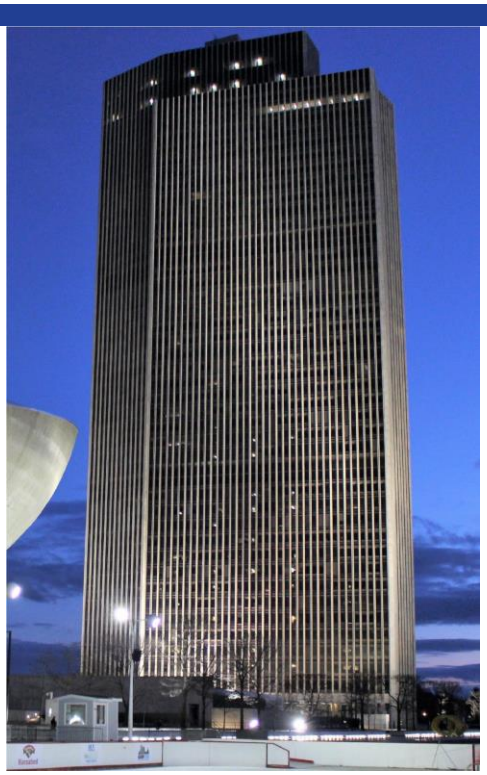

PLUGGED IN TO HEALTH

Healthcare & Policy Coverage Across New York State

March 8, 2021

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Medicaid Update – February 2021

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

Medicaid Eligibility Verification System and Dispensing Validation System Provider Manual – Beyond a member (also known as a client, recipient, or enrollee) presenting an official Common Benefit Identification Card (CBIC) to the provider when requesting services, the member's eligibility must also be verified through eMedNY by any of the **various methods** to confirm the member's subsequent eligibility for services and supplies. ***A provider that does not verify eligibility prior to provision of services will risk nonpayment for those services.***

The **MEVS/DVS Provider Manual** is a valuable resource to assist providers in interpreting the MEVS message providers encounter when checking eligibility.

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.

eMedNY Training Webinars – To register and view the list of topics, descriptions and available session dates, please visit the **Provider Training web page**.

NY State of Health (NYSOH) Special Open Enrollment Period Extended Through May 15th – 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

DOH Submits 1115 Waiver Extension Request to CMS

The Department of Health **announced** that they have submitted the State's proposal requesting an extension of the Medicaid Redesign Team (MRT) 1115 Waiver to the Centers for Medicare and Medicaid Services (CMS). The proposal seeks an extension of all current program and authorities in the MRT Waiver along with amendments that align with programmatic changes to transition Medicaid managed care benefits to fee for service, and the expiration of the DSRIP program. The State intends to submit a new demonstration proposal to CMS designed to address the health disparities and healthcare delivery issues that were highlighted by the COVID-19 pandemic.

Additional information regarding the MRT 1115 Waiver Extension request can be found **here**.

Regulatory Update

Department of Financial Services (DFS) –

Notice to Employees Concerning Termination of Group and Health Insurance Policies, Etc. – The DFS has issued a notice of **proposed rule-making** that make a series of technical corrections, changes to comport with current Insurance Law statutes, and updates office addresses, among other technical changes. This rule is open to a public comment period for 60 days from its posting in the State Register on March 3, 2021.

Office of Mental Health (OMH) –

Redesigning Residential Treatment Facilities (RTF) – The OMH has issued a notice of **emergency/proposed** which updates definitions for admission criteria and implements recently amended statutory authority to remove the pre-admission certification committee (PACC). The rule also updates definitions for alternate care determination, continued stay criteria and adds definitions for designated mental illness, medical necessity, and severe emotional disturbance.

The emergency portion of the rule is effective as of February 10, 2021 and expires on May 10, 2021. The proposed rule is open to a public comment period for 60 days from its posting in the State Register on March 3, 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 (11:00 AM, Tuesday, March 9 - **Virtual**)

A232-C (Gottfried) – This Bill will increase penalties for violations of the Public Health Law from the current $2,000-10,000 range per violation to $3,000-$20,000, and applies a cap of $5,000 for violations by an operator, or any entity that contracts with an operator of a nursing home or general hospital, or a residential adult care program. In addition, for penalties imposed on nursing homes exceeding $10k, this Bill authorizes the penalty to be transferred to nursing home quality improvement demonstration program payments.

A807 (O'Donnell) / S688 (Hoylman) – This Bill requires health insurers provide coverage for pre-exposure ("PrEP") and post-exposure prophylaxis for the prevention of HIV infection within all prescription drug coverage policies.

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.

A3470A (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.

A4177 (Lavine) / S2528 (Rivera) – 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.

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

A196 (Gottfried) / S1576 Rivera – This Bill allows DOH to extend the pre-hearing suspension of an adult care facility's (ACF's) operating certificate for up to additional 30 days until a DOH hearing can be conducted; increase fines for ACF violations from $1,000 per day to $2,000 per violation per day, and $3,000 per violation per day for identical repeat violations; expands on the violations under which assessed penalties are not precluded upon rectification to include violations which may endanger the health, safety, or social welfare of a resident, subsequent to a hearing; DOH may inspect and impose civil penalties on unlicensed ACFs consistent with Public Health Law; includes certain inspection reporting requirements for ACF operators; allows DOH to limit admissions of new residents due to safety conditions; amends certain post survey corrective actions and requirements for ACFs; and authorizes the discharge of certain patients from OPWDD, OASAS and OMH to enriched housing programs.

A1010A (Bronson) – **This Bill** requires the DOH to post on its website the results of all inspection surveys conducted in a nursing home on or after March 7, 2020.

A3131A (Kim) – This Bill requires that in the event of a state disaster emergency that involves a disease outbreak, the DOH is to issue guidance to nursing homes on precautions and procedures to mitigate the spread of such disease, including guidance on visitation, staff education and training on screening, reporting on levels of PPE, placement and cohorting of residents, and communications to the residents and their lawful representatives. This Bill authorizes the DOH to utilize public health emergency appropriations for alternative placement, including placement under home care services programs, and adds reporting requirements for nursing home operators on the number of confirmed and suspected infection cases, as well as the number of confirmed or suspected infection cases which resulted in hospitalizations or death, with a fatality threshold rate of greater than 5% of the facility's census which would require daily communications with the DOH.

A5684A (Gottfried) – This Bill requires any proposed certificate of need (CON) application relating to the establishment or incorporation (including a change of ownership) that comes before the Public Health and Health Planning Council (PHHPC) require a notice to stakeholders (i.e.- the regional office of the LTCOP, residents, and staff) and to be subject to a 90-day comment period. This Bill also requires these CON applications be subject to established conditions for high level of care (including a minimum threshold for CMS star ratings of greater than two stars) which would be required for approval; requires the prior disclosure of assets and operations/contractual agreements and/or familial ownership relationships of the applicants; requires a new operator to retain all employees for at least 60 days, with exceptions for administrators and directors of nursing; and prohibits the reduction of wages or benefits during the period of transition under approved applications.

A5685A (Gottfried) – This Bill requires that, under the regulation of the DOH, all nursing homes within the state be required to spend a minimum of 70% of aggregate operating revenue on resident care, with at least 60% of the required resident care spending being allocated to direct patient care services delivered by certified nurse aides, licensed practical nurses, and registered nurses. In addition, a discount of 20% would be applied to the total purchased or contracted resident care services. Facilities which do not meet such minimum requirements for resident care expenditure ratios would be required to deliver a payment in the amount of the difference to the DOH, for any failure to pay would result in a reduction in state Medicaid payments.

A6052 (Lunsford) / A1785A (Skoufis) – This Bill requires nursing homes to notify all residents and family members of an infection of a communicable disease within 12 hours of detection among residents or staff, and requires all nursing homes to establish a plan or procedure designating a separate cohort area for residents suspected of being infectious during an outbreak.

A6057 (Burke) / A1783 (Skoufis) – This Bill requires the DOH to establish and implement an infection inspection audit and checklist for all nursing homes and long-term care facilities.

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

S1482A (Serrano) / A839A (Serrano) – This Bill amends requirements of health care providers when transferring health and medical records to a patient or their representative, and expands the list of providers for which all health information transfer requirements would apply.

S1576 (Rivera) / A196 (Gottfried) – This Bill allows DOH to extend the pre-hearing suspension of an adult care facility's (ACF's) operating certificate

for up to additional 30 days until a DOH hearing can be conducted; increase fines for ACF violations from $1,000 per day to $2,000 per violation per day, and $3,000 per violation per day for identical repeat violations; expands on the violations under which assessed penalties are not precluded upon rectification to include violations which may endanger the health, safety, or social welfare of a resident, subsequent to a hearing; DOH may inspect and impose civil penalties on unlicensed ACFs consistent with Public Health Law; includes certain inspection reporting requirements for ACF operators; allows DOH to limit admissions of new residents due to safety conditions; amends certain post survey corrective actions and requirements for ACFs; and authorizes the discharge of certain patients from OPWDD, OASAS and OMH to enriched housing programs.

S2103 (Sepulveda) / A5841-A (Gottfried) – This Bill requires a written informed consent by a patient or patient's legal representative prior to the initial order, or subsequent increase in order, of a psychotropic medication for a resident of a nursing home or adult care facility (ACF). This Bill is also on the Assembly Codes Committee Agenda scheduled for 11:30 AM, Monday, March 1.

S2533 (Rivera) / A5185 (Abinanti) – This Bill requires health insurers to process and pay "clean claims" for personal care, home health care services or other long-term services within 30 days if such claim is submitted electronically, or within 45 days id submitted by other means.

S2539A (Rivera) / A303A (Gottfried) – This Bill requires that coverage of early and periodic screening, diagnosis and treatment ("EPSDT") under the State's child health insurance plan (CHP).

S3762 (Rivera) / A1396 (Gottfried) – This Bill establishes registration, licensure and comprehensive regulation of Pharmacy Benefit Managers ("PBMs"), and creates a number of obligations and duties for PBMs with respect to health plans, providers and consumers. The Bill further establishes a private right of action for individuals and providers to sue a PBM for legal or equitable relief to enforce the provisions of the law against PBMs.

S4335 (Benjamin) / A4591 (Dinowitz) – This Bill authorizes alternate remote means for witnessing of health care proxies to include by audio-video means, and by telephonic means with additional witnesses present.

S4934 (Rivera) / A2451 (Reyes) – This Bill requires health insurance policies to cover certain asthma equipment and supplies, and additional equipment for children under 19 years of age to have available at school. Additionally, health insurance policies must also cover asthma self-management education when deemed medically necessary by the covered

individual's physician, this includes coverage under the State's Medicaid program.

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

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