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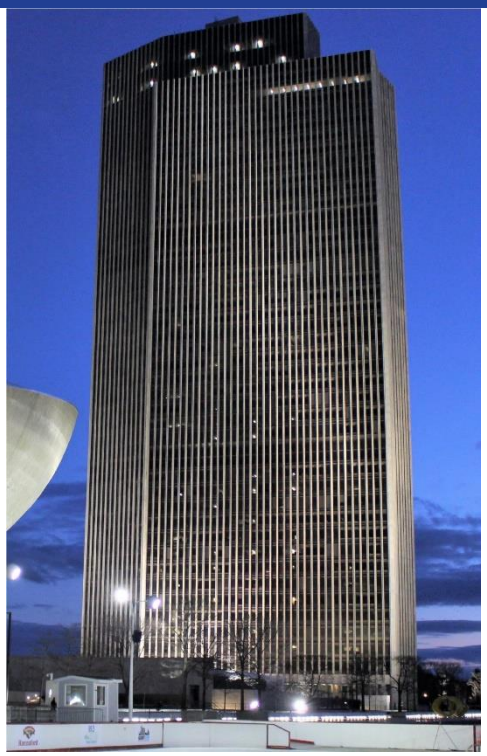

PLUGGED IN TO HEALTH

Healthcare & Policy Coverage Across New York State

June 23, 2021

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Adult Care Facility – Warm Weather Advisory

The Department of Health (DOH) has issued a "*Dear Administrator Letter*" (**DAL #21-05: Warm Weather Advisory**) to adult care facility (ACF) administrators as a reminder of the responsibility to provide residents with a comfortable and safe environment throughout the summer months and to take the necessary precautions to prevent heat related conditions. NYS Law authorizes the Department to set allowable temperatures for resident-occupied areas of the facility.

The Department recommends that the facilities accommodate residents in the common rooms while adhering to the core principles of infection control. Facilities are expected to turn on the air conditioning in the common rooms and monitor the air temperature hourly in all common areas as well as in the non-air-conditioned rooms at various locations on each floor of the facility. If room air conditioners are typically used, the air conditioners must be turned on regardless of a resident's ability to pay. Facilities that utilize central air conditioning do not no need to monitor hourly as long as the central air is turned on.

Additionally, facilities are required to post the following heat-related information in a conspicuous area that is accessible to both staff and residents.

- **Steps to be Taken by Adult Care Facilities in Warm Weather**
- **Signs & Symptoms of Heat-Related Conditions and Management**
- **Medications with Added Sensitivity to Heat And Other Conditions**

Finally, ACFs should consider aspects of heat-related illness prevention while also adhering to core principles and best practices for infection control. The DOH's recommends that:

- Hand hygiene stations should be readily accessible (either handwashing sink for soap and water or dispensers of alcohol-based hand sanitizer) for use by facility staff and residents.
- Environmental cleaning and disinfecting should be done regularly, especially targeting high touch surfaces.
- Facilities should be prepared to ensure the comfort and safety of residents on quarantine or isolation who might not be able to move to an air-conditioned common area.
- Ideally, changes to air cooling systems, air conditioners, and fan use should be evaluated by a qualified professional.

Facility staff can also be affected by heat stress issues, especially when wearing required personal protective equipment (PPE). The guidance also directs ACFs to ensure facility staff have opportunities for required breaks and for hydration. The Department

recommends implementation of a buddy system for routine verbal check-ins to monitor staff and assess for symptoms of heat-related issues; along with educating staff on first aid and emergency procedures for heat related illness.

DOH Updates ACF Mental Health Evaluation Form

The DOH also issued **DAL #20-09 & Addendum** notifying Adult Care Facility (ACF) providers of the ***updated*** **Mental Health Evaluation Form (DOH-5075)** available for immediate use, as required under current NY State regulations (Title 18 of NYCRR §487.4(i) and §488(e)(3)).

The updates to the Mental Health Evaluation Form reflect the DOH's careful consideration of feedback from the industry. Questions may be referred to the appropriate regional office of the Department or via email to the Division of Adult Care Facility and Assisted Living Surveillance at: **acfinfo@health.ny.gov**

Nursing Home – Heat Advisory

The DOH has issued a **DAL #21-09 Heat Advisory** to nursing home administrators as a reminder to take the necessary precautions to prevent heat related illnesses, and to also use this time to ensure that the facility's generator is in good working order and ready to function in the event of an unexpected power outage.

The Department recommends that all nursing home staff understand and be especially alert to the warning signals, presentation of signs or symptoms, and the consequences of heat prostration, heat stroke and heat cramps. This guidance highlights various signs and symptoms to watch for, along with sound **measures for the prevention of heat related illnesses**.

Additionally, the Department recommends facility generators be inspected weekly, exercised monthly under load for 30-minute periods, along with the continuation of any required or manufacturer recommended servicing of generators in accordance with Centers for Medicare and Medicaid Services (CMS) adopted requirements of the 2012 edition of the Health Care Facilities Code and the 2010 edition of the Standard for Emergency and Standby Power Systems of the National Fire Protection Association; NFPA 99 and NFPA 110.

Heat stress issues may also affect staff, especially when wearing required personal protective equipment (PPE). Nursing homes should ensure staff have opportunities for required breaks and for hydration. The Department recommends implementation of a buddy system for routine verbal check-ins to monitor staff and assess for symptoms of heat-related issues; along with educating staff on first aid and emergency procedures for heat related illness.

RFPs: Medicaid Redesign Team and WIC Training Services

The Department of Health has recently issued the following Request for Proposals (RFPs).

Medicaid Redesign Team (MRT) Transformation Consulting Services

The DOH issued **RFP #20034** seeking competitive proposals from a consultant or consulting firm to provide policy and technical guidance on specific Medicaid Redesign Team (MRT) projects as outlined in this RFP. During the anticipated five-year contract period, DOH intends to pursue specific projects to increase efficiency of the Medicaid program, enhance service provisions, and improve health outcomes for New Yorkers. It is the Department's intent to award one (1) contract from this procurement. Some examples of the anticipated projects that will require support include, but are not limited to, the following.

- ***Children's MRT Transformation*** – The transition of behavioral health benefits to Managed Care; the transition of the foster care population to managed care; the expansion and transition of Home and Community Based Services (HCBS) to Managed Care; the implementation of new children's State plan services; and the transition of 1915(c) care management to Health Home care management.
- ***Transitioning Foster Care Population to Managed Care*** – Consultation with the DOH and the Office of Children and Family Services (OCFS) on several design details that need to be developed and integrated into the Children's MRT Transformation design.
- ***OPWDD Transition to Managed Care*** – The transition of the OPWDD population and services to Managed Care includes the ongoing implementation of Care Coordination Organization Health Homes (CCO/HH), which serve individuals with intellectual and/or developmental disabilities (I/DD).
- ***Integrated InCK*** – A child-centered local service delivery and state payment model that aims to reduce expenditures and improve the quality of care for children under 21 years of age covered by Medicaid through prevention, early identification, and treatment of behavioral and physical health needs.

Written questions for RFP #20034 are due by June 29, 2021 by 4:00 p.m. ET, and proposals must be submitted on or before August 10, 2021.

Special Supplemental Nutrition Program for Women, Infants and Children (WIC) – Training Services for the Bureau of Supplemental Food Programs

- The DOH issued **RFP #20046** seeking competitive proposals from qualified training entities to provide a statewide training program for staff. The resulting Contractor will be required to develop, modify, and deliver adult-based training via various modalities in support of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (which includes WIC Vendors and the Vendor Management Agencies) and the Farmers' Market Nutrition Program (FMNP). It is the Department's intent to award one (1) contract from this procurement.

Written questions for RFP #20046 are due by July 7, 2021 by 5:00 p.m. ET, and proposals must be submitted on or before August 25, 2021 5:00 p.m. ET.

Regulatory Update

Department of Financial Services (DFS) –

Enforcement of Social Distancing Measures – The DOH has ***re-issued*** **emergency regulations** that reflect the State's adoption of CDC guidance regarding use of face masks and fully vaccinated individuals. Specifically, these regulations update **previously filed emergency regulations** (dated May 26, 2021) to require the use of face coverings by individuals who are not fully vaccinated at large-scale event venues (5,000 people or more) and allows these venues to require attendees to wear a face covering irrespective of vaccination status, consistent with recommendations from the CDC. Additionally, the regulations eliminate civil penalties, of up to $15,000 per violation, for holding or promoting non-essential gatherings. This rule is effective for 60-days from June 22, 2021.

Hospital Non-comparable Ambulance Acute Rate Add-on - The DOH has ***re-issued*** **emergency regulations** that restricts Article 28 hospitals, effective 10/1/20, 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. This rule is effective for 60-days from June 14, 2021.

Office of Alcoholism and Substance Abuse Services (OASAS) –

Designated Services – The OASAS has issued a notice of **revised rule-making** that set-forth the minimum regulatory requirements for certified programs to seek an Office designation including a LGBTQ endorsement for programs and minimum requirements for obtaining this designation. This revised rule is open to a 45-day **public comment period** beginning on June 16, 2021, and ending on July 31, 2021.

Worker's Compensation Board (WCB) –

Medical Billing Disputes – The **proposed amendment** makes changes to the timeline for an employer or insurance carrier (or third-party administrator – "TPA") to provide payment, or to notify the required parties of all reason(s) for non-payment, along with any other objections to the bill. Under this regulation, the 45 day window to pay or notify the required parties would begin on the day the bill is received, rather than the day the bill was submitted for payment.

This amendment requires that an employer, insurance carrier (or TPA) attach or identify denials associated with prior authorization requests along with their objections on the basis for a legal, or Medical Treatment Guidelines, as they would apply. A legal objection or a Medical Treatment Guidelines objection that was not properly raised respective to any applicable prior authorization request, will be denied.

This amendment also adds that a request for an administrative reward; or a an arbitration award, will not be accepted until at least 30-days after all issues duly and timely raised by the employer or insurance carrier (or TPA) and have resulted in an unfavorable determination.

The Notice of Proposed Rule Making will be published in the June 30, 2021, edition of the **State Register**. Comments on the proposal will be accepted for 60 days after publication, and can be emailed to: **regulations@wcb.ny.gov**

Legislative Update

Now that the 2021 Legislative session has ended, bills that have passed both houses of the Legislature will be delivered to the Governor in "batches" over the next several months. Once a bill has been delivered to the Governor, he has 10 days (excluding Sundays) to either sign the bill into law or veto the bill.

The following bills were recently acted upon by the Governor:

A7119 (Gunther)/S6346 (Rivera) – ***Signed Chap.156*** – This Bill requires that the DOH develop regulations that establish staffing standards for nursing homes, with minimum staffing levels for resident service and care, as well as penalties for violations of such regulation. Nursing homes would be required to maintain a daily average of 3.5 hours of care delivered by a CNA (no less than 2.2 hours), LPN or a nurse aide (no less than 1.1 hours) per resident, per day. All nursing homes would be required to implement these requirements by January 1, 2022 and any civil penalties for any violation of such regulations would begin being imposed after April 1, 2022.

A108-B (Gunther)/S1168-A (Rivera) – ***Signed Chap.155*** – This Bill requires every general hospital to create a clinical staffing committee responsible for developing and overseeing the implementation of a clinical staffing plan to be submitted annually to the DOH and posted on the hospital's website. This Bill also requires establishment of an independent Advisory Commission to periodically evaluate the effectiveness of the clinical staffing committees and provide a report to the State legislative leaders.

S6768 (Gianaris) / A7477 (Reyes) – ***Signed Chap.142*** – This Bill makes various amendments to Chapter 105 of the Laws of 2021 which amend the State Labor Law in relation to preventing occupational exposure to an airborne infectious disease. The amendments include technical and substantive changes that: expand the categories of employees; adds more clarity to the definition of a work site which an employer has the ability to exercise control; allows for additional time for the adoption, implementation, and communication of the employer's prevention plan; and certain changes regarding civil actions brought on by an employee based on claims that the employer is in violation of an infectious disease exposure prevention plan.

S6767 (Rivera) / A7517 (Gottfried) – ***Signed Chap.141*** – This Bill makes various amendments to Chapter 102 of the Laws of 2021 which requires nursing homes provide notification of certain contracts and agreements to all residents, representatives, staff and the office of the long-term care ombudsman.

S6204 (Rivera)/A7018 (Hevesi) – ***Signed Chap.138*** – This Bill requires nursing homes to document the reason for an individual requesting a voluntary transfer or discharge.

S4000 (Rivera)/A5460 (Joyner) – ***Signed Chap.134*** – This Bill repeals the provisions of Chapter 388 of the Laws of 2020, which established a drug assistance demonstration program and permits emergency prescriptions of insulin and related supplies. The Bill would require the establishment of an insulin workgroup that would explore options to increase access to insulin for those individuals that are without health coverage, or are ineligible for publicly subsidized health plan coverage. This bill also authorizes a physician or a nurse practitioner to issue a non-patient specific regimen for insulin and related supplies, as well as authorizes a licensed pharmacist to fill a non-patient-specific regimen of insulin and related supplies to an individual that has a valid prescription for insulin within the last 12 months after being unable to obtain authorization from the initial prescriber.

S886 (Rivera)/A985 (Gottfried) – ***Signed Chap.129*** – This Bill makes clarifications to allow for adverse determination notices to be sent electronically in certain circumstances.

Coming Up

Thursday, July 15, 2021 @ Time TBD – **Public Health and Health Planning Council, Committee Day –** Via **Webcast**

Thursday July 15, 2021 @ 9:00 a.m. **– Drug Utilization Review Board Meeting – Via Webcast**

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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