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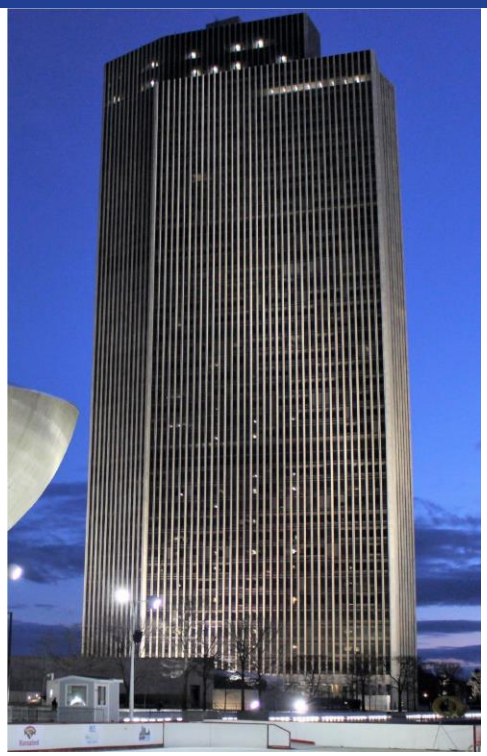

PLUGGED IN TO HEALTH

Healthcare & Policy Coverage Across New York State

July 20, 2021

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SPA Request Approved for Supplemental Payments to Nursing Homes

The Centers for Medicare and Medicaid Services ("CMS") has **approved** New York's Medicaid State Plan Amendment ("SPA") request to provide supplemental payments to nursing homes that represents a full restoration of the "*across the board two percent (2%) annual uniform reduction of Medicaid payments*" The estimated annual increase in gross Medicaid expenditures attributed to this initiative contained in the budget for State Fiscal Year 2020-2021 is $70 million ($35 million State share).

The Department of Health ("DOH") submitted this SPA request to CMS in December of 2020, (**SPA 20-72**), pursuant to enacted legislation included in the State's 2020-2021 Budget.

The SPA also indicates that the DOH will make lump sum payments to facilities going forward.

DOL Issues Model Plans for the NY HERO Act

Under the New York Health and Essential Rights Act ("NY HERO Act"), signed in to law on May 5th, 2021, private employers are required to adopt an airborne infectious disease exposure prevention plan to protect employees against exposure and disease during a future airborne infectious disease outbreak. The new law also requires that employers to establish and administer a joint labor-management workplace safety committee at each worksite.

The New York State Department of Labor ("NYS DOL"), in consultation with the DOH, has developed a new **Airborne Infectious Disease Exposure Prevention Standard**, along with a **Model Airborne Infectious Disease Exposure Prevention Plan**, and **various industry-specific model plans** for the prevention of airborne infectious disease. Employers may choose to adopt the applicable policy template/plan provided by NYS DOL, or may

establish an alternative plan that meets or exceeds the standard's minimum requirements.

According to **DOL guidance**, the Airborne Infectious Disease Exposure Prevention Standard ***does not*** apply to:

- Employees or independent contractors of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.
- Any employee within the coverage of a temporary or permanent standard adopted by the Occupational Safety and Health Administration ("OSHA") setting forth applicable standards regarding COVID-19 and/or airborne infectious agents and diseases; and
- Any seasonal or endemic infectious agent or disease, such as the seasonal flu, that has not been designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.

The airborne infectious disease exposure prevention plans (the "Prevention Plans") must go into effect when an airborne infectious disease is **designated** by the NYS Commissioner of Health. In consideration of the recent termination of NY's state of emergency relating to COVID-19, the DOL has stated that: ***"Currently, while employers must adopt plans as required by the law, as of the date of this writing no designation has been made and plans are not required to be in effect."***

However, employers are required to adopt an applicable Prevention Plan within 30 days of the issuance of the model plans, which were released on July 7, 2021.

Additional resources and information on the NY HERO Act are available **here**.

COVID-19 Guidance Update

The Department of Health (DOH) has issued the following guidance relative to the ongoing response to COVID-19 and the end of New York's declared disaster emergency.

Guidance for Medicaid Pharmacies Regarding the End of the Declared Disaster Emergency – The DOH has issued **guidance** regarding the return to pre-emergency policies for the Medicaid Pharmacy Program, effective as of July 9, 2021. The guidance includes the following updates.

- **90 Day Supplies** – Medicaid will continue to cover a 90-day supply for most prescription and over the counter ("OTC") maintenance medications, in accordance with State and federal laws.

- **Medication Deliveries** – Confirmation of delivery via phone call, text or email, in lieu of signature, has been discontinued. Pharmacies that choose to provide delivery must confirm receipt of medications by obtaining a signature at the time of delivery from the Medicaid member, their caregiver or their designee as required per **Medicaid Policy**.

- **Early Refills** – Previous guidance allowing the use of the early refill override has been discontinued. Pharmacies responding to an early refill request from a member due to quarantine or outbreak should direct their inquiries to the Medicaid Pharmacy Program (518) 486- 3209. ***Use of the early refill override for a patient's COVID-19 quarantine or outbreak must now be authorized by the Medicaid Pharmacy Program and be documented within the pharmacy's processing system***. ****Note, pharmacy claims utilizing the early refill override for any reason require DOH approval***. The DOH continues to monitor override utilization. Claims submitted with the override without authorization are subject to audit and recovery by the NYS Office of Medicaid Inspector General.

- **Drug Supplies and Shortages** – During the Declared Disaster Emergency, the Medicaid Pharmacy Program monitored prescription drugs supplies and OTC products for back orders and removed certain prior authorization requirements in order to improve access.

- As of June 2021, there are no reported drug shortages. Therefore, on June 17, 2021, prior authorization requirements were reinstated for drugs previously reported in shortage.

- For a complete listing of drugs in the Medicaid Fee-for-Service Preferred Drug Program, click **here**.

The above updates have also been communicated to Medicaid Managed Care plans.

Managed Care Policy and Planning Meeting

On Thursday, July 8, 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 June was 5,114,743, an increase from May's enrollment of 5,085,772 enrollees.

- *HARP*: Statewide HARP enrollment increased by 1,026 enrollees from May to June for a total enrollment of 157,872.

- *HIV SNP Enrollment*: HIV SNP enrollment increased by 65 enrollees from May to June.

- *MLTC Enrollment Update*: Enrollment in MLTC Partial Cap is currently 242,961, an increase of 737 members from May. MAP enrollment increased to 28,985 for May. FIDA IDD enrollment is 1,744. MA enrollment continued its downward trend to 3,103 members in June, from 3,149 in May. PACE enrollment experienced a slight increase of 19 members from May to June. Since January, enrollment across all MLTC programs has increased by 2,837.

- *Community Health Assessment Reassessments*: DOH is working on guidance for plans to begin conducting CHA reassessments for members receiving LTSS. Reassessments have been suspended since March 18, 2020.

- *Nursing Home Benefit Limit (NHBL) Batch Process*: The next batch disenrollment process will have an effective date of October 1, 2021. All MLTCPs received the template *Notice of Intention to Disenroll from MLTC Medicaid Plan*. MLTCPs must insert plan-specific information and submit the template for DOH approval by July 16, 2021. MLTCPs will receive a survey on July 23rd to identify all permanently placed members for potential disenrollment. DOH will confirm the enrollment status of identified members and will return the final list of members who will be disenrolled by August 30, 2021. MLTCPs must then send *Notice of Intention to Disenroll* notices to those members and their authorized representatives by September 1, 2021.

June 2021 - Medicaid Update

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

NYS Medicaid Expansion of Coverage for Colorectal Cancer Screening

NYS Medicaid fee-for-service ("FFS") and Medicaid Managed Care ("MMC") Plans [including Mainstream MMC Plans, HIV SNPs, and HARPs] have expanded current colorectal cancer screening coverage to include enrollees 45 to 49 years of age. This expansion is responsive to updated recommendations by the United States Preventive Services Task Force (**"USPSTF"**).

All Providers

eMedNY Training Webinars & Provider Outreach and Training – eMedNY encourages all providers to reference to the "*Provider Outreach and Training*" web page. To register and view the list of topics, descriptions and available session dates, visit the eMedNY Provider Training web page by clicking **here**.

NY State of Health (NYSOH) - Higher Income New Yorkers May Now Qualify for Financial Assistance – Consumers can access new financial assistance to help pay for health insurance made available by the **American Rescue Plan Act** ("ARPA")when enrolling in a health plan through NY State of Health. Through the ARPA, higher-income individuals and families are now eligible for the federal tax credits. These federal tax credits are only available when individuals enroll in a health plan through NY State of Health

Policy and Billing

Fluoride Varnish Application Expansion for Dental Providers – Effective July 1, 2021, for Medicaid FFS members and MMC enrollees, the Topical application of Fluoride Varnish (CPT code "D1206") is reimbursable for members/enrollees between six months and 20 years of age (inclusive) up to four times per year, provided that there is an interval of not less than three months between any type of fluoride treatment. Certain members / enrollees 21 years of age and older, may be eligible for both "D1208" and "D1206" - Topical application of fluoride excluding varnish.

Medicaid FFS – Preferred Diabetic Supply Program, Revised – Effective July 22, 2021, the NYS Medicaid FFS Preferred Diabetic Supply Program (PDSP) will follow updated criteria for the coverage of Continuous Glucose Monitors ("CGM") and disposable insulin pumps to align with the policy update found in the article titled NYS Medicaid Coverage of Real-Time Continuous Glucose Monitors found in the **April 2021 issue of the Medicaid Update**. A list of products available on the FFS PDSP can be found **here**.

Medicaid Update – Special Edition: Comprehensive Telehealth Guidance

The DOH issued a *Medicaid Update - Special Edition*, on July 2, 2021, titled "**Comprehensive Guidance Regarding Use of Telehealth including Telephonic Services**". This updated guidance provides information to NYS's Medicaid providers on the continued coverage of services provided via telehealth for the duration of the federally declared Public Health Emergency ("PHE"), or until subsequent guidance is issued. This updated guidance is effective as of June 25, 2021. The Secretary of the U.S. Department of Health and Human Services ("HHS"), Xavier Becerra, renewed the declared PHE related to the Coronavirus Disease 2019 ("COVID-19") pandemic, effective July 20, 2021, for an additional 90 days.

OMIG Offers an Application for Financial Hardship

The Office of the Medicaid Inspector General ("OMIG") has **announced** the development and implementation of a new process that affords providers the opportunity to apply for relief in the event an OMIG audit may pose a financial

hardship to the organization. Providers that have received a Final Audit Report and wish to apply for financial hardship consideration can contact the Bureau of Collections Management which can supply the provider with a Financial Hardship Application. Providers who have already entered into a repayment agreement with OMIG will be required to complete an application upon their one-year review by OMIG.

Applications must be completed in their entirety to be eligible for relief and sample Financial Hardship Applications are posted on OMIG's website, available **here**.

HHS Announces $103 Million to Strengthen Health Workforce

The U.S. Department of Health and Human Services ("HHS") recently **announced** the availability of approximately $103 million in American Rescue Plan ("ARP") funding to span over a three-year period. The funding is intended to reduce burnout and promote mental health among the health workforce.

Applications are now being accepted for the following funding opportunities.

1. **Promoting Resilience and Mental Health Among Health Professional Workforce** - Approximately 10 awards will be made totaling approximately $29 million over 3 years to health care organizations to support members of their workforce.
2. **Health and Public Safety Workforce Resiliency Training Program** - Approximately 30 awards will be made totaling approximately $68 million over 3 years for educational institutions and other appropriate state, local, Tribal, public or private nonprofit entities training those early in their health careers.
3. **Health and Public Safety Workforce Resiliency Technical Assistance Center** ("HPSWRTAC") - One award will be made for approximately $6 million over three years to provide tailored training and technical assistance to HRSA's workforce resiliency programs.

Updates: eMedNY has provided updated information for the following provider types enrolled in the State's Medicaid Program under the following links on the eMedNY website.

- **Ordered Ambulatory** providers: **Fee Schedule**
- **Nurse Practitioner ("NP")** providers: **Fee Schedule**
- **Durable Medical Equipment ("DME")** providers: **Fee Schedule**

Regulatory Update

Department of Financial Services ("DFS") –

Independent Dispute Resolution for Emergency Services and Surprise Bill – The DFS has **adopted regulations** setting forth the responsibilities of health care plans, hospitals, and IDR entities ("IDREs") in relation to the Independent Dispute Resolution ("IDR") process and details the process for submitting disputes involving hospital bills for emergency services, to include inpatient services that follow an emergency room visit.

This rule requires healthcare plans to provide notice and disclosure information to insured consumers related to surprise bills and bills for emergency services. Plans are required to provide an insured consumer with a notice that they may receive a surprise bill based on a medical claim submitted and must include a description of "surprise bills" along with information detailing the process for filing a grievance if the Plan has made the determination that the bill was not a surprise bill.

The amendment to regulation also expands disclosure requirements for non-participating physicians to inform the consumer of the IDR process, along with providing the claim form and assignment of benefits ("AOB") form which are currently only required to be provided with surprise bills.

The original proposed rule was published in the State Register on **October 23, 2019** and the revised proposed rule was published in the **April 7, 2021** issue of the State Register. This final rule is effective on August 13, 2021.

Enterprise Risk Management and Own Risk and Solvency Assessment – The DFS has **adopted regulations** requiring insurers doing business in NYS to include reasonably foreseeable material risks related to cyber-security, climate change, pandemics and epidemics within the entity's enterprise risk management ("ERM") functions. his final rule is effective on August 13, 2021.

Department of Health ("DOH") –

Rate Setting for Residential Habilitation in Community Residences and for Non-State Providers of Day Habilitation – The DOH has **adopted regulations** which implement a reduction in payments to residential providers for periods referred to as retainer days, reserved bed days, therapy days, and leaves of absence. Specifically, this rule makes changes to defined terms in the rate methodology used to set reimbursement rates for Individualized Residential Alternatives ("IRAs"). The definition changes include:

- A reset to the occupancy adjustment for IRA rates to zero;
- A limitation on reimbursement for retainer days to 50 percent of a provider's established rate; and
- Sets a limit to the number of therapy days a provider may bill for to 96 days per year per individual, at a reimbursement rate equal to 50% of the provider's established rate.

These changes would impact provider services beginning on and after May 1, 2021. This rule also makes changes to conform the regulations for OPWDD waiver services to be in line with OPWDD's approved Home & Community Based Services 1915(c) Comprehensive Waiver ("HCBS Waiver") agreement with the federal Centers for Medicare and Medicaid Services ("CMS").

The original proposed rule was posted in the **February 17, 2021** issue of the State Register. This regulation is effective as of July 14, 2021.

Surrogacy Programs and Assisted Reproduction Service Provider Licensing – The DOH has ***re-issued*** **emergency regulations** that outline 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. This regulation also implements the requirements for the DOH to establish gestational surrogacy guidelines and ova donation guidelines.

This regulation implements requirements included in Part L of Chapter 56 of the Laws of 2020, which directs the DOH to regulate surrogacy programs and assisted reproduction service providers, the practice of gestational surrogacy, and the donation of ova to ensure the health and safety of the surrogate, the egg donor and the children born under gestational surrogacy agreements, to ensure that the surrogacy agreement is ethical, and to ensure that surrogacy agreements are fair to the parties that enter into them.

This emergency regulation is effective as of July 16, 2021.

Workers' Compensation Board ("WCB") –

DME Fee Schedule – The **proposed amendments** to regulations will correct several codes and make updates to the ***Official New York Workers' Compensation Durable Medical Equipment (DME) Fee Schedule*** – second edition, June 28, 2021. Comments on the proposal will be accepted for 60 days from its publication in the State Register on July 14, 2021.

Telehealth - The **proposed regulations** will repeal and replace **section 325-1.13 of Title 12 NYCRR** (*Insurance Company Medical Inspectors*) with a new section 325-1.13 that will permanently provide the option for telehealth visits in some circumstances. Telehealth under this regulation would consist of medical treatment and care rendered by a Board authorized medical provider in NYS by use of a synchronous two-way audio and visual electronic communication, or synchronous two-way treatment and care via telephone.

This rule requires that there be an initial in-person clinical encounter occur, with interval (every third) clinical encounters being conducted in-person by the treating medical provider. This rule also allows the Chair to suspend or modify the in-person clinical encounter requirements within the regulations, due to a state-wide or regional emergency or for reasons of medical necessity.

Telehealth services administered by physical therapists, occupational therapists, acupuncturists and chiropractors along with certain other medical services would not be permissible under this regulation.

Comments on the proposal will be accepted for 60 days from its publication in the State Register on July 14, 2021.

COVID-19 Telemedicine - The WCB has issued **emergency regulations** to allow telemedicine in some circumstances for social distancing purposes due to COVID-19. These amendments supersede the previous emergency telemedicine adoption to keep telemedicine in effect during the regulatory process for the permanent telehealth proposal (above). A Notice of Emergency Adoption will be published in the July 28, 2021, edition of the State Register.

This emergency rule is effective as of its filing on July 13, 2021, and will expire after 90 days.

Notice as Required for Compliance with the Formulary – The WCB has issued an **adopted rule** implementing a compliance date of on or before May 1, 2021, for which insurers, self-insured employers and third-party administrators were required to provide notice to affected claimants and medical providers of the date that refills and renewals of prescription medication must conform to the *New York Workers' Compensation Drug Formulary (Formulary)*. The WCB's initial delay of the effective date for renewal and refill compliance will expire in early summer of 2021.

The original emergency/proposed rule was posted in the State Register on March 31, 2021, and a Notice of Adoption will be published in the July 21, 2021 issue of the State Register.

Legislative Update

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:

A7688 (Paulin) / S6312 (Comrie) – ***Signed Chap.166*** – This Bill increases the authority of the Dormitory Authority of the State of New York ("DASNY") to issue hospital and nursing home project bonds and notes from $16.6 billion to $17.4 billion.

A7659 (Buttenschon) / S6801 (Rivera) – ***Signed Chap.181*** – This Bill provides for the continuation of certain consumer and provider protections (as

it relates to changes to in-network hospital coverage) under contracts with Managed Care Organizations, through June 30, 2023.

A7660 (Reyes) / S6896 (Rivera) – ***Signed Chap.182*** – This Bill extends provisions of Child Health Plus ("CHP") related to presumptive eligibility, preventing fraud, and establishing premiums for an additional two years through July 1, 2023.

A7945 (Clark) / S7055 (Cooney) – ***Signed Chap.185*** – This Bill extends the authorization for the residential care off-site facility demonstration project under Public health Law for an additional three (3) years through 2024. The demonstration project allows for the provision of physical, occupational and speech therapy by a residential health care facility at an off-site location.

A7568 (Gottfried) / S7059 (Rivera) – ***Signed Chap.186*** – This Bill extends, for an additional two (2) years through 2023, certain provisions of the Public Health Law and Social Services Law relating to medical reimbursement of licensed home care services agencies (“LHCSAs”) and other welfare reforms.

A4594-A (Gottfried) / S5506-A (Hinchey) – ***Signed Chap.193*** – This Bill allows up to 100% of hospice residence beds to be dually certified for in-patient services.

A7022 (Wallace) / S6740 (May) – ***Signed Chap.202*** – This Bill extends access to the long-term care ombudsman program ("LTCOP") for assisted living facilities through December 31, 2023.

A7634 (Cruz) / S6528 (Persaud) – ***Signed Chap.223*** – This Bill authorizes the NYS Office for the Aging (NYSOFA) to establish the Elder Abuse Enhanced Multidisciplinary Team ("E-MDT") Program within NYSOFA.

A4801-A (Abinanti) / S4345-A (Brouk) – ***Signed Chap.289*** – This Bill authorizes summer camps to hire certain licensed professionals to provide services to meet the mental and physical needs of the attending children during their summer camp experience.

A7499 (Barnwell) / S6526 (May) – ***Signed Chap.296*** – This Bill amends the definition of social adult day services to include community or home settings which are pursuant to a person-centered service plan.

Coming Up

Tuesday July 27 @ 9:00 a.m. – **Joint Legislative Committee Hearing** Re: ***Homecare Workforce – Challenges and Solutions***
– Van Buren Hearing Room A, Legislative Office Building, 2nd Floor, Albany

Thursday, July 29 @ Time TBA – **Public Health and Health Planning Council Full Council Meeting** – Albany – Via **Webcast**

Friday July 30 @ 1:00 p.m. – **Minority Health Council Meeting** – **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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