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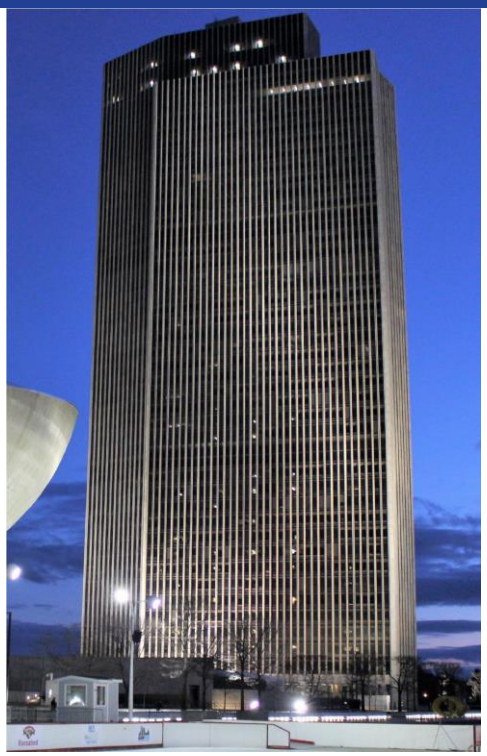

PLUGGED IN TO HEALTH

Healthcare & Policy Coverage Across New York State

July 27, 2021

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DFS Circular Letters to Insurers Re: Disaster Planning, Preparedness, and Response

The Department of Financial Services ("DFS") has issued insurance industry Circular Letters ("CLs") separately to property/casualty insurers and life and health insurers authorized to do business in New York State ("NYS"), **Insurance CL No. 6 (2021)** and **Insurance CL No. 7 (2021)** (respectively). Each of the CLs repeals and replaces its previous 2019 version of guidance, Insurance CL No 5 (2019) and Insurance CL No 6 (2019) (respectively).

In consideration of the key role that insurers play in conjunction with the DFS, to provide accurate, timely and consistent information regarding the extent or amount of losses, damages, personal injuries, and deaths arising from disasters to the Governor and the State Office of Emergency Management ("SOEM"), it is anticipated that insurers assist the DFS with obtaining this necessary and critical information before, during, and after a disaster.

The recent CLs include ***updated standards*** for insurers to adhere to in planning and preparing for, and responding to, a disaster occurring anywhere in the world, including in NYS that could affect an insurer's ability to continue doing business and servicing the people of NYS.

Among other updates, the DFS guidance specifically states that insurers should perform a business impact analysis, at least annually, with updates as necessary, whereas the previous guidance afforded a broader frequency for performing such analysis and updates.

The minimum requirements for an insurer's "Business Continuity Plan" are also expanded such that the plans should also:

- *address all significant business activities, including financial functions, underwriting and claims functions, telecommunication services, data processing, network services, and security and remote access, and assign a restoration priority to each significant business activity*; and

- address *communication and* interaction with *employees, customers, insurance producers, independent adjusters, and other* external business entities, including contractors and vendors, *and any contingency plans in the event that the insurance*

producers, independent adjusters, and other external business entities experience a business interruption.

Life and Health Insurers must submit to the Department a disaster response plan, a response to the disaster response plan questionnaire, and a response to the business continuity plan questionnaire by October 8, 2021.

The DFS requests that all required submissions be made through the **DFS Portal Application**. Instructions for the completion and submission of the disaster response plan and questionnaire and business continuity plan questionnaire, as well as instructions for use of the portal application, are all available on the DFS website, or by clicking **here**.

DOH Rescinds COVID-19 CBLTSS Guidance

Effective July 26, 2021, the DOH is ***rescinding*** the guidance originally issued on March 18, 2020 and updated on April 8, 2020 entitled – *COVID-19 Guidance for the Authorization of Community Based Long-Term Services and Supports ("CBLTSS") Covered by Medicaid **("COVID-19 CBLTSS Guidance")***. This CBLTSS Guidance was provided in response to the COVID-19 outbreak and the state disaster emergency declared by Executive Order No. 202, which expired on June 25, 2021.

The DOH provides ***"Transitional Guidance"*** that details steps for returning to pre-emergency status for each of the following topic areas.

The Transitional Guidance continues to apply to all Medicaid Managed Care Plans ("Plans"), including Managed Long-Term Care Plans (Partial, Medicaid Advantage (MA) Medicaid Advantage Plus (MAP), and Program of All-Inclusive Care for the Elderly (PACE)), mainstream Medicaid Managed Care Plans, HIV Special Needs Plans, Health and Recovery Plans and Local Departments of Social Services (LDSS).

Topic 1: Physician Order - ***Effective immediately***, and based on **emergency telehealth regulations**, the DOH extends the ability of physicians to conduct medical examinations that assess an individual's needs for PCS or CDPAS via telephonic or telehealth modalities, as well as allowing exams to be completed in-person. **Verbal transmittance of results of the medical examination and a physician order is no longer permitted**. Additionally, the physician order form (DOH-4359 or HCSP-M11Q) is required to initiate a community health assessment ("CHA"), and the CHA may no longer be initiated upon receipt of a verbal order.

Topic 2: Community Health Assessments – ***Effective immediately***, **all initial assessments** conducted by registered nurses for initial authorizations of the PCS, CDPAS, or other CBLTSS **must be conducted in-person**, as well as those assessments conducted for requests for change in service authorizations. CHAs via telephonic or telehealth modalities to develop an initial plan of care is **no longer permitted**.

Effective immediately, all CHAs conducted must be complete to be utilized for the purposes of care planning. Partial CHAs will no longer be allowed to be used in care plan development, thus also ends the use of temporary plans of care. For those members with a temporary plan of care in place, managed care plans and LDSS should ensure all members

have a completed CHA and plan of care with notice of determination in place within 90 days of the effective date of this guidance

Topic 3: Reassessments – ***Effective immediately***, managed care plans and LDSS must begin resuming scheduling and performing required face to face periodic reassessments and the six-month in-person care management home visits. The resumption should be conducted and prioritized as outlined within this Transitional Guidance.

Topic 4: Personal Assistant Annual Assessments – ***Effective immediately***, the suspension of CDPAP personal assistant annual health assessments is lifted. CDPAP Personal Assistants must obtain an annual health assessment, if due, no later than September 30, 2021.

Topic 5: Facility-Based Assessments – ***Effective immediately***, where possible, required facility-based assessments are resumed and are to take place at the facility in a face-to-face modality, under applicable facility safety guidelines in place related to mask wearing and/or social distancing.

The above is just a short summary of the steps to be taken to return to pre-emergency status, as provided by the DOH in the **Transitional Guidance** for CBLTSS under Medicaid.

UPDATED – Reopening Guidance for Medical Model Adult Day Health Care Program

The DOH has issued an update to the *Health Advisory: Reopening Guidance for Medical Model Adult Day Health Care ("ADHC") Program* issued on **March 25, 2021**. The DOH has taken a dual-phased approach for re-opening ADHC programs. Phase #1 allowed approved "off-site" ADHC programs across the state apply to re-open beginning April 1st; and Phase #2 allowed ADHC programs co-located on the grounds or immediately adjacent to the sponsoring nursing home, if there are no active COVID-19 cases associated with the co-located nursing home, **and** the nursing home meets the eligibility criteria for visitation.

In this **updated Health Advisory** the DOH announces that ***programs are now eligible to reopen, pursuant to the infection control guidelines*** as outlined within this updated Advisory.

The DOH requires that approved ADHC programs that have not already reopened must notify DOH prior to reopening and include a copy of the program's updated **policies and procedures for infection control**. Updated policies and procedures for infection control should address the key focus areas of **physical distancing** in the ADHC; **infection control**, including screening of registrants, staff, and visitors; and **transportation**.

The DOH has included updates to the three key focus areas for ADHC programs, when compared to the March 25, 2021 – Health Advisory. These updates are reflective of recent recommendations for fully vaccinated individuals, consistent with CDC and State guidance, while also adding updates for visitors to ADHC programs.

In-Service Requirements for Personal Care Aides and Home Health Aides

The DOH has issued a Dear Administrator Letter ("DAL") DHCBS 21-09, to inform home care service providers that the DOH intends to continue to exercise enforcement discretion when surveying providers for compliance with certain in-service requirements for a limited time period. Those time periods are summarized as follows.

- **Personal Care Aide (PCA)** – DOH will continue to exercise enforcement discretion until 12/31/2021 for PCAs who were required to complete 3-hours of in-service education by June 30, 2021, as permitted under **HCBS DAL 21-02**.
- **Home Health Aide (HHA)** – DOH will continue to exercise enforcement discretion until the end of the first full quarter following the declaration of the end of the federal Public Health Emergency (PHE) regarding the State's requirement for HHAs to complete 12 hours of in-service.
- **Hospice Aide** – The Centers for Medicare and Medicaid Services (CMS) has temporarily waived the requirement for meeting the In-service training of a hospice aide (min 12-hour/1-year period) and has postponed the deadline for meeting the hospice assessment requirements until the end of the first full quarter following the declaration of the end of the federal PHE.

The DOH strongly encourages employers to complete the annual and semi-annual in-service requirements for HHAs and PCAs as soon as is practicable. Those agencies that are not currently conducting annual or semi-annual in-service training should begin planning immediately for how the agency will execute forthcoming in-services to staff at the conclusion of the PHE.

Nursing Home Construction/Renovation Requirements

The DOH has issued a Dear Administrator Letter ("DAL") **NH 21-16** to nursing home operators which outlines the current allowances for the resumption of construction/renovation projects at nursing home facilities.

This DAL states that those construction projects, whether previously approved by the DOH but halted due to COVID-19 restrictions under the State Disaster Emergency, or those projects newly approved by the DOH, can now move forward with the submission and subsequent approval of a safety plan. The safety plans must include a COVID-19 mitigation / prevention plan outlining at a minimum, testing, screening, PPE use, physical distancing from residents, etc., and should be submitted to the applicable DOH Regional Office for review and approval.

Facilities must adhere to all relevant CMS, CDC, and DOH infection control guidance, including but not limited to all current guidelines related to COVID-19 testing and screening.

The DOH clarifies that – "*Under no circumstance, will the Department allow for such resumption of a renovation or construction project(s) in or adjacent to any occupied, dedicated COVID-only unit absent emergency circumstances.*"

Health Advisory: Discontinuation of Home Isolation for Persons with COVID-19 Who Are Not in Health Care Facilities or Congregate Settings

In this **updated Health Advisory**, the DOH makes the following changes regarding the criteria for the discontinuation of home isolation and applies to persons who are directed to recover from COVID-19 at home or at another home-like setting (e.g., a hotel or dorm room).

- The DOH now recommends that a person may be released from isolation 10 days after illness onset, provided that symptoms are improving and they are fever-free without the use of fever-reducing medication for at least 24 hours (reduced from 72 hours), consistent with CDC recommendations (***Ending Home Isolation for Persons with COVID-19 Not in Healthcare Settings***).

- If a test-based strategy is used to determine discontinuation of isolation (e.g., for severely immunocompromised persons, or to end isolation earlier than determined by the symptom-based strategy), negative results using **RT-PCR (Molecular Test)** for detection of SARS-CoV-2 RNA under an FDA Emergency Use Authorization (EUA) for COVID-19 from at least two consecutive respiratory specimens collected ≥24 hours apart (a total of two negative specimens) are required.

This DOH guidance applies to all individuals who test positive, irrespective of vaccination status. This guidance supersedes the previous DOH Health Advisory: *Symptom-Based Strategy to Discontinue Home Isolation for Persons with COVID-19 dated **May 30, 2020***.

Grant Opportunities

The DOH has issued a Request for Applications ("RFA") for the following opportunities.

Regional Alzheimer's Disease Caregiver Support Initiative –
This initiative provides support to informal caregivers of individuals living with Alzheimer's disease and other dementias ("AD/D") and individuals living with AD/D. The grantees will be required to implement and provide a comprehensive array of support services directed toward caregivers of individuals living with AD/D in the community. This includes allocating a minimum percentage of the total award to identify, engage and provide targeted outreach and services to members of an underserved community within the region the grantee is serving.

Total funding available under this opportunity will be $82.5 million over 5 years, with 11 grantees.

Letter of interest/intent for this RFA are due Friday July 30, 2021. Questions are due by Tuesday, August 10, 2021, and applications are due Friday, October 15, 2021, at 04:00 PM. To view a copy of this RFA, click **here**.

Centers of Excellence for Alzheimer's Disease & Other Dementias -

Applications for this RFA will be accepted only from not-for-profit Article 28 teaching hospitals, with neurology or other specialty medical services dedicated to dementia diagnosis and care, or from an not-for-profit academic institution or not-for-profit sponsoring agency applying on behalf of a not-for-profit teaching hospital.

An estimated total of $4.7 million per year is available to fund up to ten (10) grantees, serving eight (8) specified geographic regions across NYS. It is anticipated that contracts resulting from this RFA will be for a five (5) year period, beginning on June 1, 2022 and ending May 31, 2027.

Letter of interest/intent for this RFA are due Friday July 30, 2021. Questions are due by Tuesday, August 10, 2021, and applications are due Friday, October 15, 2021, at 04:00 PM. To view a copy of this RFA, click **here**.

In addition, the State Office of Temporary and Disability Assistance ("OTDA") has issued the following Request for Proposals ("RFP").

NYS Response to Human Trafficking Program ("RHTP") –
This RFP is being issued to solicit services for confirmed Human Trafficking Victims under the NYS RHTP. OTDA expects applicants to make available the following types of services to each participant.

- Case Management
- Shelter/Rental Assistance/Safe House Placement
- Medical Care (including prescriptions)
- Health Assessment
- Mental Health Counseling
- Legal Services
- Food
- Other Identified service needs as indicated by the proposal

Total funding of $11.985 million will be distributed annually for five-year contracts under this procurement. Questions regarding this RFP are due by Thursday, August 5, 2021, and applications are due August 23, 2021, at 02:00 PM. The anticipated award date for this RFP is Friday, October 1, 2021.

NYS Attorney General Announces $26 Billion Opioid Settlement

The New York Attorney General ("AG"), Letitia James **announced** a proposed $26 billion agreement that will resolve claims against three of the nation's largest drug distributors — McKesson Corporation, Cardinal Health Inc., and Amerisource Bergen Drug Corporation — as well as one of the nation's largest drug manufacturers — Johnson & Johnson (J&J).

According to the AG's announcement, New York has already signed on to the proposed global agreement, while other states have 30 days to sign onto the deal. If the global agreement is approved by a substantial number of states and local governments across the country, New York is expected to receive up to $1.25 billion in funds to support prevention, treatment, and recovery programs across the State. This agreement is in addition to an earlier agreement with J&J announced last month, in which **J&J agreed to pay almost $230 million** into NY's Qualified Settlement Fund.

The NYS Office of the Attorney General has negotiated agreements which could result in delivering nearly $1.6 billion in funds to support efforts in combatting the opioid crisis across New York State.

Request for Public Comment Re: Proposed Sale of Affinity Health Plan, Inc.

The NYS Office of the Attorney General ("OAG") has announced that Affinity Health Plan, Inc., a not-for-profit health plan, has submitted a **Petition** to the OAG for review and approval of the sale of substantially all of the assets of Affinity to Molina Healthcare, Inc., a for-profit corporation. The two parties have agreed to a purchase price of $500 million, of which $110 million will be contributed to the State's Health Care Transformation Fund, pursuant to State Law.

The OAG is seeking public comment on the proposed transaction, of which the OAG will review all comments prior to making a final decision on the Petition. Interested parties may file a comment online using the **Affinity Transaction Public Comments Form**, or by email: **Affinity.Transaction@ag.ny.gov**. Public comments regarding the transaction must be received on or before **July 28, 2021.**

Regulatory Update

Department of Health ("DOH") –

Meeting Space in Transitional Adult Homes – The DOH has ***re-issued*** an **emergency / proposed regulation** that requires Transitional Adult Home ("TAH") operators to provide space for residents to meet privately with staff of the facility, visitors or other service providers. This rule requires that such space meet certain criteria such as a minimum of 160 square feet, above grade level, offer privacy, and be separate and distinct from an occupied or reserved resident room. The TAH operator is required to submit a plan explaining how the operator will meet the space requirements to the Department within 30 days of the Department's request.

The proposed version of the regulation was posted in the **May 12, 2021** issue of the State Register, and this emergency regulation is valid for 60 days.

Workers' Compensation Board (WCB) –

Designating Contacts for PARs – The WCB has **adopted regulations** which require insurance carriers, self-insured employers, or third-party administrators (TPAs) to provide the Chair, or a designee, with the name and contact information for the point(s) of contact for a prior authorization request (PAR), on or before May 1, 2021, in the manner prescribed by the Chair.

The original emergency/proposed rule was posted in the **March 31, 2021** issue of the State Register. This rule is effective as of July 21, 2021.

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 @ 10:15 a.m. – **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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