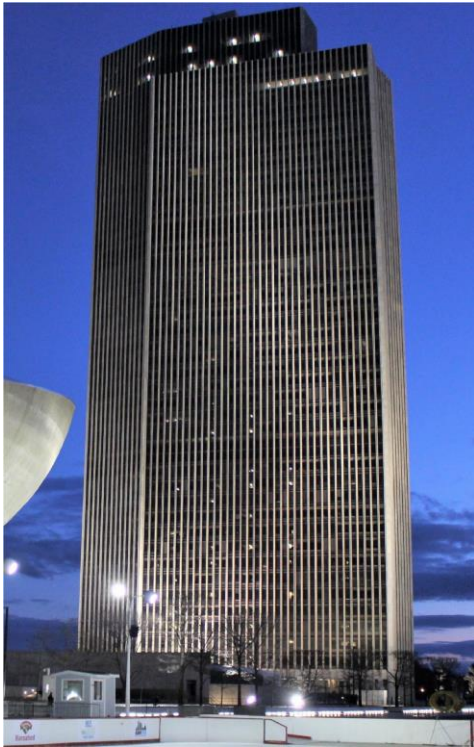

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Healthcare & Policy Coverage Across New York State



May 10, 2022

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EQUAL Program Funding Announcement for SFY 2022-23

The Department of Health (“DOH”) recently issued a “*Dear Administrator Letter*” ([DAL# 22-05](#)) to adult care facility (“ACF”) operators announcing the availability of funding under the Enhancing the Quality of Adult Living (“EQUAL”) Program for SFY 2022-23. Operators of Adult Homes and Enriched Housing Programs who provide services to individuals receiving Supplemental Security Income (“SSI”), State Supplemental Program (“SSP”) benefits, Safety Net (“SN”) assistance, and/or Medicaid (with respect to residents of assisted living programs – “ALPs”) are eligible for EQUAL Program payments.

The purpose of the EQUAL program is to enhance both the quality of care and life experience for qualifying residents by providing additional funding to licensed and certified ACF operators. EQUAL funding is split equally among two categories – *Local Assistance* and *Capital Improvement Projects*, with a total of \$6,532,000 available in EQUAL funding for SFY 2022-23.

Applications must be electronically submitted via the [Health Commerce System \(“HCS”\)](#) by **5:00 p.m. on Friday, June 15, 2022**. The DOH has provided links to a training webinar along with additional information on how to apply, conditions of participation and program certification which can be found on the HCS or on the [ACF DAL webpage](#).

Note: Operators who do not apply by the prescribed deadline will be interpreted as declining to participate in the EQUAL Program.

2023 Invitation for Participation in NY State of Health

On May 4, 2022, NY State of Health (“NYSOH”), the state’s Official Health Plan Marketplace, issued an invitation for insurers to participate for the 2023 Plan Year. NYSOH’s [invitation](#) and requirements for insurer certification and recertification to participate in 2023, along with several other related informational resources, have been posted to the NYSOH’s website which can be accessed by clicking [here](#).

Questions regarding the application process should be directed to the Invitation Administrator at Nyhxpm@health.ny.gov.

DFS Issues Notice to PBMs on Registration and First Annual Reporting

The Department of Financial Services (“DFS”) has issued **guidance** on the applicability of the recently enacted Pharmacy Benefit Managers (“PBM”) laws relating to registration and reporting. The guidance addresses frequently asked questions (“FAQs”) regarding the process and requirements for PBMs to meet the registration and first annual report deadlines.

The deadline for obtaining a PBM Registration is June 1, 2022. All PBMS operating in New York are required to have applied on or before June 1, 2022, along with the non-refundable application fee, and will be deemed to hold a temporary registration until a final determination has been made by the DFS Pharmacy Benefits Bureau.

In addition, all PBMs operating in New York are required to file a first annual report by July 1, 2022, using the first annual report documents provided on the **DFS website**.

To view the list of FAQs in its entirety click **here**. Questions regarding the PBM Registration Application or First Annual Report, email **pbm@dfs.ny.gov**.

Legislative Update

The Legislature will be in session Monday through Wednesday this week with just **twelve** “session days” remaining in the 2022 Legislative Session.

The following bill was recently **acted upon by the Governor**:

[A8536 \(Gottfried\) / S8295 \(Salazar\)](#) – ***Signed Ch. 179*** – This Bill increases the number of members appointed to the Public Health and Health Planning Council from twenty-five (25) to twenty-six (26), to include the Commissioner of Health, and adds the requirement that at least one of the appointed members represent women's health service providers.

Committee Agendas

The following bills of interest have been placed on committee agendas. The Legislative Committee meetings can be viewed online at the **[NYS Assembly website](#)**, or the **[NYS Senate website](#)**, respectively.

Assembly Codes - 3:00 PM, Tuesday, May 10, 2022

[A286A \(Gunther\) / S1997A \(Jackson\)](#) – This Bill subjects an employer to civil monetary penalties ranging from \$1,000 up to \$3,000, for each violation of the provisions of law which place restrictions on the number of consecutive hours of work for nurses. The employee shall receive an additional 15% of the overtime payment from the employer for each violation as damages.

[A6058 \(Gottfried\) / S5474 \(Rivera\)](#) – This Bill establishes the New York Health Plan, a universal single payer health plan for all New York residents.

A9722 (Reyes) / S8618 (Rivera) – This Bill requires the Commissioner of Health, by regulation, to reclassify a compound, mixture, or preparation containing a substance which is listed as a Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V substance or exempt it, if rescheduled per federal regulation.

Assembly Health - 2:30 PM, Tuesday, May 10, 2022

A3618 (Hawley)/S2704 (Ortt) – This Bill requires that the DOH conduct unpredictable nursing home inspections outside of the normal business hours of 8:00 a.m. and 6:00 p.m., with no more than 60% of all nursing home inspections conducted during normal business hours; and shall report annually on the results of the prior year’s nursing home inspections conducted outside of regular business hours.

A3622 (Hawley)/S2705 (Ortt) – This Bill implements a nursing home purchasing moratorium for a period of at least two years (24 months) for those individuals or entities attempting to purchase a nursing home whose affiliated facilities have been cited for noncompliance in a standard health inspection or life safety health inspection.

A4376 (Walczyk) – This Bill authorizes the DOH to create the Medical Professionals Across Rural New York State Student Loan Repayment Fund Pilot Program with annual award amounts ranging from \$5,000 to \$20,000 per participating professional.

A6628 (Barclay) – This Bill requires that nursing homes ensure that a resident has the right to designate an individual to be notified prior to a change of dosage, brand, or form of a resident’s psychotropic medication.

A7320 (Jensen) – This Bill establishes training and registration requirements for “patient care technicians” who provides such direct care services to an individual being cared for in a hospital, nursing home, or in a home through a home care service.

A9148 (Gottfried) / S8295 (Rivera) – This Bill requires the Commissioner of Health to promulgate regulations, issue guidance and take certain actions that will implement and promote a statewide home care policy to further ensure access to home care services through coordination with other state agencies and promotion of the policy. The regulation, guidance issued, and actions taken to promote the policy would include, but not be limited to:

- information and guidance to assist with making home care referrals by various applicable health care settings including hospitals, nursing homes, physicians as well as other applicable settings;
- development of a comprehensive public education program about home care;

- integration of home care into the state's strategic health and public health delivery planning and programming; and
- inclusion of home care service providers in DOH programs that provide support and funding for health care capital and workforce development support.

Individuals, who are Medicaid eligible, receiving care, or eligible to receive care, through admission to a hospital or nursing home must be informed verbally and in writing of the availability of home care services within their county of residence.

Further, this Bill would make significant changes to the home care reimbursement rates, along with a comprehensive examination on the coverage of home care services in conjunction with a cost benefit analysis for recommended changes.

A10186 (Gunther) / S8805 (Breslin) – This Bill requires that space be provided on forms used for enrollment, renewal, disclosures, and related health insurance policy transactions for an enrollee of such policy to register, or decline registering in the Donate Life Registry.

Assembly Higher Education - 11:00 AM, Wednesday, May 11, 2022

A3040B (McDonald) – This Bill makes changes to the definition of the practice of pharmacy to allow pharmacists to administer injectable medications for substance abuse and mental health as prescribed by a licensed prescriber.

Assembly Insurance - 10:00 AM, Wednesday, May 11, 2022

A1309 (Magnarelli) – This Bill authorizes payments by health insurers to nonparticipating or nonpreferred providers of ambulance services licensed under Article 30 of the Public Health Law, with the exception for those providers located in New York City.

Assembly Labor - 11:30 AM, Wednesday, May 11, 2022

A8874B (Joyner) – This Bill provides circumstances for the reinstatement of limitations on mandatory overtime after a local, state, or federal emergency; subjects an employer to tiered civil monetary penalties ranging from \$1,000 for the first violation and up to \$5,000 for the third violation within a three-year period, and the employee shall receive an additional 15% of the overtime payment.

Assembly Mental Health - 12:30 PM, Monday, May 9, 2022

A10139 (Gunther) / S9041 (Brouk) – This Bill establishes a temporary commission to study aging in place in mental health housing.

Assembly Science and Technology - 12:00 Noon, Tuesday, May 10, 2022

A9952A (Otis) – This Bill enacts the Critical Infrastructure Standards and Procedures Act to require the identification and protection of both public and private critical infrastructure that could be comprised by cyber-attacks.

Assembly Ways and Means - 1:30 PM, Monday, May 9, 2022

A187A (Gottfried) / S431A (Hoylman) – This Bill establishes a medication synchronization policy under the Medicaid program.

A7910 (Gottfried) – This Bill requires that additional information be provided to Medicaid managed care plans (the “plans”) during the capitated rate approval process among the DOH and its contracted independent actuary, prior to the DOH’s submission of the approved rate to CMS and requires the DOH to provide a response to a plan’s request for an additional review of the actuarial-soundness of the rate-setting process. The DOH must both agree to the plan’s request for additional review and delay the submission of the plan’s rate to CMS, or if the DOH denies such request for an additional review, the DOH must provide the plan, in writing, the clear reason for the denied review.

A8006 (Gottfried) / S7626 (Rivera) – This Bill authorizes any eligible resident of an assisted living program (“ALP”) to receive hospice services and requires the DOH to develop regulations for such delivery of hospice services to residents enrolled in an ALP.

A8880A (Wallace) / S8205A (Hinchey) – This Bill establishes a statewide advanced care planning campaign to promote public awareness of hospice and palliative care services.

Senate Budget and Revenue - 9:30 AM, Wednesday, May 11, 2022

S7365A (Kaplan) / A3409A (Lavine) – This Bill allows a tax credit for either new or retrofitted principal residences which are universally designed to be accessible and adaptable housing.

Senate Finance - 11:00 AM, Tuesday, March May 10, 2022

S7626 (Rivera) / A8006 (Gottfried) – This Bill authorizes any eligible resident of an assisted living program (“ALP”) to receive hospice services and requires the DOH to develop regulations for such delivery of hospice services to residents enrolled in an ALP.

S8879 (Persaud) / A10049 (Solages) – This Bill prohibits the denial of a screening to detect ovarian cancer for individuals who have a personal history of ovarian cancer, and such testing would not be subject to frequency caps or other limitations.

Senate Health – Immediately Following Session, Wednesday, May 11, 2022

S85 (Hoylman) / A7807 (Bronson) – This Bill establishes the lesbian, gay, bisexual, and transgender long-term care facility ("LTCF") residents' bill of rights, to prohibit a LTCF, or LTCF staff to take certain actions based on a person's actual or perceived sexual orientation, gender identity or expression, or HIV status. This Bill requires that LTCFs post and distribute an additional notice alongside its current nondiscrimination policy; maintain certain records generated at the time of admission; employ certain practices to protect personally identifiable information and privacy for residents; and ensure that direct care staff are routinely trained on cultural competency focusing on patients who identify as LGBT and patients living with HIV.

S1737 (Skoufis) / A133 (Gottfried) – This Bill requires the creation of a wholesale prescription drug importation program (the "program"), developed (with stakeholder input) and regulated by the DOH, which complies with federal standards and regulations, including any applicable waivers or exemptions necessary. The DOH must provide an annual report on the operation of the program to the NYS Legislature.

S4546B (Rivera) / A4656B (Gottfried) – This Bill requires the DOH to establish a special needs assisted living program (the "program") among the fee-for-service Continuing Care Retirement Community ("CCRC") program to serve persons with neurodegenerative diseases (such as dementia or Parkinson's disease) with demonstrated behavior symptoms. The program would be limited to no more than ten sites, with each site limited to no more than ten residential beds, with potential for the addition of two respite beds. The Bill requires the DOH to report on the progress of the program to the NYS Legislature at least every two years.

S4640 (Rivera)/A273 (Gottfried) – This Bill requires practitioners treating a patient with a neuromusculoskeletal condition that causes pain, to consider prescribing non-opioid treatments as an alternative before prescribing an opioid.

S6435B (Breslin) / A7129A (Gottfried) – This Bill prohibits health insurers from making alterations to their prescription formulary during a contract year and revises the time period for the utilization review determination process, from three business days to seventy-two (72) hours, or 24 hours in cases of serious medical emergency. This Bill also requires that the approval of the requested pre-authorization be valid for the duration of the prescription, to include any authorized refills, and throughout the duration of treatment for a specific condition as requested by the patient's provider.

S6846A (Rivera) / A9467 (Gottfried) – This Bill expands the definition of a telehealth provider to include any health care provider who possesses the requisite license, certification, registration, authorization or credentialing to

provide a health care service in New York State as determined to be clinically appropriate.

S6920 (Breslin) – This Bill provides that the failure by the utilization review agent to make a determination within the allowable time periods, shall be deemed to be an approval of the health care services.

S7499A (Salazar) – This Bill requires certain manufacturers of prescription drugs to notify the state’s drug utilization review board (“DURB”) of the proposed increase of the wholesale acquisition cost of such prescription drugs if such increase is more than 10% or more of the total cost of the drug.

S7594A (Mannion) / A10031 (Gottfried) – This Bill establishes a quality incentive program for qualifying Medicaid Managed Care providers based on their performance in meeting quality objectives and distributed based on a methodology derived by the Commissioner of Health. The quality incentive program would be funded at the greater of a minimum of 1% of premium paid to Medicaid Managed Care Plans, or \$300 million.

S7625 (Rivera) / A8441 (Gottfried) – This Bill requires hospitals to expand financial assistance access, eligibility, and protections for patients; and use a uniform financial assistance policy and application as a condition of participation in the indigent care pool fund (“ICP”).

S8205A (Hinchey) / A8880A (Wallace) – This Bill establishes a statewide advanced care planning campaign to promote public awareness of hospice and palliative care services.

S8206A (Hinchey) / A8881A (Wallace) – This Bill establishes an office of hospice and palliative care access and quality within the DOH, with certain powers and duties to promote, ensure, and improve the delivery of hospice and palliative care services.

S8805 (Breslin) / A10186 (Rules - Gunther) – This Bill requires that space be provided on forms used for enrollment, renewal, disclosures, and related health insurance policy transactions for an enrollee of such policy to register, or decline registering in the Donate Life Registry.

S8861 (Rivera) / A9293 (Gottfried) – This Bill requires the DOH to establish specialized health homes to serve adults with physical disabilities, which are to be reimbursed on a FFS basis with enhanced payment rates.

S8869 (Rivera) / A9974 (Gottfried) – This Bill requires hospitals and ambulatory surgical facilities to implement policies to prevent the exposure to “surgical smoke” during surgical procedures.

S8903 (May) / A9542 (Gottfried) – This Bill establishes a state-level program of all-inclusive care for the elderly (“PACE”) for persons 55 years of

age or older, who would otherwise qualify for nursing home levels of care, though wish to remain in their community.

Senate Higher Education – 11:30 AM, Tuesday, May 10, 2022

S2019 (Jackson) / A2294 (Pretlow) – This Bill makes various changes to the scope of practice of podiatry, to include requirements for certain certifications or permits to perform certain surgical procedures.

S4870A (Breslin) – This Bill makes changes to the definition of the practice of pharmacy to allow pharmacists to administer injectable medications for substance abuse and mental health.

S5435B (Cooney) – This Bill establishes the definition and scope of practice for the profession of certified registered nurse anesthetist (“CRNA”).

S5663A (Kennedy) / A3202A (McDonald) – This Bill allows patients up to ten visits with an occupational therapist (“OT”) without a referral from a physician or nurse practitioner; requires the OT to inform the patient that such visits may not be covered under insurance; and eliminates the need for referrals for certain treatment when covered by certain motor vehicle insurance policies.

S8465 (Rivera) / A8519 (Gottfried) – This Bill makes permanent, the authorization for pharmacists to substitute biosimilar medications under certain conditions by eliminating the sunset date under the current law.

S8843A (Stavisky)/A9971 (Cook) – This Bill extends the effectiveness of provisions of law relating to physical therapy assistants for an additional four years until June 30, 2026.

Senate Insurance – 9:30 AM, Monday, May 9, 2022

S7263 (Liu) / A2519 (Cymbrowitz) – This requires health insurers to provide victims of domestic violence with the option of providing alternative contact information for the purpose of receiving specific claim information or for specific billing purposes.

S8901 (Cleare) – This Bill requires that the State establish a pilot program for the Department of Financial Services (“DFS”) to set “ceilings” on the rates paid by a State entity (excluding Medicaid) for certain referenced prescription drugs, where such ceilings are based on the wholesale acquisition cost and the cost of such drugs referenced under select Canadian resources.

S8902 (Breslin) – This Bill extends, until December 31, 2025, the exemptions of certain property/casual insurers (including some medical malpractice insurers) from risk-based capital (“RBC”) requirements and from an application for an order or rehabilitation or liquidation.

Senate Procurement and Contracts – 1:30 PM, Monday, May 9, 2022

S8037 (Reichlin-Melnick) – This Bill prohibits the State from entering into contract to do business with any contractors who do not provide their employees with health coverage that includes supplemental breast cancer screenings.



Coming Up

Tuesday, May 10 @ 1:00 P.M. – **NYSDOH Virtual Public Hearing on State's 1115 waiver Amendment Request** – **Pre-registration**

Wednesday, May 11 @ 9:00 A.M. – **Spinal Cord Injury Research Board – Agenda and Information**

Thursday, May 12 @ 9:00 A.M. – **Drug Utilization Review Board ("DURB") Meeting** – Empire State Plaza, Concourse level, Meeting Room 2, Albany – **Webcast**

Thursday, May 19 @ 10:00 A.M. – **PHHPC Committee Meeting Day - Webcast**

Tuesday, May 24 @ 10:30 A.M. – **Continuing Care Retirement Community ("CCRC") Council Meeting** – Concourse of the Empire State Plaza, Albany, OGS Meeting Room 5 – **Agenda and Information** – **Webcast**

Wednesday, May 25 – **Transplant Council's Certificate of Need Regulatory Review Subcommittee Meeting @ 10:00 A.M. – Webcast**, followed by the **Transplant Council Meeting @ 1.00 P.M. – Webcast**

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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