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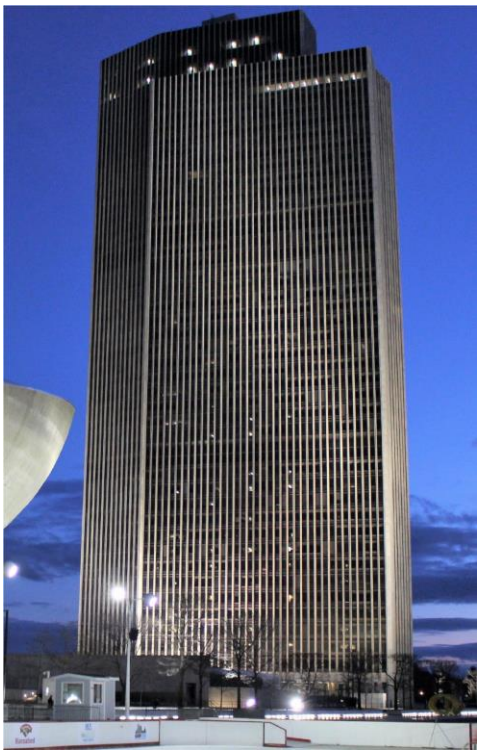

# PLUGGED IN TO HEALTH @ HINMAN STRAUB

## Healthcare & Policy Coverage Across New York State

**May 2, 2022**

## *What's Inside:*

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## *Implementation of NY's IA for PCS and CDPAS/CDPAP*

The Department of Health ("DOH") issued the following guidance to Medicaid Managed Care plans regarding the implementation of New York's Independent Assessor (NYIA).

***MMC Guidance*** – The DOH guidance, dated April 28th, outlines changes to the initial assessment process for Medicaid Managed Care (MMC) members in mainstream (MMC) plans, HIV Special Needs Plans (HIV SNPs), and Health and Recovery Plans (HARPs), seeking Personal Care Services (PCS), Consumer Directed Personal Assistance Services (CDPAS) or transfer to a Managed Long Term Care (MLTC) plan.

*Beginning May 16, 2022*, the NYIA will conduct all initial assessments for individuals seeking PCS and/or CDPAS, including Fee for Service (FFS) Medicaid members, MMC members and MLTC applicants (as detailed below). NYIA will complete the Community Health Assessment (CHA) to determine service needs and, where applicable, MLTC plan eligibility. For standard requests, the MMC plan will no longer conduct a separate CHA to authorize PCS and/or CDPAS.

Requests for PCS and/or CDPAS made on an expedited basis will continue to be made by the MMC plan until July 1, 2022.

MMC members voluntarily seeking a transfer into a MLTC plan will need a NYIA assessment to determine eligibility. If an MMC member began the initial assessment process prior to May 16, 2022, they will complete it with the MMC plan under the prior rules.

Services covered through New York's 1915(c) Waivers, including the Nursing Home Transition and Diversion (NHTD), Traumatic Brain Injury (TBI) and the Office for People with Developmental Disabilities (OPWDD) Comprehensive Waiver, will not require a NYIA CHA. However, PCS and/or CDPAS authorized for Waiver participants by an MMC plan, will require a NYIA CHA pursuant to the revised regulations.

MMC plans will continue to conduct reassessments for adults aged 18 and over, and initial assessments and reassessments for children aged 4-17, until further notice.

***MLTC Policy 22.01*** – Separately, the DOH issued MLTC Policy 22.01, dated April 27th, to MLTC plans including Partial Capitation plans and Medicaid Advantage Plus (MAP) plans that outlines the changes in how PCS

and/or CDPAS or CDPAP needs are assessed and authorized and how MLTC eligibility is established.

*Beginning May 16, 2022*, the NYIA will replace the current Conflict Free Evaluation and Enrollment Center (CFEEC) process. As part of the initial enrollment, the MLTC plan will no longer conduct a separate CHA to authorize PCS and/or CDPAS and other community based long term care support services (CBLTSS).

The guidance also notes that MLTC plans are strongly encouraged to use a CFEEC CHA conducted after May 16, 2022 which was scheduled with a CFEEC prior to May 16, 2022, as the initial assessment to authorize services. In addition, as of May 16, 2022, a CFEEC CHA is now valid for 12 months. This action repeals the current CFEEC CHA expiration in MLTC policy 16.08 of 75 days.

The MLTC plans will continue to perform certain assessment types, including 1) routine annual reassessments for authorizing PCS and/or CDPAS; 2) select non-routine reassessments as necessary; 3) MLTC to MLTC plan transfer assessments where the last assessment was conducted by the first plan; and 4) auto-assignments into MLTC plans will follow current process.

Additional guidance on reassessments under the NYIA will be issued prior to reassessment implementation. Questions on this policy can be sent to **independent.assessor@health.ny.gov**.

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## *ACF DAL – Enriched Housing*

The Department of Health (DOH) has issued a "*Dear Administrator Letter*" (**DAL# 22-06**) regarding funding made available under the Enriched Housing Operating Assistance Program (the "Program") for State Fiscal Year (SFY) 2022-23. The Program will fund enhancements to the quality of care provided to individuals receiving Supplemental Security Income (SSI) benefits by providing additional funding to qualifying certified Not-For-Profit (NFP) Enriched Housing Program (EHP) operators to improve service delivery to eligible residents.

A total of $380,000 has been appropriated to fund the Program for SFY 2022-23, and eligible operators of NFP EHPs will receive a payment amount, paid semiannually, calculated based on the number of that EHP's residents in receipt of SSI benefits.

The electronic application for the SFY 2022-23 Program will be made available on the Health Commerce System (HCS) as of May 2, 2022 and must be submitted electronically by 5:00 p.m. on May 23, 2022. Eligible Program participants must adhere to the applicable **Conditions of Participation**. Questions regarding the Program can be emailed to: **acfFinRpt@health.ny.gov**.

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## *Virtual Public Hearings on NY's 1115 Waiver Amendment Request*

The Department of Health (DOH) will hold virtual public hearings on Tuesday, May 3, and May 10, 2022, from 1 pm to 4 pm to provide an overview of the State's 1115 waiver amendment request: ***Making Targeted, Evidence-Based Investments to Address the Health Disparities Exacerbated by the COVID-19 Pandemic***. Registration for these event is required and individuals who wish to provide comment will need to register in advance and must email **1115waivers@health.ny.gov** no later than one day prior to the scheduled event (i.e. - May 2, and May 9 – respectively) by 4pm to confirm registration. Individuals providing oral comments should limit their comments to five minutes per presenter to ensure that all public comments may be heard.

Registration for the May 3rd event is available **here**, and to register for the May 10th event, click **here**.

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## *Regulatory Update*

### Department of Health (DOH) –

***Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements*** – This ***renewed*** emergency regulation continues requirements setting forth PPE stockpile requirements for all hospitals and nursing homes in New York, based on a methodology using two separate formulas, one for hospitals and a different formula for nursing homes. Each formula is comprised of specific multipliers for determining the amount of PPE needed to meet the 60-day stockpile requirement for each; single gloves, gowns, surgical masks, and for N95 respirator masks.

This regulation also continues the Commissioner's authority to increase the stockpile requirement to a 90-day supply in areas where there is a State or local public health emergency is declared pursuant to Executive Law.

Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of a facility's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the facility with a fourteen-day grace period, solely for the first violation of this provision, to achieve compliance with the stockpile requirement.

This regulation includes additional language requiring providers to maintain appropriate storage conditions as outlined by manufacturers and to maintain proper rotation of product, to maximize shelf-life of the stockpiled inventory. Providers are to also dispose of any product once the expiration date has passed. Expired product shall not be used to comply with the minimum stockpile requirements.
This Rule expires on July 23, 2022.

***COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel*** – This ***renewed*** emergency regulation continues requirements that all nursing homes and adult care facilities (ACFs) must encourage, offer, and make available the COVID-19 vaccine to all existing and new personnel and residents of the facility on an ongoing basis.

Specifically, nursing homes are required to offer COVID-19 vaccines to unvaccinated residents and personnel, and must post conspicuous signage throughout the facility, reminding personnel and residents that the facility offers COVID-19 vaccinations. In addition, ACFs are required to arrange for unvaccinated residents and personnel to receive COVID-19 vaccinations outside of the facility.

This regulation includes conforming changes to no longer reference the previous requirement for personnel to have received COVID-19 booster doses or any recommended supplemental dose of a COVID-19 vaccine.

This Rule expires on July 23, 2022.

***Surge and Flex Health Coordination System*** - This emergency regulation permits the Commissioner of Health to take specific actions and to exercise certain authorities to suspend or modify certain regulations, to activate a Surge and Flex Coordination System ("Surge and Flex System") in the event of a declared state disaster emergency, including the State disaster emergency declared under Executive Order ("EO") No. 11, as continued by EO No. 11.1, 11.2, 11.3, 11.4 and most recently under EO No. 11.5, signed by the governor on April 15, 2022.

Hospitals are required to: develop disaster emergency response plans and must implement such plan upon the declaration of a state disaster emergency; increase bed capacity (maximum of up to 50%); enhance staffing capacity; establish and maintain minimum levels of supplies and PPE as required to meet a 60-day supply; and participate in the statewide coordination of facilities.

Lastly, this regulation also authorizes the Commissioner to take necessary actions to expand and prioritize clinical laboratory testing during the declared state disaster emergency.

This emergency regulation includes changes to clarify that this regulation applies only to general hospitals under Article 28 of the Public Health Law, and does not apply to primary care centers, adult care facilities, D&TCs, etc.

This Rule expires on July 23, 2022.

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***NOTE***: The DOH has posted a correction to the most recent emergency regulation regarding **Face Coverings for COVID-19 Prevention**, with an expiration date of June 20, 2022.

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## *Legislative Update*

The Legislature will be in session Monday through Thursday this week with **16** "session days" remaining in the 2022 Legislative Session. 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 Health*** – 9:00 AM, Tuesday, May 3, 2022

**A9606 (Tapia)** – This Bill requires a physician or authorized practitioner to test patients for syphilis during the third trimester of pregnancy, in addition to the initial testing at the time of first examination.

**A9722 (Reyes) / S8618 (Rivera)** – This Bill requires the Commissioner of the DOH, 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 Insurance*** - 10:00 AM, Wednesday, May 4, 2022

**A5411B (McDonald)** – This Bill requires health plans to furnish details - in real-time, to an enrollee, their health care provider, or a third-party of their choosing, related to out-of-pocket costs, benefit, and coverage details of a prescription drug through acceptable means when requested by the enrollee, their health care provider, or a third party of their choosing.

***Senate Disabilities*** - 1:30 PM, Monday, May 2, 2022

**S3410 (Brouk)/A2060A (Barrett)** – This Bill requires every "mandated reporter" as defined in Social Services Law, to report allegations of reportable incidents to the Vulnerable Persons' Central Register (VPCR), unless the register has knowledge of the incident.

***Senate Finance*** - 9:30 A.M., Tuesday, May 3, 2022

**S1593 (Rivera) / A9575 (Solages)** – This Bill authorizes an adult home, enriched housing facility, assisted living residence (ALR) or special needs assisted living residence (SNALR) – collectively adult care facilities (ACFs), to provide residents with nursing services in the facility, provided that such nursing services are incidental and not continual, either by arrangement with a provider of nursing services or by employment of nursing staff.

**S4885A (Savino) / A181A (Gunther)** – This Bill restricts the consecutive hours or visits that a nurse in a home care setting is required to work, in excess of their scheduled or budgeted hours or visits.

***Senate Health*** – 10:30 A.M., Tuesday, May 3, 2022

**S1576A (Rivera) / A196A (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.

This Bill was pulled from the April 26th Senate Health Committee agenda at the time of that meeting.

**S1785A (Skoufis) / A6052 (Lunsford)** – 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.

**S2534 (Rivera) / A1880 (Dinowitz)** – This Bill requires home health aides and nurse's aides to receive training in working with lesbian, gay, bisexual and transgender individuals as part of the education and training for certification; and directs the commissioner of health to develop the curriculum in accordance with specific information.

**S7626 (Rivera) / A8006 (Gottfried)** – This Bill authorizes any eligible resident of 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.

**S7647 (Kaplan) / A8814 (Paulin)** – This Bill permits a notice of dense breast tissue to be considered a determination of medical necessity for purposes of coverage of a breast ultrasound as recommended by the patient's provider.

**S8295 (Rivera) / A9148 (Gottfried)** – 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.

***Senate Women's Issues*** - 11:00 AM, Wednesday, May 4, 2022

**S7865 (Brouk) / A5076A (Solages)** – This Bill requires maternal health care providers providing pre- and postnatal care, or pediatric care to the mother's infant, to offer a maternal depression screening to the mother.

**S8599B (Cleare)** – This Bill authorizes a physician or authorized practitioner to order a syphilis test during the third trimester of pregnancy, and adds congenital syphilis as a covered topic within the DOH's health care and wellness education and outreach program.

**S8879 (Persaud)** – 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.

## *Coming Up*

Thursday, April 28 @ 10:30 A.M. – Meeting of the New York State AIDS Advisory Council - **Agenda**

Monday, May 2 @ 10:00 A.M. – **New York State Drinking Water Quality Council Meeting** – Agenda and Information - Webcast

Thursday, May 12 @ 9:00 A.M. – **Drug Utilization Review Board (DURB) 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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