

IMPORTANT HOME CARE CLIENT UPDATES

Home Care Alert
January 29, 2019

DOH Webinar Sheds Light on the Executive's FI Proposal

On Wednesday, the NYS DOH hosted a webinar related to the Executive's proposed budget. The DOH stated that there are two proposals affecting fiscal intermediaries, both designed to "realize administrative efficiencies":

1. Change FI reimbursement method to a per member per month amount to better match the type of administrative services performed by FIs (payroll, wage withholding, benefit administration). Per DOH, the current reimbursement "varies with the cost of the care delivered despite FI administrative costs being largely fixed."
2. In order to realize economies of scale, permits the Department to contract with Centers for Independent Living and entities that have experience providing services to persons with disabilities, and to select one or more additional organizations to perform FI administrative services. The DOH noted that there are currently more than 600 fiscal intermediaries in the State, and that the DOH would begin the "consolidation process" in January of 2020 should the Executive budget proposal pass as currently proposed.

The DOH confirmed that, should the proposal pass, there would be no reductions to eligibility for the CDPAP or to the hours of care provided. Also according to the DOH, the State would realize savings of \$150 million should these measures be adopted.

The DOH's webinar and materials are here.

As the legislative session heats up, here are some deadlines to keep in mind:

- February 2 and February 14: The Governor's 21-day and 30-day budget amendments are due, respectively. Any feedback provided by lobbying and interest groups to the proposed executive budget will be considered and amendments may be made.
- Sometime in early March: Preparation and passage of budget positions by the Senate and Assembly.
- Sometime in mid-March: The joint Senate and Assembly conference committees will be established and convened to reconcile budgetary positions between the proposals advanced by the Executive and the Legislative branches.
- Mid to late March: Final budget negotiations between the Legislature and

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Executive Branches, and any interest groups, will be conducted.

- April 1, 2019: The deadline for the budget to be passed, although the budget could be passed earlier.

Governor Proposes Increasing Criminal Penalties for “Wage Theft”

Governor Cuomo has proposed enhancing criminal penalties for wage theft. Currently, only employers that commit repeated wage theft can be prosecuted with a felony. The proposed legislation, however, would amend the New York Labor Law to provide criminal penalties for employers that knowingly steal wages, and criminal penalties would range from a Class B misdemeanor for wage theft less than \$1,000, to a Class B Felony for wage theft greater than \$50,000. Advocates of the legislation claim that it would increase the New York State Department of Labor’s ability to make referrals of cases for criminal prosecution to the local district attorney offices or the New York Attorney General because those prosecutorial agencies would have clear criminal laws under which to file complaints. In a press release, Governor Cuomo stated: “New York will always stand with workers and we have zero tolerance for unscrupulous employers who try to steal the hard-earned wages of their employees...The State has already recovered millions of dollars for cheated workers, and this proposal will help bolster our efforts to hold accountable any employer who attempts to improperly withhold wages.”

eMedNY Posts FAQ Regarding Delayed Claim

Recently, eMedNY posted a FAQ that discusses various issues and questions regarding delayed claim processing. The FAQ is available at: https://www.emedny.org/ProviderManuals/AllProviders/PDFS/FAQs_on_delayed_claims.pdf

DOH Issues FAQ and DAL Regarding Advanced Home Health Aide Services

The NYS DOH has issued a DAL regarding the requirements for providing Advanced Home Health Aide (AHHA) services. Agencies that choose to provide AHHA services must obtain DOH’s written approval first. The following information must be submitted by the Agency to the appropriate DOH Regional Office:

- A written request to add AHHA services to the agency’s license or operating certificate;
- The agency’s policy and procedure to prevent drug diversion and address suspected incidents of drug diversion, as periodically reviewed under the agency’s Quality Assurance Program;
- The agency’s policies and procedures for provision of AHHA services consistent with the regulatory requirements; and
- The AHHA job description.

The DAL reiterates points from previous DALs issued by the NYS DOH and explains the definition and assignment of “advanced tasks” and what constitutes lawful supervision of the AHHA.

The DAL is available [here](#).

Government Shutdown Ends, e-Verify Resumes

Employers that participate in e-Verify will have until February 11, 2019 to create and enter cases into the system for all hires made during the 35-day partial government shutdown. U.S. Citizenship and Immigration Services (USCIS), which manages the program, announced that E-Verify has resumed operations, but patience will be required from users as the

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service is restored. Employers will have to create a case in e-Verify for all employees for whom a Form I-9 was completed, but e-Verify was not done due to the government shutdown. USCIS instructed that employers use the hire date from the employee's Form I-9 when creating an E-Verify case. If the case creation date is more than three days following the worker's start date, select "Other" from the drop-down list asking for an explanation and enter "E-Verify Not Available" as the reason. Any pending tentative nonconfirmation (TNC) that the employer and/or the newly hired employee were not able to resolve due to the shutdown needs to be resolved.

New York Legislature Passes the Gender Expression Non-Discrimination Act

The New York Legislature recently passed the Gender Expression Non-Discrimination Act ("GENDA"), which would amend the State Human Rights Law to prohibit discrimination on the basis of gender identity or expression. GENDA defines gender identity or expression as "a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender."

GENDA awaits Governor Cuomo's signature, and he is expected to sign the bill. If signed, GENDA would become effective 30 days after the Governor signs the bill.

Notably, the New York City Human Rights Law already prohibits discrimination based on gender identity or expression.