

NEW YORK STATE DEPARTMENT OF HEALTH ADOPTS HEALTH EQUITY IMPACT ASSESSMENT REGULATION APPLICABLE TO FACILITIES INCLUDING CLINICS, HOSPITALS, AND SKILLED NURSING FACILITIES SUBMITTING APPLICATIONS THROUGH THE STATE'S CERTIFICATE OF NEED (CON) PROCESS

Hodgson Russ Healthcare Alert
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The New York State Department of Health (DOH) published a proposed regulation in April 2023 to require the inclusion of a Health Equity Impact Assessment (HEIA) as part of the CON process which became effective on June 22, 2023. The purpose of the HEIA is to “ensure community members and stakeholders are meaningfully engaged and considered in proposed facility projects.” The final regulation was adopted on August 30, 2023, and mirrors the proposed regulation. The key provisions are outlined below:

1. Health Equity Impact Assessment: What is it?

Under the final regulation, certain applications under Public Health Law Section 2802-b must include a HEIA to “demonstrate how a proposed project affects the accessibility and delivery of health care services to enhance health equity and contribute to mitigating health disparities in the facility’s service area, specifically for medically underserved groups.”

The HEIA must be conducted by an “independent entity” with “demonstrated expertise and experience in the study of health equity, anti-racism, and community and stakeholder engagement, and with preferred expertise and experience in the study of health care access or delivery of health care services able to produce an objective written assessment using a standardized format of whether, and if so, how, the facility’s proposed project will impact access to and delivery of health care services, particularly for members of medically underserved groups.”

Information in the August 30, 2023, NYS Register explains that although the DOH received a wide range of comments requesting clarification on what would qualify as an “independent entity,” the DOH did not make any clarifying changes in the

Attorneys

Roopa Chakkappan
David Stark
Christine Bonaguide
David Bradley
Jane Bello Burke
Matthew Cameron
Glen Doherty
Reetuparna Dutta
Joshua Feinstein
Peter Godfrey
Charles H. Kaplan
Michelle Merola
Matthew Scherer
Gary Schober

Practices & Industries

Healthcare

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regulation. However, the DOH has issued a [standard template](#) with detailed [instructions](#) to ensure the process is as clear and narrow as possible for independent entities.

The HEIA template requires the applicant to describe the independent entity's qualifications and includes questions such as:

- the demographics of the applicant's proposed service area
- medically underserved groups in the service area (e.g., immigrants, racial and ethnic minorities, women, people with disabilities)
- impact of project on the quality of life of each identified medically underserved group
- professional staffing issues related to the project
- how the project will improve access to services, promote health equity, and reduce health disparities

Other questions address the engagement of stakeholders including the local health department(s) to reflect "community voices," applicant's mitigation efforts to address systemic barriers to access to services, and monitoring tools to measure the potential impacts of the project.

The applicant must also submit a [data table](#) to report the target population's demographic information and a [conflict of interest form](#) that requires the independent entity to attest that the HEIA was conducted without a conflict of interest, which means "having a financial interest in the approval of an application or assisting in drafting any part of the application on behalf of the facility other than the health equity assessment."

In addition, the applicant must publicly post the CON application and the HEIA on its website within one week of acknowledgement by the DOH, and the DOH will also post the CON application and the HEIA on its website within one week of the filing.

2. Types of CON Applications Subject to the HEIA

The HEIA is applicable to hospitals, skilled nursing facilities, diagnostic and treatment centers (Clinics), midwifery birth centers, and ambulatory surgery centers submitting the following types of CON applications to the DOH:

- Construction or purchase of equipment
- Establishment of an operator (new or change in ownership)
- Mergers, consolidations, and creation of an active parent entity
- Acquisitions to purchase facilities
- All other changes to the Operating Certificate (i.e., change in services, certified beds, location)

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3. Exceptions to the HEIA Requirement

The HEIA is not required for the following types of CON applications:

- Projects that do not require prior approval but only require a written notice to be submitted to the DOH
- Minor construction and equipment projects subject only to limited review, unless such project would result in the elimination, reduction, expansion, or addition of beds or services
- Establishment (new or change in ownership) of an operator including mergers and acquisitions, unless such establishment would result in:
 - (i) the elimination of a hospital service or health-related service
 - (ii) a 10% or greater reduction in the number of certified beds, certified services, or operating hours
 - (iii) a change of location of a hospital service or health-related service
- Diagnostic and treatment center applications whose combined patient population exceeds 50% Medicaid or uninsured, unless the application includes a change in controlling person, or owner with a controlling interest of 10% or more

Contact Us

If you have any questions about the new Health Equity Impact Assessment and its implications, please contact [Roopa Chakkappan](#) (716.848.1258) or [David Stark](#) (716.848.1369).

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