

CHHA MINIMUM WAGE

In DOH meeting, HCA questions survey results on CHHA minimum wage impact, as we seek funding adjustment to meet increased costs.

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SEPSIS

HCA sepsis effort featured as part of IPRO quality award. Member technical call discusses promising outcomes, EHR challenges, next steps on sepsis initiative.

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LAWTALK

The latest installment of our LawTalk column from counsel at Jackson Lewis focuses on the importance of responsive compliance planning.

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LTSS SPENDING

CMS report finds a 4.5% increase in nationwide spending on Medicaid long-term services and supports, from \$159 billion in 2015 to \$167 billion in 2016.

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The Situation REPORT



COMING UP

Bootcamp: A Primer on the New LHCSA Regulatory Changes
June 13, 2018
NYC

The Opioid Crisis: Family and Caregiver Assessment Factors and How to Respond to Them
June 27, 2018
11:30 a.m. to 1 p.m. (Webinar)

Registration for these and other HCA programs are on our Education and Events page at: <https://hca-nys.org/events-education/upcoming-events>

Your Source for HOME CARE News, Policy and Advocacy

Vol. 3, Issue 25 | June 11, 2018

Major HCA Grassroots Campaign Aimed at Passing Bills, Elevating Crucial Issues for Home Care, Hospice, MLTC in Waning Days of Session

With fewer than ten days left before the scheduled end of the state Legislative session, HCA urges members to continue urging support among Senate and Assembly sponsors for our priority bills.

Last week, HCA launched a major grassroots advocacy call to action. Using our *Legislative Action Center*, we have created seven distinct messages that we urge all HCA members to send to the seven Assembly and Senate sponsors of bills that HCA has developed and gotten introduced in both houses of the Legislature to positively position the home care, hospice and Managed Long Term care sectors. These action items are all displayed on a

See GRASSROOTS p. 3

Update on 2017-18 QIVAPP Funding for NYC Providers

The state Department of Health (DOH) has informed HCA that funding has been approved under the Quality Incentive Vital Access Provider Pool (QIVAPP) program for the period of April 1, 2017 through March 31, 2018.

See QIVAPP p. 2

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Award amounts to those eligible **New York City** agencies will be based on actual hours provided to managed care plans; DOH has requested that plans send them this data by **July 6, 2018**.

The list includes those agencies who were eligible for funding for the 2016-17 period.

DOH has released a list of qualified providers, but not the amounts that they will receive. Once that determination is made, HCA will alert members.

QIVAPP has been available since the 2014-15 state fiscal year for **New York City** home care providers who contract with managed long term care (MLTC) plans and meet certain criteria.

The eligibility criteria include:

- Home care agencies receive at least \$18.50 per hour from MLTC plans for aide services.
- The home care agency maintains or participates in a specialty training program for home health aides (HHAs) and personal care aides (PCAs) that exceeds DOH's training requirements (the standard 75 hours of training for HHAs or 40 hours for PCAs and/or the annually required in-service training of 12 hours for HHAs and 6 hours for PCAs).
- The agency has a written, implemented and currently active quality assurance program.
- The agency participates in a health benefit fund for its home health care and/or personal care aides and/or provides comprehensive health insurance coverage to its employees that meets certain requirements outlined by DOH.
- At least **30 percent** of the agency's total New York City workforce is enrolled in the health benefits coverage.

More information on QIVAPP for past years is at https://www.health.ny.gov/health_care/medicaid/redesign/mrt_61.htm.

Questions about QIVAPP can be directed to Andrew Koski at (518) 810-0662 or akoski@hcanys.org.

The Situation Report is a weekly publication of the Home Care Association of New York State (HCA). Unless otherwise noted, all articles appearing in *The Situation Report* are the property of the Home Care Association of New York State. Reuse of any content within this newsletter requires permission from HCA.

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▼ GRASSROOTS from p. 1

single webpage at <https://p2a.co/SFtj5oq>. Just click the “Add Your Voice” button in the boxes for each of the seven action items, read the short summaries, enter your contact information, and send the messages directly to the Assembly and Senate sponsors.

As noted in our advocacy alert last week to members, the state legislative season is expected to be short and very selective in terms of the bills that the Senate and Assembly will be considering this month among thousands introduced, especially given the eye toward statewide elections in the fall and corresponding political implications. Your grassroots support, in concert with the work of our government affairs team at Hinman Straub, will help get these bills advanced to the floor for a vote or otherwise significantly elevate the importance of these home care, hospice and MLTC measures among bill sponsors.

Collectively, these bills would: examine and provide financing support to address the major workforce issues affecting community-based providers; create new collaborative initiatives for home care’s work with mental health providers; raise the opportunities for home care interventions in public health and in addressing health disparities; and provide infrastructure support for home care sepsis screening, intervention and training, including the area of work being spearheaded by HCA as part of our *Stop Sepsis at Home* initiative (see related p. 4 story.)

The status of these bills remains in various stages. In the latest development, HCA’s bill to offer collaborative opportunities for home care to work with mental health providers (S.8632 Ort/ A.10938 Gunther) is now on the Assembly Ways and Means Committee agenda, from which it may be positioned for a vote later today. HCA expects many more developments throughout this critical week and will notify the membership as necessary.

HCA Meets with DOH on CHHA Minimum Wage Increase

Last week, HCA and LeadingAge NY met with the state Department of Health (DOH) to discuss the need for minimum wage adjustments to the Certified Home Health Agency (CHHA) episodic/fee-for-service (FFS) rates for 2018.

DOH recently reported to HCA that it was not intending to increase the 2018 CHHA FFS rates to account for the December 31, 2017 minimum wage based on the responses it got from CHHAs in a survey completed in February 2017. According to DOH, the responses showed that CHHAs statewide incurred very minimal new direct costs to fund the minimum wage increase.

HCA questioned the survey results and requested a meeting with DOH. During the meeting, HCA pointed out that the survey findings did not include over half of the CHHAs in New York State and the minimum wage costs allegedly reported by some CHHAs was different from what some members reported to us. DOH also said that the funds are intended to go to home care providers who employ aides directly and HCA did not agree, advising DOH that the 2017 CHHA episodic rates were adjusted by about 6 percent in 2017 to account for the December 31, 2016 minimum wage increase. HCA also advocated that even if the survey results showed minimal new costs for certain CHHAs, the monies were still needed by those CHHAs.

DOH agreed to examine how it calculated the funds that CHHAs reported and to share its methodology with HCA and LeadingAge NY. It also will look into why so many CHHAs were not part of the survey, and will schedule another meeting with the associations.

Subsequent review by HCA of the DOH minimum wage survey indicates that the instructions stated that all home care agencies should complete the survey **unless the provider contracts out all aide services**. This is probably why so many CHHAs indicated zero costs or did not complete the survey. HCA will be advocating for DOH to apply a minimum wage adjustment to the 2018 CHHA EPS including for those CHHAs that contract out all aide services.

HCA will keep members apprised of any new developments on this issue.

HCA Sepsis Effort, QI Work Commended with Major Award

Signed user agreements for sepsis tool effective in majority of counties as widespread, statewide adoption sought; also, providers share their experiences during technical assistance call on sepsis tool

HCA and home care's work to advance quality health care – particularly in the area of sepsis prevention – was commended with a statewide quality award last week by IPRO, the Quality Improvement Organization federal, state and industry contractor.

The award was presented to HCA Executive Vice President Al Cardillo at IPRO's statewide annual conference by IPRO CEO Theodore Will and Dennis Wagner, the Director of Innovations and Quality at the U.S. Centers for Medicare and Medicaid Services (CMS).

Specifically highlighted were HCA's efforts and accomplishments in sepsis innovation, screening and intervention through the HCA-developed sepsis tool, a team effort in partnership with IPRO, Sepsis Alliance, the Rory Staunton Foundation for Sepsis Prevention, HCA member and workgroup clinician leader Amy Bowerman, government officials, sepsis survivors and providers. Our work is also supported with a grant from the New York State Health Foundation.

HCA is grateful for the expertise and partnership of IPRO, which works with the HCA team, members and committees in so much of our proactive work on quality and program development.

At the IPRO conference, Mr. Cardillo and several other selected award recipients met with CMS director Wagner to individually present our work in health care quality, including our IPRO collaborations. HCA is seeking a follow-up meeting with the Director to explore further ways CMS could support quality initiatives.

User call shares experiences, technical needs on sepsis tool

This past week, the HCA-IPRO sepsis faculty (Al Cardillo, Amy Bowerman, Sara Butterfield and Eve Bankert) conducted a technical assistance and Q&A statewide call with HCA members who are using the HCA Sepsis Tool. Providers from all regions of the state, and all agency types, shared the distinct experiences of their agencies, clinicians and patients with the sepsis initiative.

For instance, HCA member HCR Home Care reviewed the results of over 123,000 sepsis screens that the agency has conducted, with data indicating extensive intervention and potential mitigation of sepsis cases. HCA member Kaleida Health specifically described the very positive view of nurses in this initiative and its success in progressing to serve the multiple geographic areas of Western New York. Able Health Care Services, also an HCA member, described its progression in sepsis training of home health aides and the valuable role they are playing in the initiative.

One primary challenge reported during the call was that Electronic Health Record (EHR) companies were not prioritizing a ready integration of the sepsis tool into their medical records software. HCA members who have successfully integrated with their EHR companies offered guidance and approaches from their experiences. Meanwhile, HCA plans to convene a meeting of EHR companies to

advance a solution and we will continue our discussions on EHR remedies with policymakers in the Executive administration and Legislature.

Next Steps, NYSOFA initiative and legislation

During last week's call, HCA also discussed next steps on the sepsis initiatives that are in the works with state agencies, the Legislature, multiple state associations, national organizations and other states. This includes our work last week to provide a training workshop for the Massachusetts Home Care Alliance, covering essential clinical fact patterns on sepsis and an orientation to the HCA tool. Our important partnership work with other state associations and health entities is intended to help grow the base of organizations investing in and signing under HCA's user agreement for adoption of the sepsis tool.



Counties (in yellow) served by a home care provider with a license to use HCA's sepsis screening tool.

Also, New York State Office for Aging (NYSOFA) Director Greg Olsen is convening a statewide educational webinar to present sepsis background and the HCA Sepsis Tool to organizations, case managers and agencies that make up the aging services network. HCA and NYSOFA are discussing a series of state and local initiatives to further connect home care agency users of the sepsis tool and local aging services, seniors, advocates and caregivers.

And, as reported elsewhere in this week's edition of The Situation Report, both houses of the Legislature are sponsoring HCA sepsis legislation to support provider use of the HCA sepsis tool with further training and infrastructure support. Please visit our *Legislative Action Center* at <https://p2a.co/SFtj5oq> to engage in online advocacy campaigns on these and other supportive bills introduced in the Senate and Assembly.

HCA, IPRO, and other partners continue to encourage and support **all NYS home care agencies** to adopt this tool, offering their hospitals, physicians, EMS, and health plan partners this standardized model for sepsis risk assessment, education and early identification, treatment and mitigation. Agencies who have not yet adopted the tool should contact sepsistool@hcanys.org.

Media Reports: Trump Administration to Pursue HHS Overhaul, New Name

Several media outlets this week referenced a *Politico News* report on a soon-expected Trump Administration plan to rename the U.S. Department of Health and Human Services (HHS), along with sweeping changes to federal assistance programs like the Supplemental Nutrition Assistance Program (SNAP).

Sources indicate that the new HHS name will likely have the word “welfare” in it. SNAP benefits would be moved under the newly named Department. (They are currently administered by the U.S. Department of Agriculture.)

Such jurisdictional changes would require Congressional approval. The proposed changes may be included in a report being prepared for release in June, and it would propose cuts across several Departments.

HHS already has jurisdiction over many public assistance programs, including through its U.S. Centers for Medicare and Medicaid Services, which administers government health care programs for the elderly, disabled and low-income citizens. As such, HHS and its divisions have enormous financial, regulatory and audit influence on home care in New York and other states.

The Trump Administration proposals, as reported by Politico, appear to stem in part from a March executive order in which the President tasked the Office of Management and Budget (OMB) to overhaul government departments and institute efficiencies. But analysts also point out the political rationale for these changes at a time when HHS has approved the first round of proposals allowing states to impose work requirements under Medicaid and other attempts to remake entitlement and assistance programs.

HCA will report further on any developments and will engage New York’s Congressional Delegation to protect vital services administered by HHS on behalf of home care recipients.

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Enhance Agency Collaboration	Prepare Clinical Staff for New Roles
Review & Analyze Data	Develop Staff Competencies
Improvement Plan for Quality Metrics	Develop Tracking Systems

PHHPC Meets on Applications, Reviews AHHA Proposal

The Public Health and Health Planning Council (PHHPC) met last week to act on several applications. Also included was a discussion of the newly posted Advanced Home Health Aide (AHHA) proposed rule.

The agenda and supporting documents are at https://www.health.ny.gov/facilities/public_health_and_health_planning_council/meetings/2018-06-07/.

The following applications were approved:

- One hospice to merge with another hospice;
- An existing Certified Home Health Agency (CHHA) to purchase another CHHA;
- A CHHA for a transfer of ownership;
- A CHHA for a change in indirect ownership;
- A not-for-profit corporation to become the sole corporate member of an existing CHHA; and
- Five entities to establish a Licensed Home Care Services Agency (LHCSA) with an Assisted Living Program.

An application by an existing Special Needs CHHA for a 3-year extension to its limited life operating certification was deferred for two PHHPC cycles.

Advanced Home Health Aides

On AHHA, the state Department of Health (DOH) noted that the proposed regulations only implement provisions of the AHHA law applicable to supervision of AHHAs. Regulations applicable to the practice of AHHA fall under the purview of the state Education Department which will be issuing its own proposed regulations.

DOH also noted that the proposed DOH regulations will come back to the PHHPC in the August cycle after public comments are received.

PHHPC members asked questions about which tasks AHHAs could perform; whether AHHAs would be authorized to portion out medication for patients (DOH said “no” unless it was prepackaged like blister packs); and how many existing workers would be eligible to move into an AHHA role, which is unknown at this time. (In order to be eligible, an individual must be certified as an aide for at least one year and pass the AHHA training course.)

DOH’s proposed AHHA rule is at <https://regs.health.ny.gov/sites/default/files/proposed-regulations/Criminal%20History%20Record%20Checks%20and%20Advanced%20Home%20Health%20Aides.pdf>.

Comments are due July 30, 2018.

More on VBP Status and Phase II

The state Department of Health (DOH) on June 7 updated the MLTC Value Based Payment (VBP) Clinical Advisory Group on the status of the performance measures applied across all models, as well as the Department's concept on a preliminary approach to upside/downside risk and savings in phase II VBP.

HCA has provided a number of recent reports and updates on VBP Phase II. However, this most recent presentation (see <https://hca-nys.org/wp-content/uploads/2018/06/MLTC-VBP-CAG-Meeting-Deck-for-June-7-2018.pdf>) provides additional detail and delineation on the metrics for MLTC partial cap, full cap, PACE, Medicaid Advantage Plus and FIDA. Also, substantial time was spent discussing the removal and pending replacement of the "falls" measure for which DOH invited further comment. DOH also further addressed issues and options being considered for VBP treatment of MLTC nursing home services, in the wake of adopted state budget provisions to limit the MLTC nursing home benefit to three months.

DOH again reviewed its preliminary model proposing a one-percent minimum financial risk level for MLTC-home care in phase II. HCA has raised issues with regard to this proposal and will continue to engage the Department on viable designs.

A recording of the presentation (in addition to the linked slides) will be posted by the Department. The Department indicated that it would also be addressing and posting Q&As to the presentation, and invited further comments. HCA managed long term care plans and providers can submit further questions and comments to the Department at mltcvbp@health.ny.gov, and HCA recommends copying us on these submissions.

DOH indicated that it would next update the clinical advisory group in August, with a targeted October time period for release of the 2019 year measures and MLTC measure reporting guidance.

For further information, please contact Al Cardillo at acardillo@hcanys.org.

HIRING

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- Provides nursing education and training as deemed necessary to increase the value of patient care as well as enhance the agency's ability to offer new clinical initiatives.

The candidate for this position must be a NYS licensed Registered Nurse, bachelor's prepared with:

- A minimum of 5 years work experience in Licensed and Certified Home Care agencies.
- Strong Knowledge of Medicare/Medicaid/MLTC and managed care regulations.
- Excellent communication, human relations and organizational skills are needed.
- Self-motivator, assertiveness and independent decision-making skills are essential.

Please e-mail inquiries to Sandra Weintraub at SandraW@ablehealthcare.com.

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Medicare and Social Security Trustees Issue Reports

Hospital Insurance Trust Fund solvent until 2026

Last week, the Medicare Board of Trustees released its annual report for Medicare's two separate trust funds – the Hospital Insurance (HI) Trust Fund and the Supplementary Medical Insurance (SMI) Trust Fund – and the Social Security Board Trustees issued its own report.

The Medicare report is at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/index.html>.

The report found that the HI Trust Fund will be able to pay full benefits until 2026, which is three years earlier than last year's projections, attributable to adverse changes in program income. This is due to: 1) lower payroll taxes attributable to lowered wages for 2017 and lower levels of projected gross domestic product (GDP); and 2) lower income from the taxation of Social Security benefits as a result of legislation. HI expenditures are projected to be slightly higher than last year's estimates, mostly due to higher-than-expected spending in 2017, legislation that increased hospital spending, and higher Medicare Advantage payments.

The report does not mean that Medicare would cease to make payments in 2026, but that it would no longer be able to cover all of its costs. In 2026, according to the report, Medicare would be able to cover 91 percent of its costs. However, Medicare's ability to fund its costs would decline to 78 percent in 2042 and then gradually recover to 85 percent in 2092.

The report includes data on home health and hospice spending.

The SMI trust fund is expected to be adequately financed over the next 10 years and beyond because premium income and general revenue income for Medicare Parts B and D are reset each year to cover expected costs and ensure a reserve for Part B contingencies.

The Trustees are issuing a determination of "projected excess general revenue Medicare funding" in this report because the difference between Medicare's total outlays and its dedicated financing sources is projected to exceed 45 percent of outlays within 7 years. Since this is the second consecutive such finding, the law specifies that a Medicare funding warning is triggered and that the President must submit to Congress proposed legislation to respond to the warning within 15 days after the submission of the Fiscal Year 2020 Budget. Congress is then required to consider the legislation on an expedited basis.

HCA will be monitoring what any such legislation contains at that time and how its provisions would affect providers and consumers.

Social Security

The Social Security Board of Trustees project that the combined trust funds will be depleted in 2034, the same year projected in last year's report, with 79 percent of benefits payable at that time.

The Old Age and Survivors Insurance (OASI) Trust Fund is projected to become depleted in late 2034, as compared to last year's estimate of early 2035, with 77 percent of benefits payable at that time. The

Disability Insurance (DI) Trust Fund will become depleted in 2032, extended from last year's estimate of 2028, with 96 percent of benefits still payable.

The Social Security report is at <https://www.ssa.gov/OACT/TR/index.html>. Additional information is at http://crr.bc.edu/wp-content/uploads/2018/06/IB_18-11-1.pdf.

Upcoming Deadlines

Requirement/Change	Effective/Due Date	More Information
Home Care, Fiscal Intermediaries and other providers who contract with Managed Care Organizations must be enrolled in Medicaid	Still being accepted, but providers are advised to submit now	https://www.emedny.org/info/ProviderEnrollment/ManagedCareNetwork/index.aspx
Transition Period for Using Health Insurance Claim Number (HICN) or new Medicare Beneficiary Identifier (MBI)	April 1, 2018 to December 31, 2019	https://www.cms.gov/Medicare/New-Medicare-Card/index.html
Call for Social Determinants of Health Innovations	Application due June 15	https://www.surveymonkey.com/r/SDH_Innovations
Long Term Care Planning Council Survey	Due June 18, 2018	https://www.surveymonkey.com/r/HM9DM97
Health Workforce Retraining Program RFA	Due June 22, 2018	https://www.health.ny.gov/funding/rfa/17842/index.htm
Rural Health Network Development Program RFA	Due June 28, 2018	https://hca-nys.org/wp-content/uploads/2018/05/Rural-Health-Network-Development-Program-RFP_May-2018.pdf
Managed care organizations will initiate termination of contracted providers who have not enrolled in Medicaid	July 1, 2018	https://www.emedny.org/info/ProviderEnrollment/ManagedCareNetwork/index.aspx
OSHA 2017 Form 300A form (A Summary of Work-Related Injuries and Illnesses)	Due July 1, 2018	https://www.osha.gov/injuryreporting/index.html .
Hearing on state Department of Labor's proposed rule to exclude meals and sleep time for all employees	July 11, 2018	www.labor.ny.gov
Certified Home Health Agency 2017 Medicaid Cost Report	Due July 16, 2018	https://commerce.health.state.ny.us/public/hcs_login.html
Personal Care Provider 2017 Medicaid Cost Report	New Due Date: July 30, 2018	https://commerce.health.state.ny.us/public/hcs_login.html

Increases Proposed in Workers' Compensation Medical Fee Schedule

The state Workers' Compensation Board (WCB) has issued a proposed rule that would update the fees paid for medical treatment in workers' compensation claims.

In particular, it would increase the fees for medical, physical therapy, occupational therapy, psychology, pediatric and chiropractic services.

There have been no increases in the fees paid to medical providers who treat injured workers in New York State since 1996. The updated fee schedules increase fees by at least 5 percent overall, and areas with shortages of medical providers authorized to treat injured workers may see further increases.

The notice is in the June 6 *New York State Register* at <https://docs.dos.ny.gov/info/register/2018/jun6/rulemaking.pdf> (page 13).

More information is at <http://www.wcb.ny.gov/content/main/wclaws/MedicalFeeSchedule/MedicalFeeSchedule.jsp>.

LawTalk: Keeping an Eye on Core Compliance Functions, Processes & Documentation

By Anoush Koroghlian-Scott, Principal at Jackson Lewis

In an environment that demands health care provider coordination, consideration for patient satisfaction and cost reduction, core compliance initiatives should not be neglected or forgotten.

The implications are huge, as the federal Office of Inspector General (OIG) and state Office of Medicaid Inspector General (OMIG) remain vigilant in their audit efforts. Likewise, the Office of Civil Rights keeps a sharp focus on compliance with HIPAA Privacy and Security regulations, especially with the rising demand for communication among providers that often calls for the sharing of sensitive clinical information.

In 2014, the U.S. Centers for Medicare and Medicaid Services (CMS) paid \$18 billion for home care services (including skilled nursing, physical therapy, speech pathology, and occupational therapy). According to the federal Office of the Inspector General (OIG), Comprehensive Error Rate Testing (CERT) results identified approximately \$9.4 billion in claims paid in error because patients reportedly did not meet home care criteria and/or did not require skilled services. HCA understands that these results are substantially due to documentation issues. Indeed, this underscores the importance of complete and accurate documentation supporting the need for home care services – a first line of defense in an organization's compliance efforts.

Most recently, on May 2, a federal jury in Houston, Texas convicted a patient recruiter for her role in defrauding the Medicare program of \$3.6 million. She paid physicians, physical therapists, and beneficiaries to provide the necessary documentation to commit the fraud. Likewise, on March 29, a Michigan home health agency nursing official was convicted for his role in a \$1.6 million Medicare fraud scheme. Medical records were falsified to support unnecessary medical services and services that were never provided. He was sentenced to 36 months in prison and ordered to pay more than \$1.5 million in restitution (jointly and severally with his co-conspirators).

Here in New York, OMIG's fiscal year 2018-19 Work Plan outlines three high-level goals: 1) assure providers have effective compliance programs; 2) coordinate with managed care organizations and law enforcement to

identify and prosecute Medicaid fraud and abuse; and 3) analyze data to track and trend Medicaid fraud activities. The first of these goals is again emphasized in an August 31, 2017 compliance alert, where OMIG reminds providers that it will continue to monitor all elements of providers' compliance programs. In addition to coding and billing practices, providers should pay close attention to performing an annual risk assessment, reviewing policies and procedures to assure they are up to date and reflect actual operations, educating and training staff, and monitoring compliance.

Based upon compliance program assessments performed by OMIG from 2015 to 2017, the most prevalent deficiencies noted were: identification, investigation and reporting of compliance matters; failure to provide adequate compliance orientation, education, and training for staff, the governing board, executives, and vendors; failure to maintain a process whereby compliance concerns may be reported internally on an anonymous basis and to the state Department of Health; failure to maintain disciplinary policies; and failure to maintain an adequate non-retaliation policy. Operational areas of particular concern include documentation of medical necessity and measures of quality of care, governance (conflict-of-interest policies, procedures, and disclosures), mandatory reporting of suspicions of patient abuse or neglect, and provider credentialing.

The risk is greatest when policies and procedures are weak and elements of a compliance program are not integrated within the fabric of an organization. An investigation triggered by one patient complaint may result in significant deficiencies. In many cases, compliance is not measured solely by the event, but, rather, by compliance with the policies and procedures governing how the event is managed and reported. An effective compliance program is one that meets the elements outlined by OMIG, is dynamic and familiar to staff, and one which will not only help combat fraud and abuse but also demonstrates the home care provider's commitment to compliance.

Managed care and newly emerging payment models are also facing scrutiny. Medicaid redesign initiatives have introduced new methods of reimbursing providers through capitation, risk sharing arrangements and value-based purchasing which present new and emerging compliance risks. Annual risk assessments should be adjusted year after year to accommodate these emerging risks, along with corrective actions and monitoring designed to address identified opportunities for improvement.

Finally, as home care agencies work to collaborate with primary care and institutional providers, they must carefully navigate the legal barriers presented by state and federal laws governing the privacy and security of health information, including mental health and substance use records.

Providers must be mindful to demonstrate compliance with data and documentation. Be sure to review policies and procedures annually and make sure that staff are appropriately oriented, trained and retrained. It is also vital for providers and plans to monitor medical records to assure complete and accurate documentation of medical necessity, and to ensure that the care is provided by appropriately credentialed providers under the necessary level of supervision given their scope of practice.

Each month, attorneys at Jackson Lewis (the firm that represents HCA as its counsel) will provide a brief, informational article on a legal topic relevant to HCA's members. Please note that HCA LawTalk articles are for general, informational purposes, are not legal "advice," and do not create an attorney-client relationship. Because each case is unique, the information provided should be considered to be general in nature, and should never be considered a substitution for legal counsel. Readers should not take, or refrain from taking, any action based on information in this article without first seeking legal advice from competent counsel.

HCA and Members Participate in HEPC Meetings

This week, HCA staff and members participated in two Health Emergency Preparedness Coalition (HEPC) sub-region meetings – one in the Lower Hudson Valley and the other on Long Island.

HEPCs are coalitions of health care providers, local and state emergency management and local public health preparedness officials that develop and coordinate emergency preparedness across the continuum, including readiness among individual health sectors, hold exercises and ‘hotwashes,’ conduct hazard and vulnerability assessments, and other vital activities.

Being involved with your regional HEPC offers a tremendous opportunity to increase and support your emergency preparedness work and fulfill the state and federal requirements that you participate in exercises and meet other responsibilities.

The Lower Hudson Valley HEPC meeting, attended by many home care agencies, provided a review of a Point of Dispensing (POD) exercise held in two counties to simulate vaccination distributions during a Hepatitis A outbreak; discussed the role of the Emergency Operations Center; outlined criteria for “sheltering in place” versus evacuation of patients during an emergency, along with resources and state requirements; and reviewed a database of Medicare beneficiaries who have power-dependent devices.

Home care providers at the meeting emphasized their readiness to participate in the POD and other exercises (some had done so) and the necessity of involving them in all emergency preparedness activities.

At the Long Island HEPC meeting, a similar discussion was held on a POD exercise, hospital interoperable drill and the Medicare database of individuals with power-dependent items, as well as a social vulnerability index that tracks individuals whose social conditions affect emergency preparedness activities. Attendees assembled into smaller groups to discuss training, information sharing and exercise design.

HEPC participants discussed a possible full-scale exercise this fall on Long Island whereby three hospitals will be asked to evacuate, placing over 1,000 patients into other settings, including nursing homes and home care. HCA will provide more information on that event.

Under a grant from the state Department of Health Office of Emergency Preparedness, HCA and the New York State Association of Health Care Providers (HCP) work with all home care and hospice providers to support their roles in emergency preparedness.

Those interested in participating in their local HEPC should contact Andrew Koski at akoski@hcanys.org. A list of upcoming HEPC meetings follows.

HEPC	MEETING DATE
Western New York Sub Regional	June 14
Central New York	June 14
Bronx Emergency Preparedness Coalition	June 14
Finger Lakes Sub Regional	June 18
Emergency Preparedness Coalition of Manhattan	August 15
Capital District-North Country Sub Regional	September 27

CMS Releases 2016 LTSS Report; HCBS Spending On the Rise

The U.S. Centers for Medicare and Medicaid Services (CMS) recently released a report on Medicaid expenditures for Long-Term Services and Supports (LTSS) in federal fiscal year (FFY) 2016. Federal and state spending on Medicaid LTSS totaled approximately \$167 billion in FFY 2016, a 4.5 percent increase from \$159 billion in FFY 2015.

Home and community-based services (HCBS) have accounted for almost all Medicaid LTSS growth in recent years, while institutional expenditures have remained close to the FY 2010 amount. HCBS spending increased 10 percent in FY 2016, greater than the five percent average annual growth from FY 2011 through 2015. Institutional service spending decreased two percent in FY 2016 following an average annual increase of 0.3 percent over the previous five years. LTSS provided through managed care continued to grow as states have expanded the use of managed LTSS delivery systems. Managed LTSS expenditures were \$39 billion in FY 2016, a 24 percent increase from \$32 billion in FY 2015.

In FFY 2016, total LTSS spending in New York was \$26 billion which represents a 15.6 percent increase from FFY 2015. Approximately 63 percent of New York's LTSS spending was related to home and community-based services (HCBS), a 7.2 percent increase. On a per-resident basis, New York spent \$836 on HCBS.

CMS's full report is at: <https://www.medicaid.gov/medicaid/ltss/reports-and-evaluations/index.html>.

For further information, contact Patrick Conole at (518) 810-0661 or pconole@hcanys.org.

Resources

- "Social Determinants Of Health: A Public Health Concept In Conflict," Health Affairs Blog (May 30, 2018) <https://tinyurl.com/yb4qocf7>
- "Expenditure Reductions Associated with a Social Service Referral Program," Population Health Management <https://www.liebertpub.com/doi/10.1089/pop.2017.0199>
- "Managed Care Information," by eMedNY <https://tinyurl.com/y79wcpwu>
- "2017 Managed Long-Term Care Report," by the state Department of Health https://www.health.ny.gov/health_care/managed_care/mltc/pdf/mltc_report_2017.pdf
- "Medicaid: CMS Should Take Steps to Mitigate Program Risks in Managed Care," U.S. Government Accountability Office <https://www.gao.gov/assets/700/691619.pdf>
- "New York Claimed Federal Reimbursement for Consumer-Directed Personal Assistance Services That Did Not Meet Medicaid Requirements," by the Office of Inspector General <https://oig.hhs.gov/oas/reports/region2/21601026.pdf>

For more information, contact Andrew Koski at (518) 810-0662 or akoski@hcanys.org.