

Client Alert

January 13, 2023

Healthcare Worker Bonus Program

On November 17, 2022 the New York State Department of Health (the Department) announced notification of an expansion to the Healthcare Worker Bonus (HWB) Program to include additional titles and eligible provider types. **The Exception Submission period, during which employers impacted by this expansion can submit their newly eligible employees, will begin on February 1, 2023 and will remain open for 30 days.**

During this Exception Submission period, employers (including newly Qualified Employers) must submit their eligible workers for Vesting Periods 1 and 2. During this time, eligible employers may **ONLY** submit for employees deemed eligible for the Exception Submission period. After this Exception Submission period, these employees and employers may remain eligible and should follow the same Vesting Period schedule as other employees for the remainder of the program.

The Department has posted Frequently Asked Questions (FAQs) related to the HWB Program Expansion and Exception Submission period. These FAQs can be found on the [HWB Program Expansion Notice webpage](#).

New OMIG Regulations

On December 28, 2022, the New York State Office of the Medicaid Inspector General (“OMIG”) finalized new compliance-related [regulations](#). The final regulations are intended to implement changes and clarifications related to:

- Compliance Programs;
- Medicaid Managed Care fraud, waste, and abuse prevention programs; and
- OMIG’s Self-Disclosure Program.

Below are some of the changes and clarifications found in the new regulations:

- The Regulation applies to any person (referred to as a “Required Provider”) subject to Articles 28 or 36 of the Public Health Law, Articles 16 or 31 of the Mental Hygiene Law, Medicaid managed care organizations, including managed long term care plans and any other person for whom the Medicaid program is a “substantial portion of their business operations”. Under the new regulations, “substantial portion of business operations” was modified so that the threshold amount of Medicaid claims or receipts a provider must have, or is reasonably expected to have, in any consecutive 12-month period was increased to \$1,000,000 from \$500,000.

- An Effective Compliance Program should be designed to be compatible with the provider’s characteristics (i.e., size, complexity, resources, and culture), which shall mean that it is well-integrated into the company’s operations and supported by the highest levels of the organization, including the chief executive, senior management, and the governing

body. This clarification requires providers to take into account their specific characteristics which means that an “effective compliance program” will not be the same for all providers.

- The new regulations include 10 “risk areas,” which are those areas of operation affected by the compliance program and shall apply to: (1) billings; (2) payments; (3) ordered services; (4) medical necessity; (5) quality of care; (6) governance; (7) mandatory reporting; (8) credentialing; (9) contractor, subcontractor, agent or independent contract oversight; (10) other risk areas that are or should reasonably be identified by the provider through its organizational experience. **The regulations include 2 new risk areas - ordered services and contractor oversight.**

- Required Providers are required to establish and implement an effective compliance training and education program for its compliance officer and all “affected individuals”. “Affected individuals” means **all** persons who are affected by the required provider’s risk areas **including the required provider’s employees, the chief executive and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and governing body and corporate officers.**

- With respect to overpayments made by a managed long term care plan (MLTC), a provider who reports, returns and explains an overpayment to the MLTC in accordance with the regulations shall be considered to have satisfied the repayment requirements of the Social Services Law.

Contact our office with questions or to assist with the review and update of your compliance program.

LGBTQIA+ Training Signed Into New York State Law

LGBTQIA+ training for home health aides, personal care aides, personal care staff, and certified nurse's aides is now required by law. In an effort to promote cultural competence, aides will be required to receive training in working with patients of diverse sexual orientations and gender identities or expressions. The Department of Health must develop the training unit within six months of December 23, 2022. Afterwards, the training will be required for all certifications and recertification of all listed workers.

Health Care Staffing Emergency Extended

Governor Hochul signed Executive Order 4.16, extending the declaration of a statewide disaster emergency due to healthcare staffing shortages through January 22, 2023. This permits home care providers to conduct in-home supervision of aides “as soon as practicable after the initial service visit, or to permit in-person and in-home supervision to be conducted through indirect means, including by telephone or video communication.” The order also extends nursing supervision visits for personal care services to be made as soon as practicable.

Paid Family Leave Program Now Includes Siblings

New York State’s Paid Family leave Program (PFL) enables employees to take up to 12 weeks off while maintaining job protection and partial pay to care for a child, seriously ill parent, grandparent, grandchild, spouse, or domestic partner. Effective January 1, 2023, sibling has been added to the list of members covered under the PFL. “Sibling” is defined as a biological or adopted sibling, a half-sibling or a stepsibling.

Electronic Notice Posting

An Amendment to the Labor Law now requires New York State employers to provide mandatory notice of employee rights electronically. Previously, the requirement was to post employee notices physically, in a conspicuous place on each floor of the premises, such as bulletin boards. Effective immediately, employers must either email employees a digital copy of the notices, or post a digital copy of the notices on the employer's website. Furthermore, employers must inform employees that the notices posted physically are now also available electronically. Employee notices required by federal and state law typically include federal and state wage and hour benefits, sick leave benefits, workplace safety, non-discrimination notices, and other notices.

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