

Client Alert

September 10, 2021

New York State HERO Act Work Plans Now In Effect

On September 6, 2021, Governor Kathy Hochul announced that the Commissioner of Health designated COVID-19 a highly contagious communicable disease that presents a serious risk of harm to the public health under New York State's HERO Act, which requires all employers to implement workplace safety plans in the event of an airborne infectious disease, helping to prevent workplace infections. Because of this designation employers are now required to implement their work safety plans that were previously only required to be adopted by employers and shared with employees.

As previously reported, the New York HERO Act places extensive new workplace health and safety protections on employers in response to the COVID-19 pandemic. These plans must address a variety of safety measures, including but not limited to: (1) employee health screenings, (2) face mask and social distancing requirements, (3) workplace hygiene stations, (4) workplace cleaning protocol, (5) quarantine protocol and (6) building airflow technology. Additional information and industry-specific templates for employers are available on the DOL's website.

As a reminder, employers were required to distribute their adopted work safety plan to all employees by September 4, 2021, and post the plan in a visible and prominent location within each worksite. Additionally, the HERO Act also includes anti-retaliation protections for employees which prohibit discrimination or adverse actions taken against an employee for following the requirements of these plans, reporting concerns on the implementation of a plan, or refusing to work.

Please call us regarding any questions you may have with HERO Act work safety plans and implementation.

Department of Health Posts Final Rule Affecting
Personal Care Services (PCS) and Consumer
Directed Personal Assistance Program (CDPAP)

regulation that amends sections 505.14 and 505.28 of Title 18 NYCRR regarding Personal Care Services (PCS) and the Consumer Directed Personal Assistance Program (CDPAP) that were part of the final 2020-21 state budget.

The newly adopted regulations contain numerous amendments to Sections 505.14 and 505.28 of Title 18 NYCRR. Below, we have highlighted some of the amendments. The amendments become effective on November 8, 2021.

- Services are to be ordered by a qualified and independent practitioner, and not the individual's attending physician.
- The local social services departments (LDSSs) and Medicaid Managed Care Organizations (MMCOs) both must evaluate the cost effectiveness of the provision of services relative to other services and supports available to the individual. Services may not be provided if they are not cost-effective in comparison to other appropriate alternatives.
- Service recipients need to demonstrate a minimum need for assistance with activities of daily living (ADL) before such services may be authorized. Specifically, individuals with dementia or Alzheimer's must need at least supervision with more than one ADL, and all others must need at least limited assistance with physical maneuvering with more than two ADLs.
- Supervision and cueing may be provided as a means of assisting an individual to perform nutritional and environmental support functions or personal care functions, but are not a standalone personal care service, and may not be authorized, paid for, or reimbursed, except if they are provided to assist with one of the enumerated functions in section 505.14(a)(5)(ii).
- The assessment process shall include an independent assessment, a medical examination and practitioner order, an evaluation of the need and cost-effectiveness of services, the development of the plan of care, and, when required, an additional independent medical review for high needs cases. The amendment further provides for how portions of the process may be conducted through telehealth modalities.
- Prior to authorizing more than 12 hours of services per day on average, the LDSS or MMCO must refer the case to the independent review panel, for an additional independent medical review of the individual and plan of care, and must consider the recommendation of the independent review panel when finalizing the plan of care and in its decision to authorize such services.
- The authorization of services provided through more than one fiscal intermediary per consumer is prohibited.
- Consumers are prohibited from working with more than one fiscal intermediary at a time.
- Consumer designated representatives must make themselves available to ensure that they can carry out the consumer responsibilities, and must be present at scheduled assessments or visits for nonself-directing consumers.

Please call us with any questions regarding these changes.

Personnel Vaccine Mandate

As previously reported, the Department of Health, Codes Committee of the Public Health and Health Planning Council (PHHPC) adopted an emergency regulation that requires covered entities, including Licensed Home Care Services Agencies (LHCSAs), to continuously require personnel to be fully vaccinated against COVID-19. We are currently awaiting guidance from the State regarding specific points that

have been left open ended.

Section 766.11, regulating LHCSA Personnel, has already been amended to include the following language, “the governing authority shall ensure for all health care personnel...that a record of the following tests, examinations or other required documentation is maintained for all personnel who have direct patient contact: documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.”

We will continue to provide updates as new information becomes available. Please call us with any questions regarding this mandate or COVID-19 policies and procedures generally.

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REPRESENTING HOME HEALTH CARE AGENCIES
IN NEW YORK STATE

68 South Service Road ♦ Suite 100 ♦
Melville, NY 11747

P: 516.304.5858 ♦ F: 516.304.5855

www.glaserweiner.com

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