Finally, clarifying language is needed to specify within 10 NYCRR 63.2 that HIV-testing conducted in the context of insurance institution underwriting decisions is required to be reported to NYSDOH by clinicians under whose medical license the HIV-testing is ordered. Reporting is the crucial first step in triggering the rapid deployment of state Partner Services to interrupt forward transmission and facilitate linkage to care and early treatment.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

Mandating the reporting of acute and early HIV-infection is expected to carry minimal cost. Currently, there are other diseases, such as hemorrhagic fever, measles or Hepatitis in a food handler, which require notice to DOH within 24 hours. Adding diagnoses of acute HIV infection to the list of diseases requiring 24-hour reporting should not be burdensome under existing clinician reporting processes.

Costs to State and Local Governments:

There is no impact on costs to state and local governments associated with this proposed rule change.

Costs to the Department of Health:

There are minimal costs to the Department of Health associated with this proposed rule change that shall be met within existing resources.

Local Government Mandates:

There is no impact on local government mandates associated with this proposed rule change.

Paperwork:

No new paperwork is necessitated by the proposed regulation.

Duplication:

These regulatory amendments do not duplicate any New York State or federal rules.

Alternatives:

NYSDOH is not required to move forward with these regulations, but NYSDOH believes the regulations are needed for the reasons stated in the Needs and Benefits section of this Regulatory Impact Statement.

An alternative would be to make no changes to the regulations.

Federal Standards:

These regulations do not exceed any minimum standard of the federal government.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Telehealth Services

I.D. No. HLT-12-22-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 505.17 and 533.6; addition of Part 538 to Title 18 NYCRR.

Statutory authority: Public Health Law, sections 2999-cc(2)(y), (4), 2999-ee, 201(1)(v); Social Services Law, section 365-a

Subject: Telehealth Services.

Purpose: To ensure continuity of care of telehealth services provided to Medicaid enrollees.

Substance of proposed rule (Full text is posted at the following State website: https://regs.health.ny.gov/regulations/proposed-rule-making): These proposed regulatory amendments are needed to ensure continuity of care provided to Medicaid enrollees during the transition from telehealth services provided during the public health emergency and after the public health emergency ends. During the public health emergency, all Medicaid providers were authorized to utilize telehealth, including audio-only telephone or other audio-only technology pursuant to Executive Orders and subsequently, pursuant to Emergency Regulations. This telehealth regulation is required to authorize Medicaid providers to continuously provide services pursuant to these flexibilities to ensure continuity of care. Specifically, the proposed telehealth regulation provides:

1. Expansion in the types of providers who can deliver care via telehealth, as long as such telehealth services are appropriate to meet a patient's needs and are within a provider's scope of practice.

2. Addition of Audio-only, eConsult, Virtual Check-in, and Virtual Patient Education as telehealth modalities, as well as parameters for appropriately using those modalities and standards for reimbursement.

The revisions to radiology regulations are required to allow for the provision of teleradiology as well as remove outdated reimbursement processes. Specifically, the amendments provide:

1. Definitions for interventional and diagnostic radiology, which may be conducted without a physical encounter.

2. Reimbursement guidelines for physicians and hospitals billing for professional and technical and administrative components of a radiology service. References to an outdated fee schedule have been removed.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 2999-cc(2)(y) provides the Commissioner of Health with the authority to determine, in consultation with the Commissioners of the Office of Mental Health, the Office of Addiction Services and Supports, or the Office for People with Developmental Disabilities, other categories of providers authorized to provide telehealth services.

Public Health Law section 2999-cc(4) requires promulgation of regulations to cover the modality of audio-only telephone communication as telehealth in the medical assistance and child health insurance programs.

Public Health Law section 2999-ee provides the Commissioner of Health with the authority to specify in regulation additional acceptable modalities for the delivery of health care services via telehealth, including audio-only telephone communications, in consultation with the Commissioners of the Office of Children and Family Services, the Office of Mental Health, the Office of Addiction Services and Supports, or the Office for People with Developmental Disabilities.

Public Health Law section 201(1)(v) requires the Department of Health (Department) to act as the single State agency for Medicaid with the responsibility to supervise the plan required by Title XIX of the federal Social Security Act and to adopt regulations as may be necessary to implement this plan.

Social Services Law section 365-a requires Medicaid coverage of certain medical care, services and supplies as authorized in regulations of the Department, including x-ray services.

Legislative Objectives:

The legislative objective is to provide the Commissioner of Health with authority to determine the appropriate providers and modalities of telehealth necessary to increase access to health care services for Medicaid enrollees, especially for behavioral health, oral health, maternity care, care management, services provided in emergency departments and services provided to certain high-need populations.

Needs and Benefits:

These regulatory amendments are needed to ensure continuity of care provided to Medicaid enrollees. During the public health emergency, pursuant to Executive Orders that waived certain New York State laws and regulatory requirements related to telehealth, all Medicaid providers were authorized to utilize telehealth, including audio-only telephone or other audio-only technology. When these Executive Orders expired on June 24, 2021, the Department promulgated emergency regulations to authorize Medicaid providers to continuously provide services pursuant to these flexibilities to ensure continuity of care. These regulations will establish this authority permanently.

During the course of the public health emergency, Medicaid providers

have adopted widespread use of telehealth, including through audio-only telephonic modalities and other audio-only technologies, as a means of delivering services to Medicaid beneficiaries. Providers have reported that this expansion of telehealth has improved access to care, improved patient experience, and improved provider satisfaction. Telehealth also has the potential to improve patient outcomes, although measurement of these outcomes requires further research. Furthermore, expanded use of telehealth during the pandemic has resulted in Medicaid program savings related to avoidance of emergency room and urgent care visits, and decreased utilization of Medicaid-covered non-emergency medical transportation services.

Telehealth mitigates provider access issues by connecting patients in rural areas with needed specialist care. Teleradiology, in particular, is needed to combat the lack of available radiologists. Teleradiology improves patient care by allowing radiologists to provide services remotely without having to be at the same location as the patient. Small rural hospitals often employ only one radiologist or no radiologist at all. In some cases, the interpretation of a radiological image may require input from a radiologist with a sub-specialty (e.g., MRI radiology, neuroradiology, pediatric radiology, etc.). Professionals with sub-specialty expertise typically practice in large metropolitan facilities. Teleradiology allows for these trained specialists to fill a void by providing competent and timely professional radiology services, when a radiologist is not otherwise available, twenty-four hours a day, seven days a week.

Given that the Centers for Medicare and Medicaid Services has authorized continued use of telehealth through modalities that align with Article 29-G of the Public Health Law, the Department is issuing these regulations in order to ensure ongoing and continuous access to telehealth services for Medicaid members, during and after the COVID-19 pandemic. These regulations will expand the types of providers authorized to provide care via telehealth, define additional telehealth modalities, including audio-only, and allow for teleradiology. This continuous access is particularly important for members of the Medicaid population who are unable to access services in person, or who continue to be at risk for COVID-19.

Costs:

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations because the amendments provide reimbursement for health care services provided via telehealth.

Costs to the Administering Agencies, the State, and Local Governments:

Costs to administering agencies and the State associated with these amendments will be covered by existing State budget appropriations and anticipated federal financial participation. There are no costs imposed on local governments by these regulations because the amendments provide reimbursement for health care services provided via telehealth.

Local Government Mandates:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulations impose minimal paperwork requirements on regulated parties to claim Medicaid reimbursement for telehealth services provided to Medicaid enrollees.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations.

Alternatives:

The Department considered the option of not promulgating these regulations, which would create an abrupt halt to certain telehealth flexibilities authorized during the public health emergency and which have proven vital to Medicaid members. In consultation with the Office of Mental Health and Office of Addiction Services and Supports, the Department determined that providing continuity of care to Medicaid enrollees is a public health priority and as such, decided to move forward with these regulations.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

These amendments shall be effective on publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose any new reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Department of Labor

EMERGENCY RULE MAKING

New York Health and Essential Rights Act (NY HERO Act)

I.D. No. LAB-12-22-00004-E
Filing No. 132
Filing Date: 2022-03-03
Effective Date: 2022-03-03

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of section 840.1 to Title 12 NYCRR.

Statutory authority: State Administrative Procedure Act, section 202(6); Labor Law, sections 218-b and 21(11)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: This emergency regulation is necessary to implement the NY HERO Act and put necessary preparatory protections in place in the event of the NY Health Commissioner designation of an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to the public health. The Legislature, in adopting the HERO Act, required that the Department of Labor publish this standard, and that employers adopt plans that comply with the requirements found therein. To effectuate this legislative purpose, and to provide the protections of the HERO Act, this emergency adoption is necessary to immediately enact these important rules and is necessary to public health, safety, and the general welfare, and provides protections to the employees in New York State and avoid future loss of life.

Subject: New York Health and Essential Rights Act (NY HERO Act).

Purpose: Airborne Infectious Disease Exposure Prevention Standard.

Substance of emergency rule (Full text is posted at the following State website: https://dol.ny.gov/ny-hero-act): The rule creates a new section of regulations designated as 12 NYCRR 840.1 entitled ''Airborne Infectious Disease Exposure Prevention Standard.'' This section is summarized as follows:

- Section 840.1(a), "General Provisions," sets forth the general provisions including applicability of the regulation and definitions.
- Section 840.1(b), "Exposure Prevention Plan," sets forth the requirements for an employer adopted Exposure Prevention Plan to eliminate or minimize employee exposure to airborne infectious disease agents designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.
- Section 840.1(c), "Exposure Controls," sets forth requirements for employers to select and obtain exposure controls appropriate for the exposure risks and requires that such controls be included in the employer's Exposure Prevention Plan.
- Section 840.1(d), "Anti-Retaliation," prohibits employers from retaliating against employees for exercising their rights under this regulation or an employer's Exposure Prevention Plan.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 31, 2022.