

This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop Del Giorno & Giblin LLC
October 5, 2012 Edition

In the News – New York State



NY's Health Care Exchange Begins to Take Shape

New York this week submitted its selection of an Essential Health Benefits benchmark plan for the State's Health Care Exchange, meeting the federal Department of Health and Human Service's October 1st deadline.

The State Department of Health (DOH) has selected the largest small group plan in the state, Oxford EPO, as the benchmark plan which best meets the requirements as outlined in the Affordable Care Act. In a letter to the Center for Medicare & Medicaid Services (CMS), Exchange Executive Director Donna Frescatore asserted that the plan "provides comprehensive benefit coverage to consumers while minimizing costs to both the individual and small group markets."

In April Governor Andrew M. Cuomo issued Executive Order Number 42 to establish a statewide Health Exchange. Under the Affordable Care Act, a state that chooses to operate its own Exchange must demonstrate to the federal government that its Exchange will be able to begin accepting applications by October 1, 2013 and will be operational by January 1, 2014. If the state does not demonstrate operational readiness of its own Exchange, its residents will be required to participate in a federal Exchange.

According to the Governor, the Exchange will be entirely financed by the federal government. In addition, as required by the federal Affordable Care Act, the Exchange will be financially self-sustaining, requiring no state subsidy, by January 1, 2015.

Under New York's Health Care Exchange, Essential Health Benefits would include: inpatient and outpatient hospital services, emergency medical coverage, preventive & primary care for adults and children, physician office visits, chiropractic services, lab testing, prescription drugs, home health visits up to 40 visits per calendar year, oral surgery, and mental health/chemical dependency services.

In addition to the selection of a benchmark plan, DOH indicated certain coverage areas in which benefits will be supplemented in order to meet Affordable Care Act requirements. These areas include pediatric dental/vision coverage, habilitative services, and mental health/substance abuse parity.

Other insurers that participate in the exchange will have to match coverage. Premiums and deductibles have not been set.

The October 1st selection marks the first step in complying with the November 16th submission deadline for a formal blue print for the Exchange.

Attached, for your reference, is a listing of New York's Essential Health Benefits as prepared for DOH by Millman for New York. In addition, we have attached a copy of the DOH letter to CMS announcing the selection.

Advocates: New York Moves to the Forefront on Immigration Policy

Executive Order 26 – Requiring State Agencies to Translate Vital Documents in Top Six Non-English Language – Goes into Full Effect Today

Immigrant advocates across the state are lauding New York's "first-of-its-kind" language access policy which goes into full effect today as putting the "state at the center of a debate on immigration."



Photo by Michael Friedman

"Instead of promoting fear and division, New York State is taking a forward-looking approach," said Nisha Agarwal, Deputy Director of the Center for Popular Democracy., "The state is working with its immigrant communities to find solutions because it's clear that an investment in LEP New Yorkers is an investment in the state's economic future."

According to advocates, New York's approach to immigration and shifting demographics differs sharply from that of states like Arizona, Alabama, Georgia and Indiana that have "passed harsh, anti-immigrant policies which in one case made it a crime to provide a ride for an immigrant neighbor."

Last October, Governor Andrew Cuomo issued Executive Order 26 aimed at ensuring that limited-English-proficient (LEP) individuals are able to obtain translation and interpretation services at State agencies such as the Department of Health, Office of Victim Services, and the State Police. The Executive Order calls for state agencies that interact with the public to translate vital documents into the top six non-English languages spoken by LEP New Yorkers and to provide interpretation services in any language. Based on census data, the services will be offered in Spanish, Chinese, Italian, Russian, French, and French Créole. The Order also requires these state agencies to assign a Language Access Coordinator, who will be responsible for implementing language access plans in their agencies.

The Executive estimates that approximately two and a half million New Yorkers do not speak English as their primary language and have limited ability to read, speak, write, or understand English.

The state agencies under the Governor's Executive Order include: Office for the Aging; Office of Alcoholism and Substance Abuse Services; Office of Children & Family Services; Department of Correctional Services & Community Supervision; Division of Criminal Justice Services; Empire State Development; Department of Health; Office of Mental Health; Department of Environmental Conservation; Division of Housing & Community Renewal; Division of Human Rights; Department of Financial Services; Department of Labor; Department of Motor Vehicles; Department of State; Office of Parks, Recreation and Historic Preservation; Office for the Prevention of Domestic Violence; Division of State Police; Office of Temporary and Disability Assistance; Division of Veterans' Affairs; Workers Compensation Board; Department of Public Service; and Office for People With Developmental Disabilities.

Actions by the Governor

Bills Signed by the Governor

Chapter 457 (sponsored by Senator Skelos/Rules Committee (at the request of M of A Pretlow) -- Enacts the New York State Racing Franchise Accountability and Transparency act of 2012.

Chapter 460 (sponsored by M of A Titone/Senator Golden) -- Relates to the definition of artists and theatrical employment agencies.

Chapter 463 (sponsored by M of A Magnarelli/Senator DeFrancisco) -- Enacts the Veterans Mental Health and Chemical Dependency Act.

Chapter 482 (sponsored by Senator Martins/M of A Schimel) – Allows the use of lever voting machines in school district, village, and special district elections for an additional two years.

Bills Vetoed by the Governor

Veto 157 (sponsored by M of A Bronson/Senator Grisanti) -- Relates to the employment of persons to function as central service technicians in certain healthcare facilities.

Veto 158 (sponsored by M of A Cahill/Senator Savino) -- Relates to the practice of surgical technology and surgical technologists.

Veto 159 (sponsored by M of A Abbate/Senator Golden) -- Requires training of fire officers in NYC.

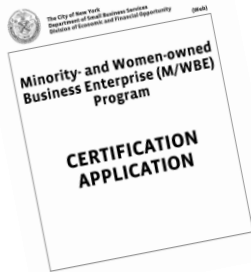
Veto 161 (sponsored by M of A Brindisi/Senator Hannon) -- Provides that recoupments and reductions of medical assistance payments for home care services shall not be subject to interest and shall be payable monthly.

Veto 165 (sponsored by Senator Young/M of A Paulin) – Establishes criteria for the certification of certified registered nurse anesthetists by the State Education Department.

Veto169 (sponsored by Senator Little/M of A Markey) -- Establishes the "tourism economic development fund" to be funded with revenue from the licensing of the "I Love NY" brand.

In the News – New York City

Be Careful of What You Wish For: M/WBE Legislation



Legislation to expand the City’s minority-women owed business program drew praise and criticism alike at a meeting this week of the City Council’s Contracts Committee. Proponents were quick to laud the overall spirit of the legislation, but found themselves confounded by the details.

When introduced in August by Speaker Christine Quinn et al., Intro. 911 was heralded as a major step towards expanding the opportunities afforded to M/WBEs while maintaining a system of accountability. The Bloomberg administration came out in support of the bill which eliminated the current \$1 million cap on contracts in the M/WBE program.

According to the sponsors, in 2005, the Council passed a law to help level the playing field for minorities and women in City contracting. The law established goals for increasing the number of City contracts awarded to M/WBEs.

In 2011, city agencies met less than half of the programs goals. M/WBEs made roughly \$73 million of the targeted \$153 million total sum in contract earnings. In 2010, they made only about \$70 million of the nearly \$313 million goal.

“While it was a step in the right direction, it has become clear that more must be done to ensure that minorities and women are fairly represented in City procurement,” Speaker Quinn explained.

However, as time has allowed stakeholders the opportunity to analyze the specifics of the legislation, the measure has come under fire as creating disincentives for M/WBE success and disenfranchising certain groups. On Thursday, the Committee heard six hours of testimony on the initiative.

As drafted the legislation ironically penalizes successful M/WBE companies by establishing a “cap” on gross revenues for program participation. Specifically, it revises the definition of “graduate MWBE” to include companies that have grown beyond industry federal Small Business Administration allowances for three years. Therefore, if a firm becomes successful and grows beyond a federally-defined “small business,” the company becomes “decertified,” as City agencies would not receive credit for utilizing graduate M/WBEs.

“[Under federal guidelines] All specialty trade contractors ... have a limit of \$14 million in average annual revenue or better known as gross sales,” Gina Addeo, president of GMA Electrical, said in explaining the federal small business limit. “That limit is way too small for subcontractors in NYC. I think we must remember that in NYC all of our costs, especially our construction costs, are higher than the federal average.”

Council Member James Sanders indicated that this was an issue that the Council should carefully consider-- since it might unintentionally reduce the number of M/WBE firms that are capable of handling City agencies’ projects--by relying on federal size standards that do not recognize the unique conditions (and higher costs) in the NYC marketplace.

“If this is enacted, many of the firms that are currently certified that are both qualified and have the capacity will be graduated out of the M/WBE program,” Ms. Addeo agreed. “There is always discussion in the M/WBE community regarding firms not having enough bonding, capacity or funding. Honestly, subcontractors in NYC that are at or above the \$14 million size are the ones that can handle those issues.”

Similarly, Building Trades Employers’ Association President & CEO Louis Coletti questioned the rationale underlying the use of a sales cap and noted the irony-- isn’t the point of the program to aid and encourage M/WBEs to succeed?

Representatives of the Hispanic Community railed against the legislation which reduces the set aside for Hispanic construction contracts from 9.06% to 4%.

"[Christine] Quinn is going to lose the Hispanic vote because we're going to make sure of that," Frank Garcia, chairman of the New York State Coalition of Hispanic Chambers of Commerce, told the *Village Voice* following the hearing. "We don't feel that [she] takes the Hispanic vote very seriously right now."

Mr. Garcia noted that the Coalition will conduct a press conference on Wednesday of next week to further outline their objections to the legislation. As the negotiations continue on the legislation, amendments are likely. Speaker Quinn previously indicated that she would like to see Council action on the legislation before the end of the year.

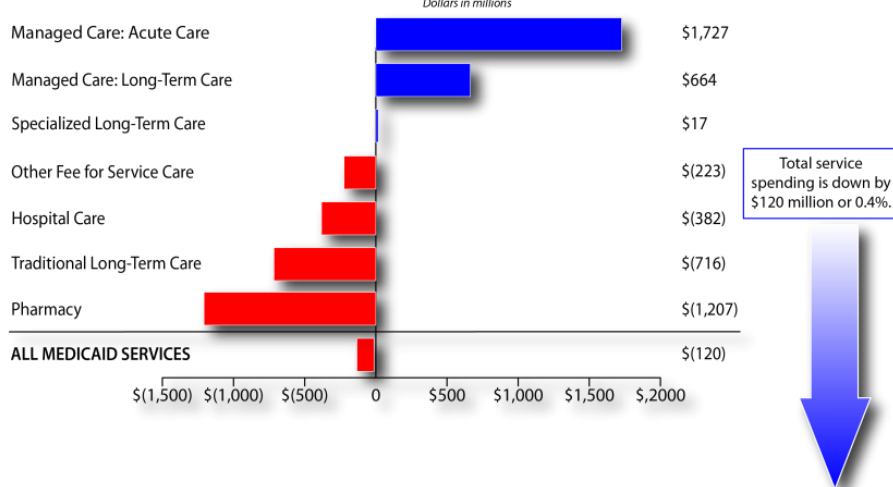
Attached, for your reference, is a copy of the Committee’s report on the specifics of the legislation in its current form.

How Has Medicaid Spending on New York City Residents Changed Since Gov. Cuomo Implemented Savings Measures?

(Source: IBO's NYC By The Numbers)

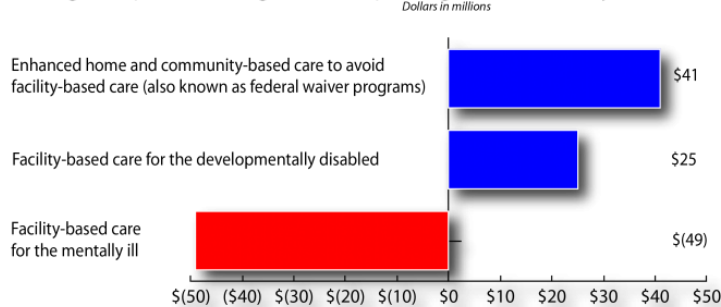
In January 2011, Governor Andrew Cuomo appointed a Medicaid Redesign Team to identify savings and limit yearly growth in statewide Medicaid funding to 4%.

Changes in Medicaid spending from state fiscal year 2010-2011 to 2011-2012*



Spending *increased* for two out of three types of specialized long-term care.

Changes in specialized long-term care spending from state fiscal year 2010-2011 to 2011-2012*



SOURCES: IBO; New York State Department of Health, MARS 39 Reports
 NOTE: *Includes all funds federal, state, and local. Does not include spending on Medicaid-related administrative costs or special supplemental payments. State fiscal years run from April 1st to March 30th. Spending for 2010-2011 is as of July 2011; spending for 2011-2012 is as of July 2012.

Bradford J. Sussman Joins Pitta Bishop Del Giorno & Giblin LLC & Pitta & Giblin LLP

Pitta Bishop Del Giorno & Giblin LLC and Pitta & Giblin LLP Managing Member / Partner Vincent F. Pitta this week announced the hiring of Bradford J. Sussman. A longtime community and political activist, Mr. Sussman, a Harlan Scholar at the Center for New York City Law, recently graduated *summa cum laude* and number one in the Evening Division class of New York Law School. He will pursue a dual career in law and government relations.



Bradford J. Sussman

Prior to joining Pitta Bishop and Pitta & Giblin, Mr. Sussman served in the office of the Manhattan Borough President as a community liaison officer.. More recently he served as assistant director of intergovernmental affairs for Attorney General Andrew Cuomo.

While pursuing his law degree Mr. Sussman served internships in the Civil Rights Bureau of the Attorney General's office; the Prosecutions Unit of New York State Division of Human Rights, the Crime Strategies Unit of the Manhattan District Attorney's Office and as a Legal Extern in the Administrative Law Division of the NYC Law Department.

"Brad brings a wealth of experience and a practical understanding of government and the law. His knowledge of the law and his insight into government are sure to enhance both firms," Mr. Pitta said.

A resident of Manhattan, Mr. Sussman has served on the board of Community Board 2; was President of the Sixth Precinct Community Council; a member of the Borough President's Manhattan Nightlife Task Force; Chair of the Bleecker Area Merchant Resident Association; the Director of Programs on the Executive Board of the National Organization for Women, NYC; and is an advisory board member of New York's Village Halloween Parade.

In Brief



Empire State Games to Return

New York's "Olympics," the Empire State Games, will return, following a two-year absence due to founding cuts. Founded by Governor Hugh Carey in 1978, the games were eliminated in 2009 when the state cut its \$2.7 million appropriation. In 2010, organizers in western New York secured

private funding and a pay-to-play model to restart the games. But the games couldn't be sustained the following year.

The Empire State Sports Foundation, headed by Governor Carey's son Michael, will fund the program which will be named the Hugh L. Carey Empire State Games. The foundation recently reached a deal with the state's Park Department to revive the games, the group said in a statement. Carey, a Manhattan-based attorney, will serve as president of the foundation's Board of Governors.

The 33rd annual Winter Games will be held in Lake Placid from February 7-10. The summer games will be held July 24-28 in Rochester.

Manhattan Building Permits Jump

The New York City Buildings Department has issued 70 permits for construction of new buildings this year, as of September 30th, compared with just 36 during the same period last year, according to figures provided by the Department. New permits for major renovation projects are also up 12%, year-over-year.

According to the New York Building Congress, construction costs in New York City rose nearly 3.6% in 2011, according to a construction costs index tracked by trade magazine *Engineering News-Record*. That increase came on top of a 2.4% rise in 2010. *Engineering News-Record* projects a 4.3% jump for 2012.

Hold on Small Business: Help is on the Way

The City Council this week announced five new steps it will take to assist NYC small businesses, including:

- *Identification of violations for which businesses should receive a warning or opportunity to cure the violation instead of an automatic penalty or fine.* Legislation soon to be introduced in the Council will require agencies to identify any violations for which a cure period or opportunity to receive a warning does not exist, and to make recommendations for whether a cure period should or should not be adopted for each such violation.
- *Elimination of obsolete violations.* Every agency that interacts with businesses will undertake a review to identify violations that are obsolete, and to recommend those that should be eliminated.
- *Streamlining of regulatory processes; Simplification of the Place of Assembly permitting process.* Currently this process involves duplicate work by the Department of Buildings and the Fire Department. Legislation being introduced in the Council will simplify this process, so that business owners need only interact with one agency in order to receive and later renew a place of assembly permit.

- *Standardization of customer service training for all agency inspectors.* Legislation being introduced in the Council will require the Mayor's Office of Operations to develop a standardized customer service curriculum for training agency inspectors, to review each agency's inspector training program, and to certify agency training programs that include the standardized customer service curriculum.
- *Designation of agency liaisons to serve as points-of-contact with chambers of commerce and industry groups.* Legislation being introduced in the Council will require every agency that interacts with businesses to designate an employee to serve as the agency's liaison to the regulated community.

Pennsylvania Voter ID Law Delayed

Commonwealth Court Judge Robert Simpson delayed Pennsylvania's voter ID requirement from taking effect this election, saying he wasn't sure the state had made it possible for voters to easily get IDs before November 6th.

"I am still not convinced ... that there will be no voter disenfranchisement" if the law took effect immediately, Judge Simpson wrote.

With the ruling, Pennsylvania's voting system reverts back to its previous protocol in which identification is requested, however, if voters are unable to produce it, they will still be allowed to vote.

Coming Up

New York State

No Meetings the week of October 8th.

New York City

Wednesday October 10th

Committee on Public Safety, City Hall- Council Chambers, 10 a.m.

Int 0799-2012- In relation to requiring law enforcement officers to provide notice and obtain proof of consent to search individuals.

Int 0800-2012 In relation to prohibiting bias-based profiling by law enforcement officers.

Int 0801-2012 A In relation to requiring law enforcement officers to identify themselves to the public.

Int 0881-2012 In relation to establishing an office of the inspector general for the NYC police department.

Committee on Education, 250 Broadway- Committee Rm, 16th fl, 1 p.m.

T2012-5329 Oversight - School bus service in New York City, is DOE meeting the need?

Committee on Cultural Affairs, Libraries, and International Intergroup Relations, 250 Broadway- Committee Rm, 14th fl, 1 p.m.

Thursday October 11th

Committee on Rules, Privileges, and Elections, City Hall- Committee Rm, 10:30 a.m.

City Council Stated Meeting, City Hall- Council Chambers, 1:30 p.m.

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