

## **A Community Guide to NYS' Health Equity Impact Assessment Law**

**Are you and your neighbors worried about how you will be affected by a proposed elimination or reduction of services at your community's hospital or clinic?** Are you concerned about whether a proposed change in ownership at the local nursing home could affect the care your elderly parent receives there?

**Because of a New York State law that took effect on June 22, 2023, state officials and health facility leadership will have to consider the likely impact of proposed health facility changes on medically underserved people before granting approval.** The new Health Equity Impact Assessment law requires an independent review of the likely impact of proposed health facility changes, including "meaningful engagement" of people in the affected community. This guide will explain how the new law works and what opportunities it provides for people in affected communities to voice their concerns.

**Why was this new law needed?** Hospitals and health systems have been merging and cutting services at a rapid pace across the nation and here in New York State. Local communities have been harmed by the resulting loss of emergency rooms, maternity services, psychiatric care, dental clinics and other services at their local hospitals. As a result, people sometimes have been forced to travel long distances to new health facilities where they don't know the doctors and nurses and may not find anyone who speaks their language or knows how to properly care for people with disabilities. For-profit takeovers of health facilities such as nursing homes are also changing who controls health services and have led to staff layoffs and declines in the quality of care. Unfortunately, the people directly affected by these changes in the health care delivery system may be the last to find out about the proposed changes, and often have little or no say in whether the transaction should be approved.

**What does the new law require?** For the first time, New York public health law will require an independent health equity impact assessment of the likely consequences for medically underserved people when a health facility asks the state Department of Health (DOH) for permission to make a change that would reduce, relocate or eliminate medical services, or change ownership of the facility. The assessment process must include gathering comments from people who would be affected by the change and developing recommendations to offset or reduce any harmful effects that were identified. The assessment report must be submitted to the DOH along with the health facility's Certificate of Need (CON) application for approval to carry out the proposed changes. The findings and recommendations must be considered by DOH staff and by members of the state Public Health and Health Planning Council, which votes on major changes being proposed by health facilities.

## **Who are the medically underserved people whose access to health care must be considered in a health equity impact assessment of proposed health facility changes?**

The law spells out a list of the categories of people considered to be medically underserved. They include:

- racial and ethnic minorities and immigrants
- people with disabilities
- women and LGBTQ+ people
- older adults, including frail elderly people living in nursing homes
- rural residents
- people living with a prevalent infectious disease or condition (such as HIV or Long COVID)
- people with low incomes
- people who are uninsured, under-insured or publicly insured (such as through Medicaid)
- other people who are unable to obtain care (a category that includes members of Tribal Nations)



**Who would carry out the independent health equity assessment?** The assessment would be conducted by an organization or individual that has expertise in health equity, anti-racism and community engagement and has no conflicts of interest that could produce a biased report. The cost of the assessment must be paid by the health facility seeking to make the change, but the assessor must not have participated in preparing the CON application seeking state approval for the change or have a financial interest in securing approval of the change. Non-profits and consulting firms will most likely be carrying out the independent assessments, but there is no approved list of assessors or agencies.

**How would the health equity assessor agency engage people in the affected community?** The law and implementing regulations require advance notice to stakeholders and “meaningful engagement” of individuals or organizations served by the facility, employees of the facility, public health experts including local health departments, residents of the facility’s service area and organizations representing those residents, patients or residents of the facility, community-based organizations and community leaders. Meaningful engagement has been defined as use of one or more types of community outreach, including surveys, telephone calls, community forums and online engagement. The use of multiple forms of engagement are required for major proposed changes. The regulations specify that such engagement must be “culturally competent” based on the needs of the stakeholder being engaged” and offer the example that “people with disabilities should be offered a range of audiovisual modalities to complete an electronic online survey.”

**What types of data must the health equity impact assessment include?** The assessment report must describe the demographics of a health facility's service area, providing such data as racial and ethnic makeup, disability status, median household income, percent of people living in poverty, percent with no vehicle and percentages of people with and without health insurance, based on such sources as the U.S. Census. The report must list any civil rights complaints filed against the facility in the previous 10 years. In addition, the report must summarize the availability of similar services or care at nearby health facilities. The report must also list the stakeholder groups that were engaged, the dates and method of engagement, the point of contact for each stakeholder group, including their email, and the results of the stakeholder engagement (including who would benefit from or be burdened by the project).



**How should the report describe the likely impact of a proposed change on health equity?** The report must identify which specific medically underserved groups in the health facility's service area would be impacted by the proposed changes, and how their unique health needs or quality of life would be affected. For each medically underserved group, the report must describe the likely positive or negative impacts of the proposed project on the ability of that group to obtain quality, timely, comprehensive and accessible care. The report must also describe how the proposed changes would either compound or offset the negative impacts from other projects carried out over the last five years. Specific attention must be paid to any likely impact on the facility's provision of indigent care, any changes that would need to be made in patients' access to service by various types of transportation and whether the changes would create architectural barriers for people with mobility impairments.



**Would the equity assessment report suggest how to address identified negative impacts of the proposed health facility changes?** Yes! The assessment report must include a section recommending potential changes to the proposed health facility that could mitigate (offset or reduce) any identified negative consequences. These recommendations could include modifications or adaptations of the proposed project to better deliver services or care to medically underserved groups.



**How could a community find out what a health equity impact assessment concluded about the likely impact of a proposed health facility change on medically underserved people?** Health facilities are required to post a copy of each health equity impact assessment (and the corresponding Certificate of Need application) on their websites within one week of acknowledgement by the Department that the assessment has been received. The NYS DOH will also post each assessment and corresponding CON application on its NYSE-CON website page within one week of the filing of the assessment. Should community stakeholders disagree with all or part of the findings of a health equity assessment, they could submit comments to the NYS DOH for consideration as part of the Department's review of the CON application and accompanying health equity assessment.



**How would state regulators respond to health equity impact assessments in deciding whether or not to approve a health facility's proposed changes?** The new law says only that the state DOH and members of the Public Health and Health Planning Council must "consider" the findings and recommendations of health equity impact assessment when deciding whether or not to approve proposed health facility changes. That consideration could include sending the CON application back to the health facility to develop a mitigation plan or attaching conditions to any approval of the proposed changes in order to address the identified negative consequences. It will be up to health advocates in our state and motivated stakeholders from the affected community to demand that any identified negative health equity impacts be addressed before state approval is given.

**When will we start to see health equity impact assessments being carried out?** The new law applies to most Certificate of Need applications filed on or after June 22, 2023, the date on which the law became effective. It may be some months before health facilities begin to engage independent health assessors to carry out the equity reviews.



**Are all health facility changes covered by this new health equity requirement?** Most changes would be covered, but there are certain types of transactions and health facilities that are exempt. The law specifically exempted diagnostic and treatment centers (such as clinics and Planned Parenthood affiliates) from the requirement if more than 50% of their patients are enrolled in Medicaid or are uninsured. That exemption would not apply, however, if the CON application included a change in the ownership, principal stockholder or principal corporate "member" of the facility. Also exempted under the law would be any mergers of hospitals, health systems or facilities that would not cause the elimination, reduction or relocation of services. The state DOH added an exemption for minor construction or equipment purchase projects, as long as they did not cause the elimination, reduction or relocation of services. Of greatest concern to health advocates is the fact that proposed closings of hospitals and other facilities would not be covered by the health equity requirement because no CON application is required for closings, only "notice" to the Department and approval by the commissioner. Department staff have pledged to work on improving community engagement when closings are proposed.