Highmark's Weekly Capitol Hill Report

Issues for the week ending February 25, 2022

Federal Issues

Regulatory

COVID-19 Updates

- The Health Resources and Services Administration (HRSA) announced it was making more than $560 million in Provider Relief Fund (PRF) Phase 4 General Distribution payments to more than 4,100 providers across the country. With this announcement, a total of nearly $11.5 billion in PRF Phase 4 payments has now been distributed to more than 78,000 providers in all 50 states, Washington D.C., and five territories.

- The week of February 21, Sanofi and GlaxoSmithKline announced they would seek authorization from the Food and Drug Administration for their COVID-19 vaccine. The companies stated they will submit data from Phase 3 trials that demonstrated 100% efficacy against severe COVID-19 disease and hospitalizations and 75% efficacy against moderate or severe COVID-19 disease.

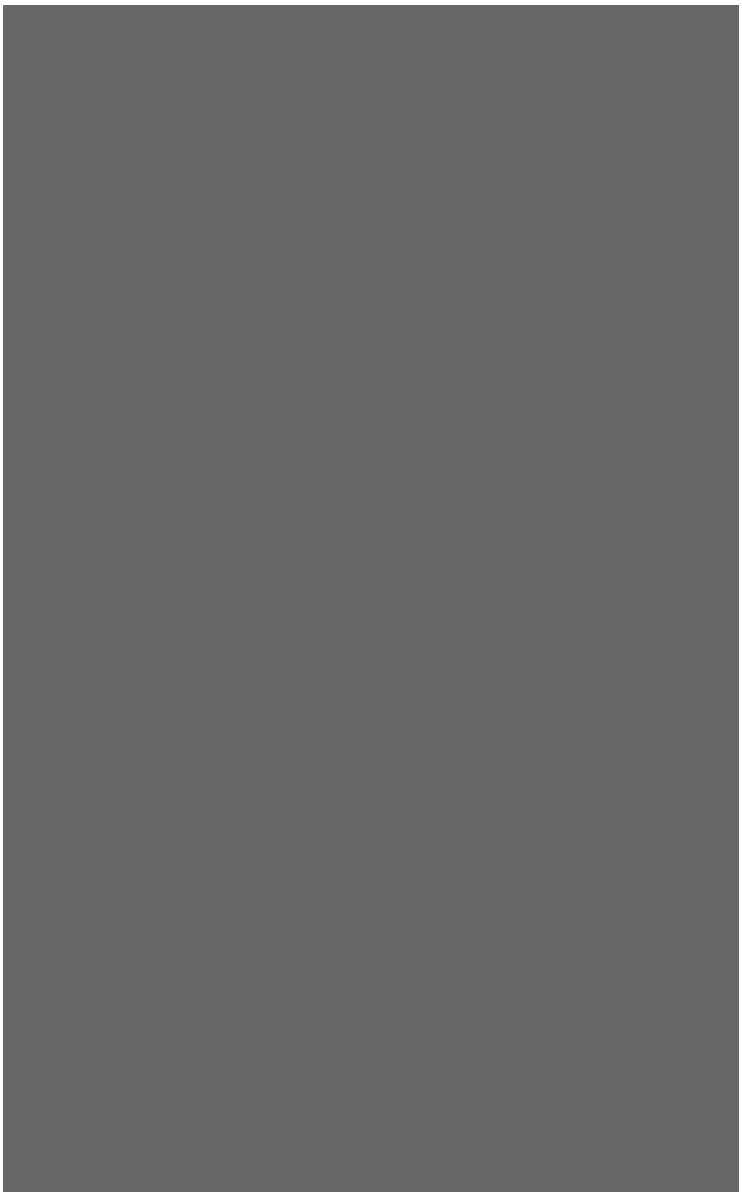
- The Centers for Disease Control and Prevention (CDC) has updated guidance for administration of mRNA COVID-19 vaccines (i.e., Pfizer and Moderna). The guidance now

In this Issue:

states the interval between first and second doses of the mRNA vaccines may be as long as eight weeks for certain populations. According to the CDC, “an 8-week interval may be optimal for some people ages 12 years and older, especially for males ages 12 to 39 years. A shorter interval (3 weeks for Pfizer-BioNTech; 4 weeks for Moderna) between the first and second doses remains the recommended interval for: people who are moderately to severely immunocompromised; adults ages 65 years and older; and others who need rapid protection due to increased concern about community transmission or risk of severe disease.”

- The CDC also updated masking guidance. The guidelines now recommend counties to consider three measures to assess risk of the virus when determining masking policies: 1) new COVID-related hospital admissions over the previous week; 2) the percentage of hospital beds occupied by Covid patients; 3) new coronavirus cases per 100,000 people over the previous week.

Why it matters: As Highmark Health continues to address the COVID-19 pandemic, updates from federal regulatory agencies and industry trends remain significant developments.



State Issues

New York

Legislative

HPA Head to be Panelist on March 4 Coverage Expansion Webinar

On Friday (3/4), HPA President and CEO Eric Linzer will be one of the panelists in a webinar examining ways New York can expand coverage. The webinar is hosted by the Citizens Budget Commission and Community Service Society, which recently issued a report, *"Narrowing New York's Health Insurance Coverage Gap."* More information and registration for the event is available here.

Regulatory

Governor Lifts COVID Regulations

Governor Hochul announced the mandate for mask wearing at schools and day care centers will be lifted as of Wednesday, March 2, based on the declining infection and hospitalization rates and the new CDC guidance. Counties and school districts can choose to implement their own mandates based on local infection rates. Mask requirements remain in effect for state regulated health care and adult care facilities, homeless shelters and domestic violence shelters, correctional facilities, and on mass transportation.

Additionally, last week the Governor lifted the "surge and flex" restrictions and announced that elective surgeries and procedures can resume at all New York hospitals.

Industry Trends

Policy / Market Trends

Federal Court Strikes Down Key Dispute Resolution Provisions of the Surprise Billing Rules, Litigation Continues

The U.S. District Court for the Eastern District of Texas issued a decision in Texas Medical Association v. HHS. The court ruled parts of an October interim final rule (IFR) implementing various requirements of the *No Surprises Act* conflicted with that law and were in violation of the Administrative Procedure Act. The court ordered certain provisions of the IFR be struck down and remanded back to the agencies. AHIP and BCBSA are closely monitoring whether the government will seek to stay this decision, move to appeal, or instead await decisions in similar lawsuits pending in other courts across the country before taking further action.

In the meantime, the district court's decision to strike down certain provisions presumably applies nationwide. Non-affected provisions of the IFR, the arbitration process, and consumer protections against balance billing remain in place and in effect.

Why it matters: The decision invalidates provisions of the IFR that anchor the law's independent dispute resolution (IDR) process to the qualifying payment amount (QPA), and provisions establishing how certified IDR entities are to consider and apply the other statutorily enumerated factors against the QPA. The court ruled "the Act nowhere states that the QPA is the 'primary' or 'most important' factor" and that the Departments had improperly placed "a substantial thumb on the scale in favor of the QPA." The court found doing so conflicted with a clear statutory requirement that all factors enumerated under the Act must be considered by an arbitrator when selecting an out-of-network payment offer. The court also found the agencies failed to adequately justify issuing IFRs without first undertaking adequate notice and comment.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: **http://legis.delaware.gov/.**
New York Legislation: **https://nyassembly.gov/leg/**
Pennsylvania Legislation: **www.legis.state.pa.us.**
West Virginia Legislation: **http://www.legis.state.wv.us/**
For copies of congressional bills, access the Thomas website – **http://thomas.loc.gov/.**
If you have any questions about a DE, NY, PA, WV, or congressional bill, contact the Government Affairs Department at (717).302.3978.