Highmark's Weekly Capitol Hill Report

Issues for the week ending April 1, 2022

Federal Issues

Legislative

House Passes Insulin Cap Bill

On Thursday, the U.S. House passed, H.R. 6833, a bill that would cap out-of-pocket costs for insulin. Specifically, the bill requires that insurers cover a 30-day supply of insulin at the lesser of $35 or 25% of a plan's negotiated price. It would apply to Medicare Part D and private health plans.

Why it matters: A similar insulin cap, along with more sweeping drug pricing reforms, was passed by the House as part of the Build Back Better package, which has stalled in the Senate.

The path forward is murky, however. Although the House bill passed with minimal GOP support, there is bipartisan legislation being developed in the Senate by Sens. Jeanne Shaheen (D-NH) and Susan Collins (R-ME) that reportedly aims to take a broader approach at addressing the cost of insulin, including potentially addressing high list prices for insulin. It remains unclear, however, whether that approach would garner enough Republican support to pass the Senate. Nonetheless, Majority Leader Chuck Schumer (D-NY) has said he intends to put the yet-to-be introduced legislation on the floor sometime after Easter.

In this Issue:

Senate Panel Continues Mental Health Focus

The Senate Finance Committee continued its series of hearings on mental health issues last week with a panel focused on integrating mental health care into primary care -- including SUD and suicide prevention – as well as achieving mental health parity.

Why it matters: Congress plans to develop a draft legislative package by Memorial Day, hold markups in key committees this summer and ideally pass something before the end of the year. Several insurance-related mental health issues could be addressed, including, inaccurate provider directories, reimbursement, parity enforcement and administrative burdens for providers, such as prior authorizations and extensive paperwork.

Also last week, the committee released its Bipartisan Report on Mental Health Care in America. Key takeaways include:

- The committee received 256 RFI responses on how to strengthen the behavioral health workforce including expanding eligible provider types for Medicare payment to include marriage and family therapists, licensed professional counselors, licensed addiction counselors and peer support specialists

- The committee is focusing on workforce issues and virtually access via telehealth. However, they also note that "insurance companies must be held accountable for putting mental health care on par with physical care. Medicare, Medicaid and CHIP must also deliver on the promise of parity."

- Finding in-network behavioral health providers is a challenge and often a barrier to accessing care. Studies of individual market plans and Medicare Advantage have found that networks cover a smaller proportion of behavioral health providers than of primary care providers. Numerous commenters point to low health plan

Regulatory

- **Emergency Due to Healthcare Staffing Shortages Extended**
- **DFS Issues Colon Cancer Screening Circular Letter**
- **2023 Rate Submissions due on May 10**

Pennsylvania

Legislative

- **Pandemic Health Care Waivers Extended through June**

Industry Trends

Policy / Market Trends

- **2021-2030 Projections of National Health Expenditures**

reimbursement rates as one reason for limited network participation.

- Use of tele-behavioral health services proved to be vital during the COVID-19 pandemic, and Congress built on that success in 2020 by permanently removing many Medicare barriers to tele-mental health.

Federal Issues

Regulatory

No Cost Sharing for COVID-19 Over-the-Counter Test for Medicare Beneficiaries

On April 4, the Biden Administration announced beneficiaries with Medicare Part B coverage, including Medicare Advantage (MA) plan, now have access to over-the-counter (OTC) COVID-19 tests at no cost to them, mirroring the coverage required of commercial health plans that went into effect in January. Beneficiaries will be able to receive up to eight FDA-approved OTC tests per month, but will need to purchase OTC tests from participating pharmacies and health care providers. Medicare will reimburse the participating pharmacies and providers for the OTC tests.
This program begins on Monday, April 4 and will last through the public health emergency. MA plans are not responsible for the costs of these tests.

A list of eligible pharmacies and other health care providers that have committed publicly to participate in this initiative can be found here. To receive the free tests, beneficiaries should bring their red, white and blue Medicare card, rather than their MA insurance card, to a participating provider or pharmacy.

BCBSA, AHIP and insurers have been supportive of CMS ensuring equitable access to these products for more than 59 million Medicare beneficiaries. The announcement marks the first time Medicare has covered an OTC product at zero cost to beneficiaries.

HHS Strengthens Safety Net for Seniors and People with Disabilities

On Thursday, CMS announced that it will offer more than $110 million to expand access to home- and community-based services (HCBS) through Medicaid's Money Follows the Person (MFP) program. This demonstration program supports state efforts for rebalancing their long-term services and supports system (i.e., increasing the proportion of Medicaid spending on home- and community-based services compared to institutional services) so that individuals have a choice of where they live and receive services. The new Notice of Funding Opportunity (NOFO) provides individual awards of up to $5 million. This funding is available only to the more than 20 states and territories that are not currently participating in MFP program.

These funds will support initial planning and implementation for these new programs. Applications are due May 31, 2022.

For states already participating in MFP, CMS announced that the agency will increase the federal matching rate for MFP "supplemental services." These services will now be 100% federally funded with no state share. CMS is also expanding the definition of supplemental services to include additional services that can support the transition from an institution to the community, including short-term housing and food assistance. These changes will help to address critical barriers to community living and increase community transition rates and the overall effectiveness of the MFP program. From the Medicaid website, from the start of the program in 2008 through the end of 2020, states have transitioned over 107,000 people to community living under MFP.

IRS Releases Guidance on Qualifying Payment Amount Methodology

The IRS issued additional guidance to calculate the No Surprises Act qualifying payment amount (QPA).

Why it matters: Notice 2022-11 2022-11 provides an indexing factor for the QPA for items and services furnished in 2022 (1.0299772040). This applies in cases where a health plan does not have sufficient information, as of Jan. 31, 2019, to calculate the median contracted rate. The guidance specifies the average CPI-U for 2021 to 2022 to be used in QPA calculations. The IRS previously released an indexing factor for 2022 (1.0648523983).

CMS Releases Draft Guidance on Recovered Cost-Sharing Reduction Amounts in the Medical Loss Ratio and Rebate Calculations

On March 17, CMS released proposed guidance to provide instructions for issuers to report and treat recovered cost-sharing reduction (CSR) amounts in their medical loss ratio (MLR) and rebate calculations. CMS is accepting comments until April 15.

Biden Administration Launches COVID.Gov Website

The Biden Administration yesterday launched COVID.gov, a new website where Americans can locate vaccines, tests, treatments and masks. The website also includes information on local spread of the virus, guidance on travel rules, and a Test-to-Treat locator tool to help people access one-stop locations that offer COVID-19 tests and antiviral pills at one location.

COVID-19 Updates

The Food and Drug Administration (FDA) authorized a second booster of Pfizer-BioNTech and Moderna for adults 50 years and older, announcing that a fourth shot improves protection against severe COVID-19. The agency also authorized a second Pfizer-BioNTech booster for immunocompromised children older than 12 and a second Moderna booster for immunocompromised adults over 18 years old. The CDC's Advisory Committee on Immunization Practice (ACIP) still has yet to evaluate whether to recommend these boosters.

Provider Directory Compliance Report

On March 22, CMS released a summary report on issuer compliance with requirements to make provider directories available in a machine-readable format, a condition of certification as a qualified health plan on the FFM. The report summarizes CMS findings on the consistency and accuracy of data submitted on provider contacts, specialties and acceptance of new patients for plan years 2017 through 2021.

CMS consistently identified differences between the provider network data contained in issuers' data files and the secret-shopper review results and comparison to other published data sources. When validating provider information through secret-shopper calls, CMS confirmed that no more than 47% of the selected provider entries included all current and up-to-date telephone numbers, addresses, specialties, plan affiliations and accepting new patient information at the time of the file submission. Likewise, when comparing the submitted provider data to the published directories accessed by consumers via the Network URL, no more than 73% of the providers reviewed could by fully matched.

State Issues

New York

Legislative

Legislature Fails to Adopt Budget by April 1 Deadline

The Legislature failed to reach agreement on a 2023 state budget by the April 1 deadline. Talks with the Administration stalled last Thursday and lawmakers were sent home for the weekend while staff continued discussions. With all parties saying they want to adopt a final budget as quickly as possible, lawmakers returned to Albany Monday. Several health care provisions are still in play until the major items -- including bail reform and state funding for a new Bills' stadium – are settled.

Regulatory

Emergency Due to Healthcare Staffing Shortages Extended

Last week, Executive Order 4, Continuing the Declaration of a Statewide Disaster Emergency Due to Healthcare Staffing Shortages, was extended to April 30, 2022 – now EO4.7. That also continues the related circular letter (CL 9 of 2021) that suspends certain administrative actions including utilization review and timelines for appeals.

DFS Issues Colon Cancer Screening Circular Letter

The Department of Financial Services (DFS) last week posted the final circular letter related to coverage of colon cancer screenings. It specifically addresses coverage of follow up colonoscopies after positive non-invasive screenings.

2023 Rate Submissions due on May 10

At its meeting with health plan actuaries last week, DFS reiterated that 2023 individual and small group rate submissions will be due on May 10, and that DFS will issue final rate decisions on July 29. Proposals regarding participation in individual and small group offerings are due to New York State of Health (the exchange) by May 25.

State Issues

Pennsylvania

Legislative

Pandemic Health Care Waivers Extended through June

Last week, the General Assembly unanimously passed and Governor Tom Wolf signed legislation extending COVID-19 waivers and flexibilities for health care through June 30.

Following its termination of the state COVID-19 disaster declaration during June 2021, the General Assembly extended regulatory waivers and flexibilities for health care through September 30, 2021 and then again through March 31, 2022. Last week's **action** extended the waivers again through June 30.

Why it matters: The waivers provide regulatory flexibility to help hospitals continue to prioritize patient care by expanding telehealth services, increasing vaccine access, allowing hospitals to quickly alter space to care for emergency influxes of patients, and easing regulatory burdens related to clinician licensing and scope of practice.

Next steps: The waivers now expire June 30, which is typically when lawmakers finalize the state budget. Budget-related legislative activity presents opportunity for lawmakers to continue the extension, if necessary. The goal, however, is to make key the waivers permanent so that future extensions will not be needed.

Industry Trends

Policy / Market Trends

2021–2030 Projections of National Health Expenditures

CMS released the 2021–2030 National Health Expenditure (NHE) report that is prepared by the CMS Office of the Actuary. The office annually produces projections of health care spending for categories within the National Health Expenditure Accounts that track health spending by source of funds (private insurance, Medicare, Medicaid), by type of service, and by sponsor (businesses, households, governments).

The report found that the growth in national health spending is estimated to have slowed to 4.2%, from 9.7% in 2020, as supplemental funding for public health activity and other federal programs, specifically those associated with the COVID-19 pandemic, declined significantly. The report finds that annual growth in

national health spending is expected to average 5.1% over 2021–2030 and to reach nearly $6.8 trillion by 2030.

The percentage of the population with health insurance is expected to be 91.1% in 2021 and 2022, which is mainly due to rapid growth in Medicaid enrollment during the COVID-19 public health emergency (PHE). After the end of the COVID-19 PHE, enrollments are projected to begin returning to pre pandemic distributions. The 2030 insured rate is projected to be 89.8%.

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/.**