Highmark's Weekly Capitol Hill Report

Issues for the week ending July 28, 2023

Federal Issues

Legislative

Committees Advance Legislation on PBMs, Transparency

On Wednesday, the Senate Finance and House Ways and Means Committees each advanced legislation related to pharmacy benefit managers (PBM), transparency, site neutral payment reform, hospital billing requirements, and other key health care issues.

Why this matters: Six committees of jurisdiction on Capitol Hill have now advanced largely bipartisan legislation aimed at reining in PBM practices and promoting more transparency in the health care system. **It is likely that at least some of these provisions will be included in an end of year omnibus package.**

The Finance Committee advanced a bill – the "Modernizing and Ensuring PBM Accountability Act" – that seeks to reform the way PBMs work with Medicare Part D, including new transparency requirements. The measure passed 26-1.

Key provisions of the legislation include:

- **De-Linking PBM Compensation**: prohibiting PBMs and affiliates from deriving remuneration

In this Issue:

related to Part D drugs in any form other than bona fide service fees (BFSF).

- **PBM Reporting to Part D Sponsors**: requiring PBMs to annually report information to Part D plan sponsors and HHS.

- **Audit Rights for Part D Sponsors**: allowing Part D plan sponsors to annually audit PBMs, including price information and relationships with affiliates.

- **Pharmacy Performance Standards and Pricing Information**: requiring the development of standardized pharmacy performance standards and prohibiting Part D plans from using other performance standards in their pharmacy contracts.

- **Medicaid Spread Pricing Prohibition:** prohibiting PBMs from using spread pricing in their contracts with Medicaid managed care organizations and pharmacies.

- **Report on Drug Price Markups in Medicare Part D**: requiring an Office of Inspector General study on drug price markups in the Medicare Part D program, focusing on vertically integrated entities.

Industry Trends

Policy / Market Trends

- **New Research: Growth of Private Equity-Controlled Physician Specialists Continues to Harm Competition, Increase Surprise Medical Bills**
- **Medicaid Redetermination Updates**

Also on Wednesday, the House Ways & Means (W&M) Committee held a markup of its health care package, consisting of two bills: H.R. 3284, Providers and Payers COMPETE Act and H.R. 4822, Health Care Price Transparency Act of 2023. Both bills were favorably reported out of committee by votes of 23-17 and 25-16, respectively.

The markup builds on recent momentum from the Energy and Commerce (E&C) and Education and Workforce (E&W) Committees to codify and expand the Transparency in Coverage rule. The markup took place as all three Committees continue efforts to come together on policies related to fair hospital billing, association health plans, telehealth and price transparency. An agreement could form the basis of a House GOP package on affordability with the aim of floor activity in September.

Key provisions of H.R. 4822 include:

- **Transparency in Coverage Codification**: The bill would codify the Transparency in Coverage final rule requirements to publicly disclose negotiated rates through machine-readable files, including a variation of the deferred prescription drug reporting requirements.

- **PBM and Issuer Transparency**: The bill would require PBMs and issuers to submit 4 annual reports to plan sponsors detailing key prescription drug pricing and spending data.

- **Site Neutral Reform**: The bill would create parity in payments for outpatient services delivered in hospital outpatient departments located separate from the hospital.

- **Prior Authorization**: The bill would require the establishment of electronic prior authorization (ePA) standards, plan use of ePA systems to support real-time decision making, public reporting of PA-related statistics and would increase PA oversight for Medicare Advantage (MA) plans, drawing in provisions from the Improving Seniors' Timely Access to Care Act.

- **Part D Cost-sharing Limits**: The bill would require that post-deductible cost-sharing in Part D be no greater than the lower of the net cost of the drug after rebates or the cash price available from the pharmacy.

H.R. 3284 would require the Department of Health and Human Services (HHS) to submit to Congress an annual report on the effects of certain Medicare regulations on provider and payer consolidation, include questions about consolidation when seeking public comment on rulemaking, and consider the effects of payer and provider consolation with respect to CMS innovation center models.

Both chambers recessed for the month of August at the end of the week. The Senate resumes work on Sept. 5, with the House returning on Sept. 12.

Federal Issues

Regulatory

Biden Administration Issues New Mental Health Parity Proposed Rule, Report, & Other Documents

The Biden administration announced actions to strengthen mental health parity, including a proposed rule and technical release.

- **In a corresponding move,** the administration also issued its 2023 Report to Congress and enforcement fact sheet on the Mental Health Parity and Addiction Equity Act (MHPAEA).

Why it matters: Plans have long asked regulators for more specificity on how to ensure compliance with MHPAEA and streamline the audit process, which also will impact how benefits and networks are structured.

The details: The Departments of HHS, Labor and Treasury proposed a number of clarifications and changes to the MHPAEA final regulations that would:

- **Require** health plans to evaluate outcomes of their coverage rule, not only policies and processes
- **Provide** examples to clarify what health plans can and cannot do regarding utilization management tools, reimbursement and networks
- **Expand** the application of MHPAEA to non-federal government health plans, like those offered to state and local government employees

The technical release included a request for public feedback on non-quantitative treatment limits related to network composition, including potential reporting on out-of-network utilization, the percentage of in-network providers actively submitting claims, and time and distance standards, among others.

Yes, and: In their second Report to Congress, as required by the Consolidated Appropriations Act, 2021, the Departments detailed their continued enforcement efforts and comparative analysis of health insurers' parity compliance with MHPAEA based on information provided by health plans and insurers.

- **Like last year,** the report included a significant number of findings of noncompliance; however, this year's report also included several instances where health plans already resolved the compliance issue.

Next steps: The proposed rule has a 60-day comment period. Additional information is included in the news release and White House fact sheet.

Dig Deeper: The rule proposes a number of clarifications, changes and requests for comment:

- Establishing NQTL standards based on outcomes rather than solely parity across policies and processes, including for provider reimbursement, prior authorization and medical management, and network composition
- Amending existing NQTL examples and include additional examples to provide greater clarity on expectations and potential pathways to ensure compliance

- Establishing the content requirements for NQTL comparative analyses and specify how plans and issuers must make these analyses available

- Soliciting comments on whether there are ways to improve the coverage of mental health and substance use disorder benefits through other provisions of Federal law

- Implementing the sunset provision for self-funded, non-Federal governmental plan elections to opt out of compliance with MHPAEA, as adopted in the Consolidated Appropriations Act (CAA), 2023

Insurance Group Reactions

- **AHIP: "**We agree that everyone deserves access to mental health care, and that access should be on par with physical health. Access to mental health has been, and continues to be, challenging primarily because of a shortage and lack of clinicians, which is why for years, health insurance providers have implemented programs and strategies to expand networks and increase access."

- **BCBSA: "**Every Blue Cross and Blue Shield company is committed to continuing compliance with the MHPAEA to help ensure Americans' mental health needs are supported. While we need time to carefully review the report and proposed rule, particularly for those improvements that provide much-needed clarity, we look forward to working with the administration to enhance our shared understanding of the MHPAEA so that all patients can access the equitable health care they need."

CMS Releases Medicaid Redetermination Data

The Centers for Medicare & Medicaid Services (CMS) posted the first batch of Medicaid Redeterminations data reported under the Consolidated Appropriations Act, 2023, and included their summary here.

CMS described the key takeaways for the April 2023 data as:

- More than 2 million people went through a full renewal process.

- Of those, nearly half (45.5%) were successfully reenrolled in Medicaid and CHIP, and more than half (55%) of those renewed were done automatically (through an ex parte data review).

- Approximately one-third (32.2%) lost their Medicaid and/or CHIP coverage. Within that group, 79% of terminations were for procedural reasons.

- Just over 22% of people due for renewal in April were still pending with the state at the end of the month.

- Many people leaving Medicaid or CHIP may transition to Marketplace coverage. There were nearly 44,000 new plan selections from consumers who previously had Medicaid or CHIP enrollment in the 14 HealthCare.gov states that completed at least one full cohort of renewals by April.

The Connecting to Coverage Coalition also released a statement on the data release: "This data will be of tremendous value in evaluating how states are handling the unprecedented volume of Medicaid eligibility

redeterminations taking place nationwide as a result of the unwinding of Medicaid's pandemic-era continuous coverage provision."

The full data set, including state-by-state metrics, is available here.

Coalition Urges CMS Not to Implement Conflicting Prior Authorization Standards

AHIP, the American Medical Association (AMA), the American Hospital Association (AHA), and the Blue Cross Blue Shield Association (BCBSA) came together to urge CMS to reconsider a recent proposal to implement HIPAA attachment standards for prior authorization.

Why this matters: In a joint letter the associations highlighted the inclusion of prior authorization standards in the Administrative Simplification proposed rule would conflict with the standards proposed in the Interoperability and Prior Authorization rule and create multiple electronic standards and workflows for prior authorization, complicating the process.

Read the letter.

CMS Releases 2021 Medicaid Managed Care Enrollment, Program Characteristics Information

CMS announced the release of the 2021 Medicaid Managed Care Enrollment and Program Characteristics and Data Tables. Enrollment data is broken down by program, population, and state. As of July 1, 2021, 77.2 million individuals—85% of all Medicaid enrollees—were enrolled in some form of Medicaid managed care. Read More

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CMS Releases Medicaid and CHIP Mental Health and Substance Use Disorder Action Plan

The Centers for Medicare & Medicaid Services (CMS) released a Medicaid and CHIP Mental Health (MH) and Substance Use Disorder (SUD) Action Plan **Overview** and **Guide.** These new resources describe CMS's strategies for improving treatment and support for Medicaid and CHIP enrollees with MH and/or SUD conditions.

Areas of focus include improving coverage and integration to increase access to prevention and treatment services and encouraging engagement in care through increased availability of home and community-based services. The resources also discuss coverage of non-traditional services and settings and improving quality of care for MH conditions and SUDs.

State Issues

Pennsylvania

Regulatory

Pennsylvania Insurance Department Considers Updating the Commonwealth's Essential Health Benefits Plan

On Saturday, through Notice 2023-14 in the *Pennsylvania Bulletin*, the Pennsylvania Insurance Department announced that it is exploring the possibility of updating the Commonwealth's Essential Health Benefits benchmark plan (EHB-benchmark plan).

The Department is seeking public input about which benefits to potentially include in an updated EHB-benchmark plan as the Commonwealth considers the update process. The Commonwealth's current EHB-benchmark plan can be found here.

Background: Under the Affordable Care Act, the EHB-benchmark plan establishes the minimum essential health benefits that individual and small group health insurance plans must offer.

The Commonwealth's EHB-benchmark plan must provide coverage for benefit categories such as but not limited to:

- Ambulatory patient services.
- Emergency services.
- Hospitalization.
- Maternity and newborn care.
- Mental health and substance use disorder services, including behavioral health treatment.

For a full list of benefit categories please review the Notice.

In addition to the required coverage categories, Federal regulations provide parameters that must be considered prior to updating any EHB-benchmark plan. Therefore, to assist the Department in evaluating options for an updated EHB-benchmark plan, the Department seeks public input about what benefits should be considered for inclusion in an updated EHB-benchmark plan.

The Notice is available at: https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-30/1017.html

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Industry Trends

Policy / Market Trends

New Research: Growth of Private Equity-Controlled Physician Specialists Continues to Harm Competition, Increase Surprise Medical Bills

The growth of private equity control of important physician specialties has led to an increase in consolidated markets and surprise billing practices, a new report from *Health Affairs Scholar* finds. **The report, which looks at Medicare Part B, highlights the increasing consolidation in both the anesthesia and emergency medicine markets:**

- Private equity and publicly traded companies boosted their share of the anesthesia market to **19%** in 2019, a sixfold increase from 2009.

- Their share of the emergency medicine market also surged over the same timeframe, jumping to **22%**, nearly three times the level in 2009.

- Anesthesia and emergency medicine are the 2 specialties most linked to surprise medical bills.

Read more about how private equity is contributing to higher health care costs.

Read more about what health insurance providers are doing to promote competition and lower health care costs for Americans.

Medicaid Redetermination Updates

The Centers for Medicare & Medicaid Services (CMS) shared an updated document outlining the 2023 state Medicaid and CHIP renewal timelines and distribution plans.

The updated document includes information on:

- State renewal start dates that have changed.

- The amount of time states plan to spend on renewals.

- Whether states are prioritizing some or all renewals for individuals likely to be ineligible for Medicaid.

The Kaiser Family Foundation (KFF) continues to update its Medicaid Enrollment and Unwinding Tracker, which shows at least 3.75 million Medicaid enrollees have been disenrolled as of July 26, 73% of which are due to procedural challenges.

Finally, the National Association of Medicaid Directors (NAMD) published two items related to redeterminations this week: a blog post on how Medicaid programs are applying insights toward a successful unwinding, and a summary of survey data about the scope of states' outreach efforts, including indication of how many states may pursue flexibilities recently released by CMS. For example, 82% of responding agencies indicated they were extending the 90-day post termination reconsideration period to all of their Medicaid enrollees.

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/.**