Highmark's Weekly Capitol Hill Report

Issues for the week ending September 23, 2022

Federal Issues

Legislative

House Panel Approves Mental Health Bills

The House Ways and Means (W&M) Committee on Wednesday held a markup session on a broad range of legislative proposals focused on providing mental health support to employees, families and Medicare enrollees.

Why this matters: W&M is one of several committees on both sides of the Capitol that have advanced bipartisan legislation to improve our nation's mental health system.

Among other things, the legislation considered would broaden the type of mental health providers available to Medicare enrollees to include professional counselors and family therapists. It would also work to educate providers on integrating behavioral health into primary care settings. The committee also considered proposals impacting health plans that would establish designations for evaluating behavioral health provider networks, require plans to publicly post summary of benefits and coverage and require providers (and provider directories) to inform if they are accepting new patients.

In this Issue:

Next steps: This markup is the latest in a series of congressional actions taken to advance bipartisan mental health legislation. Advocates are hoping the various committee products will be combined for an end-of-year mental health package.

- **Senate Committee Advances Cyber Security, Prohibition on Cost Sharing for Breast MRI and BRCA Gene Testing Legislation**
- **House Committee Advances Childhood Lead Testing Legislation**
- **House Advances Early Eye Drop Refill Legislation**

Federal Issues

Regulatory

HHS Releases Roadmap for Behavioral Health Integration

The U.S. Department of Health and Human Services released its Roadmap for Behavioral Health Integration to help advance the Administration's strategy for addressing the national mental health crisis.

Why this matters: The Roadmap highlights programs and policy actions HHS is undertaking to provide all Americans with integrated, equitable, evidence-based, culturally appropriate, and person-centered behavioral health care.

Key elements of the Roadmap include:

- **Achieving equity** in access to affordable, high-quality, culturally appropriate care for mental health/substance use disorder across all ages, conditions, and populations;
- Strengthening system capacity by **expanding the supply and diversity of the behavioral health workforce** prepared to practice in integrated settings;
- **Increasing integration, coordination, and consultation** in a range of settings;
- Bridging the gap between services offered and people's ability to get the care they need by **making care more affordable**;
- **Engaging high-risk populations in integrated care** through targeted outreach tailored to their needs; and
- Creating healthy environments by aligning structural supports and financing to **integrate promotion and prevention programs** in community-based settings, including schools.

Medical Association Again Challenges Surprise Billing Rules

The Texas Medical Association filed a complaint in the federal district court for the Eastern District of Texas to challenge rulemaking finalized in August implementing the No Surprises Act.

Why this matters: The specific policy challenged by the lawsuit is the status an independent dispute resolution (IDR) entity gives to the qualified payment amount (QPA) when determining the final payment owed to an out-of-network provider for certain types of services where an individual patient would not be able to choose to utilize an in-network provider due to circumstances beyond their control.

- After successfully challenging interim final rules which created a "rebuttable presumption" to select the QPA, the Texas Medical Association argues that the August final rule has "the same effect" as the previously court-vacated standard, as the final rule adds clarification (or "extrastatutory criteria") regarding how the QPA and additional factors relate to one another.
- Specifically, the lawsuit argues the payer-calculated QPA is given too much weight and accepted without being subject to an analysis regarding whether the QPA is "credible." By contrast, provider-submitted factors cannot be considered unless the information is "credible" and not already incorporated into the QPA.

Background:

- This is the second lawsuit filed by Texas Medical Association challenging the IDR regulations issued by the Departments.
    - It follows an earlier case filed in the same Texas federal district court that successfully challenged an interim final rule (IFR) addressing the treatment of the QPA in the IDR process, which is on appeal in the Fifth Circuit but remains stayed in light of the Departments' new final rule.

- The lawsuit does not challenge the core balance billing prohibition protection under the No Surprises Act.

Biden Administration Releases Fact Sheet on New Funding and Actions to Address Overdose Epidemic

In recognition of National Recovery Month, the Biden Administration released a fact sheet outlining the new and recent actions taken to address the overdose epidemic and support people in recovery. Important highlights include:

- The Substance Abuse and Mental Health Services Administration (SAMHSA) awarded nearly $1.5 billion to support states, tribal lands, and territories' efforts to address the opioid crisis and support individuals in recovery.

- SAMHSA is also awarding $20.5 million in grant funding to organizations that help connect individuals with substance use disorders (SUD) with community resources.

- The Health Resources and Services Administration (HRSA) is investing over $104 million in public, private, and non-profit entities working to expand access to treatment and prevention services for SUD in rural communities.

- The Food and Drug Administration (FDA) issued guidance to facilitate distribution of naloxone products to increase availability and accessibility.

- The Office of National Drug Control Policy (ONDCP) announced an additional $12 million for new High Intensity Drug Trafficking Areas (HIDTAs), public health and public safety partnerships working to prevent overdoses, and efforts to prevent gun crimes associated with drug trafficking.

- The Department of Labor's Employment and Training Administration (ETA) released new guidance for employers to create recovery-ready workplaces.

The Department of the Treasury's Office of Foreign Assets Control (OFAC) will use sanctions to target the global fentanyl supply chain, particularly in Mexico, to disrupt the illicit production of synthetic opioids like fentanyl.

OIG: Opioid Overdoses and Limited Treatment Options Continue to Be Concerns for Medicare Beneficiaries

The Office of the Inspector General released its study of the impact of the opioid epidemic in 2021. According to the OIG, about 50,400 Part D beneficiaries experienced an opioid overdose--from prescription opioids, illicit opioids, or both--during 2021. Conversely, the number of Medicare Part D beneficiaries who received opioids in 2021 decreased to 25% of beneficiaries. Further, fewer Part D beneficiaries were identified as receiving high amounts of opioids or at serious risk, but prescribers continued to order a steady number of opioids. Yet over 1 million Medicare beneficiaries had a diagnosis of opioid use disorder in 2021, and fewer than 1 in 5 of them received medication to treat their disorder. The report concludes that monitoring opioid use and access to medications for the treatment of opioid use disorder as well as to naloxone are critical to addressing the opioid crisis. A December 2021 OIG report recommended that CMS take steps to improve access to medications for the treatment of opioid use disorder and other support services.

CMS Reissues 2019 Benefit Year HHS-RADV Results and Releases 2020 Results

On September 15, 2022, the Centers for Medicare & Medicaid Services (CMS) released the 'Reissued 2019 Benefit Year Department of Health and Human Services Risk Adjustment Data Validation (HHS-RADV) Results and 2020 Benefit Year HHS-RADV Results' memo. The reissued 2019 benefit year HHS-RADV final results and 2020 benefit year HHS-RADV final results were published on the CCIIO website. The 2019 benefit year HHS-RADV results are being reissued in response to actionable discrepancies under 45 CFR 153.630(d)(2), which challenged the calculation of the 2019 benefit year error rates under the HHS-RADV error estimation methodology. Among these discrepancies, a difference was observed between the error rate calculation finalized in the 2019 Payment Notice and the error rate calculation described in the 2020 HHS-RADV Amendments Rule.

Why this matters: The revised methodology is consistent with BCBSA's recent recommendation to CMS to calculate the error rates based on the HCC portion of the risk score rather than the full risk score. CMS reviewed the report on a September 21 REGTAP call and indicated verbally that the methodology will continue to be used for future benefit years. The full report can be found here.

HHS to Seek Comment on First 'National Strategy' to Support Family Caregivers

On September 21, U.S. Department of Health and Human Services, through the Administration for Community Living (ACL), released the 2022 National Strategy to Support Family Caregivers. The report

highlights nearly 350 actions the federal government will take to support family caregivers in 2023 and more than 150 actions that can be adopted at other levels of government and across the private sector to build a system to support family caregivers.

According to the report, family caregivers lack resources to maintain their health, wellbeing, and financial security while providing crucial support for others. The strategy was developed by two advisory councils established by the Recognize, Assist, Include, Support, and Engage (RAISE) Family Caregivers Act and the Supporting Grandparents Raising Grandchildren (SGRG) Act. The strategy will be updated every two years and is open for public comment starting October 2022 for 60 days. The updates will be based on public input, advisory councils, communities, states and tribes, and federal agencies that are involved with program management.

State Issues

Pennsylvania

Legislative

House Committee Advances Prior Authorization Legislation

On Tuesday, September 20, the House Insurance Committee advanced Senate Bill 225 (Phillips-Hill, R-York) with amendment A05616 (Pickett, R-Bradford). Senate Bill 225 streamlines and standardizes the process for prior authorization and step therapy considerations for insurers, MCO's and contractors.

Senate Committee Advances Cyber Security, Prohibition on Cost Sharing for Breast MRI and BRCA Gene Testing Legislation

On Tuesday, September 20, the Senate Banking and Insurance Committee advanced the following bills:

- Senate Bill 1225 (Mensch, R-Berks) prohibits cost sharing for MRIs for individuals with dense breast tissue.
- Senate Bill 1330 (K. Ward, R-Westmoreland) requires coverage for genetic counseling and genetic testing for the BRCA1 and BRCA2 gene mutation for individuals believed to be at an increased risk due to personal or family history of breast or ovarian cancer.
- House Bill 2499 (Pickett, R-Bradford) requires licensed insurance entities to develop cybersecurity policies and report cybersecurity events to the Insurance Commissioner.

Why this matters: Highmark expressed concerns with Senate Bill 1225 and Senate Bill 1330 regarding the inequities caused by prohibiting cost sharing for tests related to specific diseases or conditions, while those needing MRIs or tests for other conditions will continue to pay cost sharing.

Highmark supported advancing House Bill 2499.

House Committee Advances Childhood Lead Testing Legislation

On Wednesday, September 21, the House Children and Youth Committee advanced Senate Bill 522 (Baker, R-Luzerne) with amendment A05546 (Delozier, R-Cumberland). Senate Bill 522 ensures pregnant women and children receive blood testing to detect lead poisoning and requires applicable insurance policies cover blood lead tests.

House Advances Early Eye Drop Refill Legislation

On Wednesday, September 21, the House advanced Senate Bill 1201 (Pittman, R-Indiana) to third consideration. Senate Bill 1201 provides coverage of prescription eye drops refills if the refill is requested:

- Between 21 and 30 days after the original date for 30-day supplies or after the insured received the most recent refill;
- Between 42 and 60 days after the original date for 60-day supplies or after the insured received the most recent refill; and
- Between 63 and 90 days after the original date for 90-day supplies or after the insured received the most recent refill.

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/.**