Highmark's Weekly Capitol Hill Report

Issues for the week ending September 30, 2022

Federal Issues

Legislative

Congress Clears Stopgap Funding Bill

Just prior to the end of the fiscal year on Friday, Congress passed a continuing resolution (CR), to keep the government funded through Dec. 16th. On Thursday, the Senate passed the measure 72-25. The House followed suit of Friday by a vote of 230-201 and President Biden promptly signed the bill into law.

Why it matters: The CR will temporarily allow the government to remain funded at the current spending, giving negotiators and leadership more time to work out a larger agreement over how to fund the government for fiscal year 2023.

Several items that were on the table for inclusion in the package, such as an energy permitting reform proposal and additional COVID funding, were ultimately removed due to a lack of bipartisan support. The package did, however, contain funding for Ukraine as well as a five year reauthorization of FDA user fees.

A section-by-section summary of the package is available here.

In this Issue:

House Passes Mental Health Matters Act

On Thursday, the U.S. House passed the Mental Health Matters Act by a vote of 220-205. The legislation had been passed by the House Education and Labor Committee earlier in the summer.

Why it matters: Key mental health proposals are being advanced in several committees of jurisdiction across Capitol Hill and are expected to be rolled into a larger, bipartisan legislative package Congress hopes to pass by the end of the year.

Key provisions in the bill include:

- Grants to increase the number of school-based mental health services providers
- Requirements for institutions of higher education concerning students with disabilities
- New Department of Labor (DOL) enforcement authority to issue civil monetary penalties (CMPs) against employer plans and insurers for Mental Health Parity and Addiction Equity Act (MHPAEA) violations, building upon the CMP authority the DOL has under the Genetic Information Nondiscrimination Act.
- Prohibits most ERISA plans from addressing benefit dispute resolutions via arbitration or other alternate means.

Next Steps: Focus will shift to the Senate post-election. The Senate Finance Committee recently released a discussion draft aimed at enhancing the mental health workforce. It is unclear if the provisions in the Mental Health Matters Act will have enough support to be included in a final package.

- **AHIP Participates in White House Conference on Hunger, Nutrition, and Health**

CBO Report Highlights Policies to Lower Commercial Insurance Spending Growth

At the request of Rep. John Yarmuth (D-KY), the Chairman of the House Committee on the Budget, the Congressional Budget Office released a report titled, "Policy Approaches to Reduce What Commercial Insurers Pay for Hospitals' and Physicians' Services."

Why this matters: The report primarily identifies three policies designed to reduce the prices commercial health insurers pay that would in turn lower costs for enrollees: (1) promoting price transparency; (2) promoting competition among providers; and (3) capping the level or growth of prices.

All told, price-cap policies were found to lead to moderate to large price reductions relative to price transparency and pro-competition policies, though all three policies are thought to have price-lowering effects and reduce the federal deficit through lower premium subsidies for Exchange-enrolled consumers. States have been most aggressive with implementing price-cap policies within the Medicaid and state employee plan markets, while the federal government's actions to date have largely focused on promoting price transparency, such as the adoption of hospital and health plan machine readable data files, self-service out-of-pocket estimator tools, and real-time benefit tools in the Medicare Part D program. The CBO report provides a preview of how CBO would estimate the effects of future legislation tackling commercial health insurance spending growth.

Federal Issues

Regulatory

CMS Releases Updated 2023 Medicare Advantage and Part D Premiums

The Centers for Medicare & Medicaid Services (CMS) released key information on 2023 premiums and deductibles for Medicare Advantage (MA) and Medicare Part D prescription drug plans.

Why this matters: CMS projects **the average premium for 2023 MA plans will be $18 per month, a decline of nearly 8%** from the 2022 average premium of $19.52. CMS also indicated that expected MA enrollment will increase to an **estimated 31.8 million people in 2023**. CMS also projected the average **basic monthly premium for standard Part D coverage to be $31.50 for 2023**, compared to $32.08 in 2022, as announced in July.

In addition, CMS noted more than 1,200 MA plans will participate in the Center for Medicare and Medicaid Innovation's (CMMI) MA Value-Based Insurance Design (VBID) Model in 2023, which tests the effect of customized benefits designed to better manage diseases and meet a wide range of health-related social needs, from food insecurity to social isolation.

The CMS release also highlights new policies going into effect in 2023, such as 119 MA plans throughout 24 states participating in the VBID Model's Hospice Benefit Component, the requirement that all MA dual eligible special needs plans (D-SNPs) establish enrollee advisory committees, and the $35 cost-sharing cap on a month's supply of insulin products, as enacted by the *Inflation Reduction Act*.

CMS also highlighted the value MA provides to enrollees, stating in their press release that MA plans "continue to offer a wide range of supplemental benefits in 2023, including eyewear, hearing aids,

preventive and comprehensive dental benefits, access to meals (for a limited duration), over-the-counter items, and fitness benefits."

According to the release, Medicare Open Enrollment for 2023 will begin on October 15, 2022, and ends on December 7, 2022. The full notice can be read here.

Another released update by CMS indicates the 2023 premiums, deductibles, and coinsurance amounts for the Medicare Part A and Part B programs, and the 2023 Medicare Part D income-related monthly adjustment amounts.

Highlights from the rate changes for Part B include:

- The standard monthly premium* for Medicare Part B enrollees will be $164.90 for 2023, a decrease of $5.20 from $170.10 in 2022.
- The annual deductible for all Medicare Part B beneficiaries is $226 in 2023, a decrease of $7 from the annual deductible of $233 in 2022.
- Starting July 1, people with Medicare who take insulin through a pump won't have to pay a deductible, and cost-sharing will be capped at $35 for a one-month supply of covered insulin.
- For 2023, the immunosuppressive drug premium is $97.10.

**The 2022 premium included a contingency margin to cover projected Part B spending for a new drug, Aduhelm.*

Part A highlights include:

- The Medicare Part A inpatient hospital deductible will be $1,600 in 2023, an increase of $44 in 2022.
- In 2023, beneficiaries must pay a coinsurance amount of $400 per day for the 61st through 90th day of a hospitalization ($389 in 2022) in a benefit period and $800 per day for lifetime reserve days ($778 in 2022).
- For beneficiaries in skilled nursing facilities, the daily coinsurance for days 21 through 100 of extended care services in a benefit period will be $200.00 in 2023 ($194.50 in 2022).

Medicare Part D monthly premiums are based on income. The monthly-adjusted changes impact about 8% of people with Medicare Part D and these individuals will pay an additional amount to their Part D premium. The full table can be viewed online.

According to the release, Medicare Open Enrollment for 2023 will begin on October 15, 2022, and ends on December 7, 2022. CMS plans to release more information on premiums in cost sharing in 2023 plans in the near future. The full notice can be read here.

Inflation Reduction Act Implementation is Set to Begin with Inflationary Rebates and New Part D Plan Guidance

Saturday, October 1, 2022, marked the beginning of the Inflation Reduction Act's first significant reform to Medicare Part D. October 1 is the first day of the measurement period in which drug manufacturers that raise prices faster than inflation will pay rebates to the Medicare Program. Despite the start of the measurement period, CMS has not issued formal guidance regarding this reform but is expected to do so.

Last week, the Centers for Medicare & Medicaid Services (CMS) released two guidance memos for Part D plan sponsors giving a preview of its plans for implementing the recently enacted Inflation Reduction Act's provisions that take effect in 2023. Given the abbreviated timeline to implement these provisions, CMS intends to not disrupt existing bid review processes and the Medicare Plan Finder website build, while also implementing the law as written. Specifically, CMS instructs sponsors to not submit requests to update their Part D bids (already under review) to reflect the new vaccine and insulin requirements. Those provisions provide $0 enrollee cost-sharing for Part D-covered vaccines and cap covered insulin out-of-pocket costs to not exceed $35 per month.

To compensate plans whose bids do not reflect these benefits, CMS will pay a temporary retrospective subsidy to plans for the cost of the aggregate reduction in cost-sharing and deductible. Medicare Part D Plan Finder, a helpful tool for beneficiaries to identify plans covering their medications on-formulary, will not integrate the IRA provisions in a beneficiary-friendly manner but will instead include a footnote that vaccine and insulin costs may be cheaper than what is reflected on the website.

HHS Invests over $104 Million to Expand Substance Use Treatment and Prevention in Rural Communities

On September 23, the Health Resources and Services Administration (HRSA) announced investments of over $104 million to expand treatment and prevention services for substance use in rural communities nationwide as part of the Rural Communities Opioid Response Program (RCORP).

The RCORP is a multi-year initiative aimed at reducing the morbidity and mortality of rural Americans from substance use. This funding is designed to help rural communities address difficulties they face in providing and accessing substance use treatment. Rural communities have experienced a consistent rise in drug overdose deaths, with a nearly five-fold increase from 1999 to 2019. Opioid-related overdose deaths have increased significantly across the United States since 2019. The funding will be awarded to three programs under the RCORP:

1. **Medication Assisted Treatment Access** – HHS is awarding $10 million to establish new medication assisted treatment access points for substance use, including opioid use disorder. The program will reduce barriers to evidence-based treatment in underserved rural areas.
2. **Implementation** – HHS is awarding $65 million to strengthen and expand opioid use disorder prevention, treatment, and recovery services in rural communities utilizing workforce development and training, telehealth, health care integration, and family support services.
3. **Behavioral Health Care Support** – HHS is awarding $29 million to improve the quality and sustainability of behavioral health care services in rural communities, including through evidence-based, trauma-informed treatment for substance use. The program works to improve rural residents' access to quality, integrated behavioral health care services.

Public Comment Period Reopened for Temporary Increase in FMAP for the COVID-19 PHE

On September 23, the Centers for Medicare & Medicaid Services (CMS) reopened the comment period for the Interim Final Rule (IFR) entitled Temporary Increase in Federal Medical Assistance Percentage (FMAP) in Response to the COVID-19 Public Health Emergency (PHE).

Published in November 2020, the IFR described certain regulatory requirements that states must meet to claim the temporary 6.2% increase in federal matching funds for their Medicaid programs under the Families First Coronavirus Response Act (FFCRA), including maintenance of benefits, though with some limited exceptions.

CMS is considering modifying those requirements for several reasons, including:
1) to avoid certain scenarios under which states may reduce coverage;
2) in light of some individuals having experienced reductions in benefits;
3) acknowledging certain related legal actions; and
4) improvements in the financial circumstances among states since publication of the IFR.

CMS is reopening the comment period for an additional 30 days and seeks comments on issues relating to the potential modifications. Comments are due October 27, 2022.

For more information or to view the published version of the notice and discussion, please visit this *Federal Register* website link.

State Issues

New York

Regulatory

Public Health Emergency Updates

Governor Hochul last week extended two Executive Orders related to ongoing public health emergencies.

- EO20.2 —Extends the state emergency due to the ongoing spread of monkeypox. A related CL (CL12of 2022) outlines expectations for insurers' coverage of testing, diagnosis and immunization of monkeypox.

- EO4.13 — Extends the state of emergency due to Covid-related staffing challenges at health facilities as the Omicron subvariant drove a spike in cases last winter. However, an earlier extension of this EO removed the suspension of utilization review requirements and appeal timeframes.

Industry Trends

Policy / Market Trends

AHIP Participates in White House Conference on Hunger, Nutrition, and Health

AHIP was among the participants at the White House Conference on Hunger, Nutrition, and Health. Kicked off by President Biden, the conference brought together government officials and stakeholders to help identify actions to improve hunger, nutrition, and health.

In conjunction with the conference, the Biden Administration released a National Strategy on Hunger, Nutrition, and Health and the President announced a **goal of ending hunger in America and increasing healthy eating and physical activity by 2030** so fewer Americans experience diet-related diseases - like diabetes, obesity, and hypertension - while reducing health disparities.

Why this matters: The National Strategy includes Calls to Action for health stakeholders, and an overview of five pillars of action: 1) improving food access and affordability; 2) integrating nutrition and health; 3) empowering all consumers to make and have access to healthy choices; 4) supporting physical activity for all; and 5) enhancing nutrition and food security research.

To address social determinants (SDOH) and food insecurity, the Strategy proposes the following efforts:

- CMS will explore **incorporating quality measures relating to screening for social needs as part of the Medicare Shared Savings Program and Medicare Advantage Star Ratings Program**.
- CMS will **measure social risk factors, including food insecurity, for at-risk Medicare Advantage beneficiaries**.
- CMS will consider broadening access to the Center for Medicare and Medicaid Innovation's Medicare Advantage Value-Based Insurance Design (VBID) model and **encouraging additional Medicare Advantage organizations to provide food and nutrition services in their offerings under the Special Supplemental Benefits for the Chronically Ill (SSBCI)**.
- CMS will continue to support efforts to develop the **data infrastructure needed for food insecurity and other SDOH data** elements to be captured in electronic health records.

Specifically, the Strategy includes the following efforts pertaining to health insurance providers:

- Supporting **legislation to create a pilot to test covering medically-tailored meals for individuals in original Medicare who are experiencing diet-related health conditions**;
- **Expanding nutrition and obesity counseling coverage to Medicaid** beneficiaries that currently are not guaranteed access to these services.
- Expanding **Medicare beneficiaries' access to nutrition and obesity counseling** for patients with conditions other than diabetes, kidney disease, and/or obesity.
- **Soliciting information from insurance plans regarding what nutrition services are already covered**.
- The Departments of Labor (DOL), Health and Human Services (HHS), and Treasury will **clarify how mental health parity protections apply to coverage related to nutritional counseling for eating disorders** to ensure that this coverage is not inappropriately being limited.

- Treasury will also issue guidance **clarifying what nutrition and diet-related disease medical expenses can be reimbursed under health savings accounts and health flexible spending arrangements**.

The strategy also calls on health insurance providers to consider providing or expanding coverage of nutrition services, including producing prescriptions and/or medically tailored meals for target populations.

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/.**