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SELLERS DORSEY DIGEST

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NAVIGATION

Summary of Key Updates

On July 22, the Centers for Medicare and Medicaid Services (CMS) issued a bulletin reaffirming that the 2019 Public Charge Final Rule is no longer in effect and reminding states of the requirement to safeguard applicant and beneficiary information. CMS is encouraging states to work within their local communities to provide this information to their immigrant populations so that residents can access public benefits related to health and housing (Inside Health Policy, July 22).

On July 22, the Missouri Supreme Court unanimously upheld Medicaid expansion within the state, ruling the voter-approved initiative to expand eligibility is constitutional. This decision overturns the Cole County Circuit Court ruling that the expansion was not valid (St. Louis Post-Dispatch, July 26; The Hill, July 22; Fierce Healthcare, July 22; Modern Healthcare, July 22; Inside Health Policy, July 22).

On July 26, a group of 58 medical organizations released a joint statement calling on providers to implement mandatory COVID-19 vaccination policies for health care workers. The latest show of support for mandatory vaccines echoes joint and individual statements released in recent weeks by dozens of medical professional groups (Fierce Healthcare, July 26; The New York Times, July 26).

From July 21 to July 27, CMS approved nine SPAs, six of which are COVID-19 disaster relief SPAs.

Sellers Dorsey works at the intersection of industry and government to help managed care plans successfully pursue the right goals in Medicaid, creating strong relationships so that states, stakeholders, businesses, and beneficiaries come out on top together. Learn more and contact us to about how our managed care expertise can help.

Federal Updates

News

- On July 22, the Centers for Medicare and Medicaid Services (CMS) issued a bulletin reaffirming that the 2019 Public Charge Final Rule is no longer in effect and reminding states of the requirement to safeguard applicant and beneficiary information. CMS is encouraging states to work within their local communities to provide this information to their immigrant populations so that residents can access public benefits related to health and housing. The 2019 Public Charge Rule denied green cards to immigrants based on their likely use of public benefits, including Medicaid. The Biden administration vacated this rule in March 2021 and the Department of Homeland Security (DHS) resumed operating under the 1999 public charge guidance, which does not include Medicaid or CHIP enrollment in public charge determinations. States are prohibited from sharing Medicaid beneficiaries' information about citizenship status, even with DHS, and have an obligation to keep applicant information safeguarded (Inside Health Policy, July 27; CMS, July 22).
- The Bipartisan Infrastructure Framework under consideration in Congress will include a further delay for a rule that would eliminate a safe harbor for Medicare Part D rebates, replacing them with point-of-sale discounts. The Biden Administration had delayed the rule's implementation until January 1, 2023. It is unclear how long the additional delay would last, but the delay is intended to help offset the cost of the infrastructure measure (Fierce Healthcare, July 23).
- A Government Accountability Office (GAO) study found the annual tally for firearm-related injuries is more than $1 billion, with other studies estimating the cost as high as $2.8 billion. Medicaid picks up a substantial share of the cost, whether directly reimbursed by the state or through a capitated contract with a managed care payer. The GAO report found that gun violence accounted for more than 30,000 hospital stays, and 50,000 ER visits the previous year, with more than 15% of firearm injuries resulting in a hospital readmission (Health Payer Specialist, July 26; Politico, July 14).

Federal Legislation

- December 2020's Consolidated Appropriations Act permanently authorized Medicare providers to cover mental health services delivered via telehealth, so long as the member has seen his or her practitioner in-person within six months before beginning telehealth treatments. Providers and other stakeholders oppose the requirement for an initial in-person visit, indicating it has no clinical benefit and is a burden for both providers and patients. Bi-partisan bills have been introduced (SB2061 and HB4058) to remove the requirement for an in-person visit pre-telehealth care and for a subsequent period afterwards, as determined by the Department of Health and Human Services (HHS). The bills have broad support from the provider community and Sen. Ron Wyden (D-OR), Senate Finance Committee chair, has indicated he is "open to revisiting the in-person requirement." (Modern Healthcare, July 26).

Letters

- In a July 26 letter to U.S. Senate leadership, the American Hospital Association (AHA) urged Senate leaders not to repurpose the remaining $43.7 billion in COVID-19 provider relief funds to offset the cost of the bipartisan infrastructure package. AHA called the proposed funding reallocation "short-sighted," as COVID-19 cases, hospitalizations, and deaths are surging nationwide. AHA also stressed that the most recent provider relief distributions are based on metrics from the beginning of 2020, ignoring the significant COVID-19-related costs generated from the summer and winter surges in cases. AHA indicated it would oppose any infrastructure legislation that rescinds funding from the provider relief fund to pay for spending unrelated to the COVID-19 pandemic (AHA, July 26; Inside Health Policy, July 26).

- America's Health Insurance Plans (AHIP) penned a July 20 letter of support to the four co-sponsors of The Value in Health Care Act of 2021. The bill is related to value-based care in Medicare and proposes modifications to shared savings rates and risk methodologies to make it easier for payers and providers to participate in such initiatives. The bill was introduced in the House earlier this month and has bipartisan support. The support letter is cosigned by the American Medical Association, AHA, and several other professional organizations (AHIP, July 20; Health Payer Specialist, July 26).

COVID-19

- On July 26, The Biden administration released new guidance on support individuals suffering from long-term effects of COVID-19 ("long COVID") in recognition of the 31st anniversary of the Americans with Disabilities Act (ADA). HHS and the Department of Justice (DOJ) declared that long COVID qualifies as a disability under the ADA and ACA, and therefore those identified as having long COVID are entitled to the same protections against discrimination as those with other disabilities under the ADA. Long COVID will be considered a disability if the person's condition or any of his or her symptoms causes a physical or mental impairment that substantially limits one or more major life activities. The long COVID guidance provides a definition of long COVID and its symptoms, clarification surrounding long COVID as a disability, the rights those with long COVID have, and a list of federal resources for those with symptoms of long COVID (HHS and the U.S. Department of Justice, July 26; Politico, July 26; The Hill , July 26).
- On July 26, a group of 58 medical organizations released a joint statement calling on providers to implement mandatory COVID-19 vaccination policies for health care workers. The latest show of support for mandatory vaccines echoes joint and individual statements released in recent weeks by dozens of medical professional groups, including AHA, America's Essential Hospitals, and the Association of American Medical Colleges. The statements promote the safety and effectiveness of COVID-19 vaccines, as well as the responsibility of health care workers to mitigate the spread of COVID-19 among the immunocompromised and otherwise vulnerable populations they serve. Dozens of hospitals and health systems across the U.S. have already made COVID-19 vaccination a mandatory condition of employment for their staff (Fierce Healthcare, July 26; The New York Times, July 26).
- AHIP has urged Congress to stop price gouging by providers for COVID-19 tests. AHIP's request comes after a recent study, conducted by the association, found significantly higher prices (more than $185) being charged by out-of-network providers for an estimated 54% of COVID-19 tests in March 2021. Furthermore, the study found 27% of COVID-19 tests in March 2021 were administered out-of-network representing a 6% increase since the beginning of the pandemic. The AHIP study determines the average commercial market costs for COVID-19 tests to be $130, and it defines high prices as $185-$389 per test (Health Payer Specialist, July 23).

Waivers

- Section 1115
    - On July 6, Oregon submitted an application to CMS to extend its existing Section 1115 demonstration waiver, Oregon ContraceptiveCare (CCare), for five years. The application includes no changes to the program, and as such, the state is requesting to use the fast track process. CMS will accept public comments on the extension application through August 22.

SPAs

- Service SPAs
    - West Virginia (WV-21-0008, effective January 1, 2021): Provides a $1,000 per calendar year benefit for diagnostic, preventative, and restorative dental services for adults aged 21 and over receiving benefits through an Alternative Benefit Plan.

- Payment SPAs
    - Louisiana (LA-21-0005, effective April 1, 2021): Removes a nursing facility that is no longer owned or operated by a non-state governmental organization (NSGO) from the list of NSGO facilities qualified to receive quarterly upper payment limit supplemental payments.
- Administrative SPAs
    - Oregon (OR-21-0011, effective April 1, 2021): Allows the state to change from using a Prior Authorization method to using a Pre-Payment Review process for physical therapy, occupational therapy, and speech therapy services.
- COVID-19 SPAs
    - Colorado (CO-21-0012, effective March 16, 2021): Sets the reimbursement rate for administration of a dose of the COVID-19 vaccine at $41.18. This time limited COVID-19 SPA terminates at the end of the public health emergency (PHE).
    - Kansas (KS-21-0012, effective June 8, 2021): Increases the payment for administering in-home COVID-19 vaccinations to Medicaid members who have difficulty leaving their homes or are otherwise hard to reach from $40.00 per vaccine administered to $75.00 when no other services are delivered in the home on the same date. This time limited COVID-19 SPA terminates at the end of the PHE.
    - Louisiana (LA-21-0012, effective March 1, 2020): Increases the payment rate for laboratory tests to 100% of Medicare rates. This time limited COVID-19 SPA terminates at the end of the PHE.
    - Minnesota (MN-21-0003, effective January 1, 2021): Implements a more liberal income method for a disregard of pandemic unemployment assistance income under Section 2102 of the CARES Act. This time limited COVID-19 SPA terminates at the end of the PHE.
    - New Hampshire (NH-21-0031, effective July 1, 2020 – June 30, 2021): Updates the payment methodology to shift two Non-State Government-Owned (NSGO) nursing facilities from Proportionate Share Incentive Adjustment 1 (which uses a Resource Utilization Group-based payment methodology) to Proportionate Share Incentive Adjustment 2 (which uses a cost-based payment methodology) for SFY 2021 due to decreased nursing facility utilization resulting from the COVID-19 pandemic.
    - Texas (TX-21-0013, effective March 1, 2020): Establishes reimbursement rates for COVID-19 specimen collection, viral testing, antibody testing, and vaccine administration as payable and equal to the Medicare reimbursement, regional Medicare contractor rate, or the median of other state Medicaid rates for both governmental and private providers. This time-limited COVID-19 SPA terminates at the end of the PHE.

State Updates

- On July 22, the Missouri Supreme Court unanimously upheld Medicaid expansion within the state, ruling the voter-approved initiative to expand eligibility is constitutional. This decision overturns the Cole County Circuit Court ruling that the expansion was not valid. In August 2020, Missouri voters approved a constitutional amendment to expand Medicaid eligibility to 138% of the federal poverty level under the ACA. Missouri Governor Mike Parsons (R) and the state's Legislature did not appropriate funding for the expansion, resulting in a lawsuit from three residents who claimed the state was required to implement expansion. The Cole County Circuit Court ruled against expansion, stating the ballot measure had been unconstitutional because it appropriated money without a funding source. Now, the Missouri Supreme Court ruling states the ballot measure did not directly appropriate money or infringe on the Legislature's appropriations power. A lower court is tasked with issuing an order to implement the ruling. Missouri will

be the 38th state to expand Medicaid, with an estimated 275,000 residents newly eligible for coverage (St. Louis Post-Dispatch, July 26; The Hill, July 22; Fierce Healthcare, July 22; Modern Healthcare, July 22; Inside Health Policy, July 22).

- On July 22, Governor J.B. Pritzker of Illinois signed a new law that permanently expands a telehealth parity requirement for mental health and substance use disorder services through 2027 and creates a 14-person telehealth task force to study long-term virtual care coverage. In addition to eliminating geographic barriers and setting limits on cost-sharing, insurers cannot require an in-person visit prior to a telehealth service or make patients provide a reason for requesting virtual care. Providers are also prevented from requiring patients to utilize telehealth if they request in-person care (Illinois.gov, July 22; Becker's Hospital Review, July 23).
- While a national public health insurance option is still under consideration, three states have moved forward with plans of their own. Colorado and Nevada passed public option plans this year that are set to begin in 2023 and 2026, respectively. Washington enacted its law in 2019 and started its public option in January 2021. Both Colorado and Nevada laws establish limits on premium costs, while Washington did not establish mandatory premium levels. Each state also has variation in provider reimbursement rates; Colorado's are set at 155% of the Medicare rate; Nevada set Medicare payment rates as their floor; and Washington set their rates at 160% of Medicare payment rates. Proponents for public option plans hope states will create a more affordable alternative for individuals without health insurance, while opponents do not believe a financially feasible public option has been created yet (Modern Healthcare, July 22).
- An Arkansas law that prohibits gender-affirming medical care for transgender children has been temporarily blocked by a federal judge through a preliminary injunction. The law, which was set to be effective July 28, has been paused, while a legal challenge by the ACLU works its way through the court. The Arkansas Attorney General has vowed to appeal the judge's decision (Forbes, July 21).
- Texas Governor Greg Abbott (R-TX) announced the Texas Health and Human Services Commission (HHSC) will receive more than $210 million in federal emergency grants ($135.6 million for substance use prevention and treatment and $74.5 million for community mental health services) from the Substance Abuse and Mental Health Services Administration in response to the COVID-19 pandemic. The emergency funding will allow the state to address the challenges associated with COVID-19 and the uptick in substance abuse and mental health demand, while enhancing programs and resources for Texans in need of support. Drug overdose deaths hit the highest number on record in 2020 according to the CDC. HHSC is using the funds to develop and implement more than two dozen substance use disorder and mental health initiatives throughout the state. These initiatives include virtual and in-person treatment services, peer recovery, social supports, and education, and involving mental health professionals in responding to 911 calls (Corridor News, July 20).

Private Sector Updates

- UnitedHealthcare will award $11.4 million to programs addressing social determinants of health. The insurer previously awarded more than $40 million in grants across 26 states since establishing its Empowering Health program in 2018, impacting over six million people. This round of funding will be distributed to programs in Indiana, New York, Nevada, Mississippi, Virginia, Michigan, Maryland, Florida, Georgia, North Carolina, Texas, Kansas, Nebraska, South Carolina, Tennessee, West Virginia, Ohio, and the District of Columbia (Fierce Healthcare, July 22).

Sellers Dorsey Updates

- "The status quo is not an option anymore in Medicaid. We appreciate the importance and the strength of the Medicaid program, but also how far it still has to go." – PENNY THOMPSON
  "The pandemic has laid bare inequities that are more visible than perhaps they have been in the past, disparities in health status, outcomes, and access." – GABE ROBERTS

  What have we observed as we struggle together to emerge from the pandemic? Check out this conversation between two nationally recognized leaders in Medicaid and health care.

- Sellers Dorsey works at the intersection of industry and government to help managed care plans successfully pursue the right goals in Medicaid, creating strong relationships so that states, stakeholders, businesses, and beneficiaries come out on top together. Learn more and contact us to about how our managed care expertise can help.

- Michigan Association Health Plans annual summer conference kicked off this week, and Sellers Dorsey staff members are excited to connect with and hear from industry experts on trends in Medicaid, key issues in health care access, and more topics.

- In case you missed it, last week Sellers Dorsey released an updated summary analyzing several states' budgets including the following additions: Illinois, New Hampshire, New Jersey, Rhode Island, and Wisconsin. This summary focuses its analysis on states' overall budgets as well as their specific Medicaid expenditures and program changes. We will continue to summarize more states as they enact their budgets in future Digest issues. The document will be regularly updated here.

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