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July 22, 2019 Volume 8, Issue 25

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March 2019 Medicaid Global Cap Reports

The March 2019 Global Cap Report was recently posted on the Medicaid Redesign Team (MRT) website. Additionally, this Global Cap Report includes Medicaid spending results for December 2018 through February 2019, as the last Global Cap Report posted by the Department was through November 2018.

The Department of Health and the Division of Budget report that total State Medicaid expenditures under the Medical Global Spending Cap for FY 2019 resulted in total expenditures of $20.814 billion. This is $4 million *below* the projected $20.818 billion target.

However, the State has, at times, managed the timing of Medicaid payments to ensure compliance with the Global Cap. As such, by deferring the final FY 2019 cycle payments to Medicaid Managed Care Organizations by three business days along with delaying other payments, the State was able to avoid exceeding the Medicaid Global Cap indexed rate for FY 2019. The State-share value of the deferral was approximately $1.7 billion.

Through delayed payments, the spending in Medicaid Managed Care categories was reported at $690 million below projections, of which:

- MLTC spending would have exceeded projections by $452 million, mostly due to higher than expected enrollment. Enrollment increased by 12% (28,124 individuals) compared to a budgeted 5% increase over FY 2018.
- Mainstream Managed Care spending would have exceeded $238 million, primarily due to an increase in stop loss claims. The State processed 25% more stop loss claims this fiscal year over the prior year driving higher than projected spending.

Medicaid spending in major fee for service (FFS) spending was $416 million, or 5.3% over projections. This included the following:

- Clinic spending was $48 million above projections. Total claims billed were 6.4 % higher than anticipated through March.
- Nursing Homes spending was $173 million above projections. Total claims billed were 7.0% higher than anticipated through March.
- Non-Institutional spending (includes Pharmacy, Medical Supplies, Physicians, Supplemental Medical Insurance, etc.) was $133 million above projections. This is primarily the result of higher than expected utilization for Transportation services.

Additional factors contributing to overages in spending included $441 million above projections in "All Other" spending which was primarily related to lower than anticipated Accounts Receivable collections and unachieved savings from several MRT initiatives.

State Attorney General James Leads Coalition of AGs to Support Court Decision Against AHP Rule

The New York Attorney General, Letitia James, along with 11 other states' Attorneys General, filed a brief in the U.S. Court of Appeals for the District of Columbia Circuit, defending a lower court's decision striking down the Association Health Plan (AHP) Rule.

On July 26, 2018 the twelve states' Attorneys General filed a lawsuit challenging the AHP Rule *(State of New York v. United States Department of Labor)*. The lawsuit alleged that the Department of Labor violated the Administrative Procedures Act when it promulgated the AHP rule ("the Rule") and also argues that the Rule violates both the ACA and the Employment Retirement Income Security Act ("ERISA"). In March of this year, a district judge ruled in favor of the plaintiff states and vacated portions of the Department's final rule.

The federal rule allows groups of small employers to band together to offer reduced cost health insurance. The U.S. Department of Justice filed an appeal on April 26, 2019 disagreeing the lower court's decision, and the U.S. Department of Labor issued a policy statement indicating that those who have already enrolled in AHPs under the final rule can maintain that coverage until their current plan year or contract term expires.

Committee Meetings of the Public Health and Health Planning Council

On July 18, the Public Health and Health Planning Council held a Committee Meeting Day, in which the Committees on Health Planning and the Establishment and Project Review (EPRC) met in Albany. A copy of the agendas and meeting materials can be found here.

The Health Planning Committee met to discuss revised policies for reviewing Certificate of Need (CON) applications for Ambulatory Surgery Centers (ASCs). Ms. Tracy Raleigh, Department of Health (DOH), Director of Center for Planning, Licensure and Finance, presented on the revised policies which were developed by DOH based on the Council member input shared at the May 15, and June 6 PHHPC meetings. The overall concerns which the Department attempts to address relate to the impacts on community hospitals as a result of the approval for establishment of ASCs. This concern has been raised during recent PHHPC meeting discussions with compelling arguments that the growth or service expansion of ASCs can have a significant effect on "already struggling" local hospitals or hospital systems by drawing away profitable services, as well as arguments that disapprovals may deter access to quality care and improved innovative services or procedures.

DOH presented policy revisions to the CON review for ASCs that would:

- Recommend disapproval of applications which the application would have a negative financial impact on a Critical Access Hospital or Sole Community Hospital;
- Consider "other factors" which could include good faith efforts of effective collaboration between the proposed operator and the impacted hospital, future reimbursement trends, and consideration for specialty type surgical services; and
- Apply limited life to non-hospital owned freestanding ASCs, not only upon initial establishment, but also upon change of the ownership of 50% or greater members.

The policy revisions were endorsed by the Health Planning Committee after a brief public comment period, and will be presented to the full Council at a future date.

The EPRC also met to discuss a selection of CON applications of which all were recommended for approval, and will go before the full Council at the next scheduled PPHPC meeting to be held on August 8, 2019 in New York City.

Department of Health Announcements

DOH Posts FAQs Regarding Changes to FI Services

The Department of Health (DOH) has posted a list of frequently asked questions (FAQs) by consumers, to further clarify the Department's recently issued guidance to implement changes in reimbursement for Fiscal Intermediaries (FIs) providing services under the Consumer Directed Personal Assistance Program (CDPAP).

The DOH guidance details the implementation of a three-tier Per Member Per Month (PMPM) rate structure for FIs delivering administrative services to Medicaid fee-for-service (FFS) members enrolled in CDPAP. FIs will bill a separate rate code for each consumer for each month the FI provides administrative service to that consumer, the tiered rate of reimbursement is based on the authorized number of direct care hours. Medicaid Managed Care Plans may either adopt the FFS three tiered payment structure or an alternative administrative fee payment, as long as the administrative fee is segregated from the direct care services payment. The changes to the rate structure go into effect on *September 1, 2019*.

Elderly Pharmaceutical Insurance Coverage (EPIC) Program Webinar

DOH is hosting an informational webinar on the Elderly Pharmaceutical Insurance Coverage (EPIC) program's current and future policy for providing assistance with the Medicare Part D Late Enrollment Penalty, with time at the end dedicated to questions and answers. The webinar will be held on July 30, 2019 from 10:00 AM to 11:00 AM. To register, please click here.

1115 Medicaid Waiver – Written Comments from June 24th Public Comment Day - Posted

DOH has posted the written public comments for the State's 1115 Medicaid Waiver Program, June 24th - Upstate Public Comment Day, on the DOH website. Written public comments were due by July 12, 2019. The Department has also posted links to presentation materials, a recorded webcast, and a transcript from the meeting.

Regulatory Update

Department of Health

Patients' Bill of Rights

The Department of Health has issued a notice of proposed rulemaking that revises the diagnostic and treatment centers (D&TCs) Patients' Bill of Rights and requires D&TCs to provide patients a list of the health plans and the hospitals that the center participates with as well as to receive an estimate of the amount they will be billed after services are rendered. The proposed regulation is similar to provisions already in the Patients' Bill of Rights associated with general hospitals to deter practices or errors of surprise billing.

This rule will be open to public comment for 60 days from its date of posting on July 17, 2019.

Office of Mental Health

Establish Standards for Providers Who Wish to Become Licensed Children's Mental Health Rehabilitation Programs

The Office of Mental Health (OMH) has issued a notice of adopted rulemaking that establishes standards for providers who wish to become licensed Children's Mental Health Rehabilitation programs. The Children's Mental Health Rehabilitation Program (CMHRS) is a means for implementing the new State Plan services for children with mental health needs. Providers who become licensed as a CMHRS program will be responsible for the provision and coordination of five of the new State Plan services, including: *Other Licensed Practitioner, Community Psychiatric Supports and Treatment, Psychosocial Rehabilitation, Family Peer Support, Services, and Youth Peer Support and Training*.

This rule includes non-substantive changes from its original version posted in the February 20, 2019 issue of the State Register. This rule is effective as of as of July 17, 2019.

Related Articles and Other News

CBO: Senate Surprise Billing Legislation Would Save Feds $7B Over Next Decade

CVS moves into kidney care with clinical trial for home dialysis device

NY Attorney General Announces Arrests Of NYC Pharmacy Owner And Managers For Stealing Millions From Medicaid

Calendar

Thursday, August 8, 2019	The Public Health and Health Planning Council – Committee on Codes, Regulations and Legislation and Full Council Meeting 9:15 a.m. - 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC

Quick Links

NYS Department of Health --- **NYS DOH –Meetings, Hearings & Special Events** --- **Medicaid Redesign Team** --- **Senate Health Committee Website** --- **Assembly Health Committee Updates** --- **NYS Division of Budget**

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