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DSRIP 2.0 Waiver Narrative Released

On Tuesday, the State released its narrative Waiver Amendment request for the next phase of DSRIP. The State is seeking a full four-year extension that would span from April 1, 2020 through March 31, 2024. This includes a one-year extension of the current DSRIP program and three years of DSRIP 2.0. Through the request, New York is requesting $8 billion to be invested toward DSRIP Performance ($5 billion), Workforce Development ($1 billion), Social Determinants of Health ($1.5 billion), and an Interim Access Assurance Fund for safety net hospitals ($500 million).

For the next phase of DSRIP, the State is looking to continue certain "promising practices" that fall within the following categories:

- Expansion of Medication-Assisted Treatment into Primary Care and ED settings;
- Partnerships with the justice system and other cross-sector collaborations;
- Primary care and behavioral health integration;
- Care coordination, care management, and care transitions;
- Expansion of Mobile Crisis Teams (MCT) and crisis respite services;
- Focus on patients transitioning from IMDs to the community;
- Focus on Seriously Mentally Ill/Seriously Emotionally Disturbed populations;
- Addressing Social Determinants of Health through Community Partnerships; and
- Transforming Primary Care and Supporting Alternative Payment Models.

Instead of the PPS serving as the sole lead for projects, under 2.0, new collaborations of providers (which may include PPSs or subparts of PPSs), MCOs, and community-based organizations called "Value-Driving Entities" (VDEs) will apply to work together in assigned specific regions/markets to implement the high-priority promising practices. PPSs will have the flexibility to modify their existing structure to accommodate new partners, or may propose a governance model for the VDE. However, all VDEs will be required to bring MCOs in the region into the management and operational structure to replicate and scale (and make ready for VBP contracting) the promising practices, as well as PCPs, behavioral health, and long term care providers.

According to the Waiver Summary, VDEs will be selected based on their history of performance improvement, strength of provider, MCO and CBO partnerships, an inclusive governance structure that includes a range of providers, MCOs and CBOs in executive steerage, and importantly, the potential to sustain the selected DSRIP promising practices under VBP arrangements by the third year of the extended demonstration.

In addition to the "promising practices", other priorities for the VDEs and DSRIP 2.0 will be:

- Maternal mortality: a community with high maternal mortality and low birthweight deliveries could leverage existing public health projects to develop a project leading to adoption of a maternity bundle that integrates promising practices from beyond DSRIP (e.g. Centering Pregnancy).
- Children: VDEs will extend successful practices to children in the areas of chronic care management, behavioral health integration, pediatric-focused patient-centered medical homes, and attention to adverse childhood experiences and social determinants. This would include: use of telemedicine for care management of residential populations for ED triage and expansion of crisis stabilization programs would improve management of overall care and minimize avoidable admissions.
- Long Term Care Reform: exploration of bundling and value-based payment options to strengthen and integrate the broader continuum of care for patients needing longer-term services and supports; identification of the system reforms needed to support the aging population and the

workforce needs that will be required, including subsidies and stipends for participating in aide certification and nursing programs, loan forgiveness programs for nursing graduates, subsidies for work barrier removal including child care for LPNs and aides, including for all innovative approaches to address the needs in rural areas where needs are acute.

- Continued Investment of Non-Clinical Workforce: VDEs will require ongoing flexibility to fund community health workers, peers, patient/community navigators, etc., as they work with the MCOs and CBOs to design VBP approaches that support these value-adding team members for the long-term.
- Social Determinants of Health Networks (SDHNs): SDHNs will deliver socially focused interventions linked to VBP. Lead SDHNs will be selected through a competitive procurement with VDEs/PPS being eligible applicants. The lead entity of the SDHN will create a network of CBOs that will collectively use evidence-based interventions to coordinate and address housing, nutrition, transportation, interpersonal safety and toxic stress. A lead applicant in each region will be selected to formally organize CBOs to perform SDH interventions; coordinate a regional referral network with multiples CBOs and health systems; create a single point of contracting for VBP and SDH arrangements; and assess Medicaid members for State-selected SDH issues and make appropriate referrals based on need.
- Addressing the Opioid Epidemic: VDEs will partner with their regional Centers for Treatment Innovations (COTIs), NY State's Office of Alcoholism and Substance Abuse Services treatment providers that are focused on engaging people in their communities by offering mobile clinical services, as well linking people to other appropriate levels of care. COTIs target un/underserved areas and expand access to tele-practice, substance use treatment services, and linkage to Medication-Assisted Treatment, as well as peer outreach and engagement within the local community.

The DOH has scheduled a public comment day to be held on October 25, 2019 at Baruch College in New York City from 11 am to 2 pm, and the meeting will also be webcast live at: https://www.health.ny.gov/events/webcasts/. All written public comments can be submitted to 1115waivers@health.ny.gov through November 4, 2019.

Drug Utilization Review Board (DURB) Meeting

On Thursday, the Department of Health's Medicaid DURB met in Albany. The meeting included a review of the final numbers on the SFY 2018-19 Medicaid Drug Cap and an overview of the State's current Drug Cap situation for SFY 2019-20. The majority of the meeting was devoted to providing the DURB with an overview of the Federal Substance-Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, which included an extensive review New York's efforts to date in responding to the opioid epidemic.

Medicaid Drug Cap Update

Janet Elkind from DOH explained that the 2019-20 Budget now allows the State to initiate rebate negotiations with manufacturers using target rebate amounts based on established cost effectiveness studies, instead of requiring new studies to inform a target rebate amount. The Budget also allows the State to set target rebate amounts for drugs without consideration for rebates already provided by that manufacturer for other drugs. Notably, the total Drug Cap overage would have been $108 million had DOH not credited the upcoming rate cut to managed care plans related to PBM Fair Pricing Models from the State share totals for SFY 2019-20. It was noted that, to date, the State has negotiated over 20 supplemental rebate contracts with manufacturers, with "many" still in progress.

As for the final closeout of 2018-19, the State share drug spend exceeded the Cap by $1 million by the end of Q4 compared to the initial $75 million projected overage. This $1 million was absorbed by the Medicaid Global Cap, according to DOH. DOH was able to reduce the Drug Cap overage by obtaining $49 million in accelerated rebate payments from manufacturers (i.e., asking drug manufacturers to pay rebates owed sooner than they were due so DOH could apply them against the Cap period); retroactively reducing HARP premiums by $11.3 million; and obtaining $13.5 million in additional supplemental rebates from manufacturers. These three efforts produced approximately $74 million savings. As the Budget allowed all rebate agreements to be retroactive effective to the start of the fiscal year, DOH could presumably secure a rebate for FY 19-20 in FY 20-21 and still credit it back to the 2019-20 Drug Cap.

SUPPORT Act Presentation

Elana Andi from DOH provided an overview of the Federal SUPPORT Act, which is intended to increase options for treating beneficiaries with SUD and opioid use disorder (OUD). Among other things, the Act requires all Medicaid programs to cover all Medication Assisted Treatment (MAT) services beginning October 1, 2020 through September 2025, and for FFS and MMC to have certain provisions in place, such as safety edits on opioid fills and the maximum daily morphine equivalents (MMEs) that can be prescribed.

DOH said provisions required by the SUPPORT Act are in place in FFS and surveys of MCOs are under way, but early indications are these provisions are in place in MMC. DOH reviewed opioid trends as a result of coordinated initiatives that include I-STOP and the PMP; POS clinical edits, and other State initiatives, including limiting opioid prescriptions to 4 every 30 days in MMC and preventing initial prescriptions of opioids of more than a 7-day supply for acute pain. As a result of these efforts, the State showed that in the Medicaid program from SFY 2014 to SFY 2019, there was a 33.4% decline in the overall number of members utilizing an opioid; a 32.4% decline in total opioid claims volume; and a 39.6% decline in the total number of opioid units dispensed. Additionally, compared to SFY 2014, in SFY 2019, there was a 67.1% decline in members receiving greater than four opioid claims in 30 days; and as a result of the "7 day opioid legislation", there was a 28% decline in the number of members initiating a short-acting opioid therapy for acute pain.

DURB members voted to approve the following DOH recommendations and action items related to the SUPPORT Act:

- (Opioid Utilization) "Prior authorization is required for opioid-naïve patients exceeding a morphine milligram equivalent (MME) of 90 per day." (Opioid naïve is defined as no opioid use in the last 60 days.
- (Antipsychotic Utilization in Children as related to SUPPORT Act) "Send a targeted prescriber education letter regarding antipsychotic therapy and metabolic monitoring for patients less than 21 years of age."
- (Antipsychotic Utilization in Children as related to SUPPORT Act) "Prior authorization is required for patients less than 21 years of age when there is concurrent use of two or more oral antipsychotics for greater than 90 days."
- (Opioid and Antipsychotic Concurrent Utilization as related to the Support Act): "Send a targeted prescriber educational letter highlighting the Support Act requirements addressing the concurrent use of antipsychotic and opioid medications, and the importance of mental health treatment and coordination of care."

The next DURB meeting is tentatively scheduled for December.

Oral Arguments Heard in Fiscal Intermediary Rate Change Case

On Tuesday, Albany County Supreme Court Judge, Honorable Christine Ryba, heard oral arguments presented by both the counsels for Petitioners (FIs) and counsel for the DOH. The FIs presented three main arguments: 1) that the State failed to follow the State Administrative Procedures Act (SAPA) requirements to implement a rate change methodology within the Consumer Directed Assistance Program (CDPAP); 2) the miscellaneous notice provided in the State Register was in the context of an amendment to the State Plan and insufficient to fulfill SAPA requirements of public notice and comment; - and, 3) the new methodology is arbitrary and capricious. The FIs believe that the DOH has "reverse engineered" the basis for this new rate methodology in order to justify a budgetary savings.

The State maintains that DOH in fact has authority to establish rates in the Medicaid program so long as such rates are within federal compliance for rate adequacy to cover allowable program costs, and such rates meet the rational basis standard under Article 78 of the Civil Practice Law & Rules (CPLR). The State insists it has not violated SAPA - as the initial rate methodology and the new rate methodology are an interpretation of the rule for payment requirements within the CDPAP. Further, the State claims the new rate methodology is based on the Department's review of data submitted to DOH, and is changing the FI rate structure in response to improper billing practices by the FIs, which the counsel for the State classified as "abuse" of limited Medicaid dollars. The State believes the pm/pm payment model will allow FIs to continue

to operate, but operate under a restructured or adjusted business model and is necessary to preserve limited Medicaid dollars.

Judge Ryba questioned the Counsel for the State regarding initial proceeding statements that the new methodology was implemented in order to reflect enacted budget reductions, which presents inconsistent to the affidavit submitted by Medicaid Director Donna Frescatore. After hearing arguments from both the FIs and the State, Justice Ryba closed stating a decision will be delivered at a near future date.

Special Meeting of the PHHPC and Committee on Codes, Regulations and Legislation

The Public Health and Health Planning Committee (PHHPC) and the Committee on Codes, Regulations and Legislation (CCRL) held a second special meeting on Tuesday to discuss emergency regulations presented by DOH which bans the sale, possession, manufacture, distribution, or offering of almost all flavored e-liquids, with the exception of unflavored, tobacco and menthol flavored liquids. The regulation pertains to possession by retailers, not consumers. DOH Commissioner, Howard Zucker, presented that the regulations are intended to address to two major public health concerns – first is to address the recent increase in use of flavored e-cigarettes by youth in the state, and second is to address the increasing number of lung and respiratory illnesses associated with illegal and illicit vaping products.

The public comment period included several personal testimonies from individuals who have benefited from the use of flavored e-cigarette products in transitioning away from combustible cigarettes. Of which, they reiterated that without the availability of flavored vape products they would never have seen such success in transitioning away from combustible cigarettes. Several speakers emphasized that without the flavors available they are more likely to revert back to combustible cigarettes. Vape shop owners and representatives also shared testimonies of the success that they have seen from flavored vape products in transitioning smokers away from traditional cigarettes. Business owners emphasized that the impacts to their businesses will be unsustainable as most shops sell an overwhelming majority of flavored e-cigarette products and this action will create an unwelcomed “black market” for these products, and suggested alternative options to the “questioned” emergency regulation.

Advocates in favor of the regulation banning flavored e-liquids spoke out as well during the public comment period almost all urged the DOH and the PHHPC members to further include menthol flavors in the ban. The push to include menthol was backed by some claims suggesting that a possible workaround the regulation will be to include “menthol” in the name of their products in order to retain the ability to sell in New York.

After hours of public comment, the CCRL voted unanimously to recommend approval of the emergency regulation to the full Council, and the full Council recommended approval of the emergency regulation with two members in

opposition. The regulation will go into effect immediately, with a two week grace period before enforcement by DOH and State Police begins. The regulation will be in effect for 90 days unless extended or adopted permanently.

Department of Financial Services Issues IDR Progress Report

The State Department of Financial Services (DFS) issued a new report detailing the progress of New York's independent dispute resolution process which resolves billing disputes between an out of network provider and a health plan, protecting consumers from emergency and surprise bills from out-of-network doctors and other healthcare providers. The report states that since the implementation of the IDR process in March of 2015 and through 2018, 2,595 decisions were rendered by IDR entities (IDREs), and estimates it has saved consumers over $400 million. Additionally, the report provides a detailed overview of the IDR process along with 2015-2018 statistical data of the IDR determinations in favor of both billings by providers and payments of plans as they relate to emergency services and surprise bills.

OMIG Posts Update to 2019-2020 Work Plan – MLTC Site Visits

The New York State Office of the Medicaid Inspector General (OMIG) recently posted an *update* to their 2019-2020 Work plan. OMIG is undertaking an initiative to conduct on-site visits with Managed Long-Term Care (MLTC) plans across the state to discuss program integrity-related processes and procedures. The visits serve to review with MLTCs the rules, regulations and contract requirements relating to program integrity, and inform OMIG's program integrity efforts in this area going forward.

A detailed outline of the OMIG Work Plan actions and goals can be found on the OMIG website.

New York State's Mandatory Employee Training Deadline Nearing

Reminder: All NYS employers must have all employees complete initial sexual harassment training by October 9, 2019. Training must be conducted annually, with new-hires trained as quickly as possible. Newly enacted State Law requires all employers to adopt a sexual harassment prevention policy and provide employee training regarding the adopted sexual harassment prevention policy. Model sexual harassment prevention policy document links are publicly available and posted on both the Department of Labor and the Division of Human Rights websites.

Regulatory Update

No updates at this time.

Related Articles and Other News

Medicare Plan Finder Gets an Upgrade for the First Time in a Decade

Governor Cuomo and Health Commissioner Zucker Issue Renewed Warning as Vaping-Associated Illnesses Continue to Climb Nationwide

Calendar

Tuesday, September 24, 2019	State Emergency Medical Advisory Committee (SEMAC) - Webcast 1:30 p.m. – 3:30 p.m.
Wednesday, September 25, 2019	NYS Emergency Medical Services Council (SEMSCO) - Webcast 12:30 p.m. – 3:30 p.m.
Thursday, September 26, 2019	The Public Health and Health Planning Council – Committee Meeting Day 10 a.m. 90 Church Street, 4th Floor, Rooms 4A and 4B, NYC
Thursday, October 3, 2019	The Continuing Care Retirement Community (CCRC) Council Meeting 11 a.m. – 1:30 p.m. at the Department of Health offices located at 875 Central Ave, Albany

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**