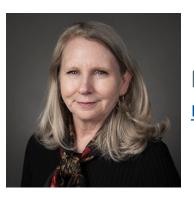


#### **Healthcare Regulatory Round-Up #63**

## Coming to a Statehouse Near You

January 24, 2024

#### **Introductions**



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#### Agenda

- 1. Medicaid coverage
- 2. Medicaid payments
- 3. Quality standards and staffing levels
- 4. Price transparency
- 5. Surprise billing
- 6. Tax-exempt hospitals/community benefit
- 7. Prescription drug affordability
- 8. Payer regulation
- 9. Telehealth
- 10. Provider licensure











#### 1. Medicaid Coverage Expansion

ACA Medicaid eligible population expansion (138% FPL) (10 states remaining; renewals/repeals)

Work requirements, increased primary care payments, private option

#### Maternal health

- Expanded coverage to 1-year post-partum (8 states remaining)
- CMMI Transforming Maternal Health Model

#### Social services programs

- Homelessness, food and nutrition
- Gun violence
  - California, Colorado, Connecticut, Illinois, Maryland, New York, and Oregon

Undocumented immigrants (Medi-Cal)



#### 2. Medicaid Payments

- States addressing PHE aftermath (loss of additional 6.2% FMAP, other funding)
- Changes to provider assessments?
  - Used by every state except Alaska to fund portion of state share of Medicaid payments
  - Some states expanding types of providers subject to tax and/or restructuring existing taxes
  - Federal scrutiny of providers' side arrangements regarding fund allocations
- Change to fee-for-service reimbursement rates?
  - Nearly all states increasing rates in response to inflation, workforce shortages
  - Some rate reductions tied to changes in supplemental payments (DSH and UCC)
- Value-based payment arrangements
  - MCO contract provisions to all-payer initiatives (e.g., CMMI AHEAD Model)



## 3. Quality Standards and Staffing Levels

- Improving quality and access to care
  - Maternal health
  - Primary care
  - Behavioral health
- Workforce issues
  - Nurse-to-patient staffing ratios
  - Staffing levels
    - Addresses both nursing and allied health workers
      - Requirement for staffing committees in hospitals to develop staffing plans for both service workers and professional/technical workers (Oregon)
      - Coverage for breaks
  - Impact of minimum wage increases



#### 4. Price Transparency

- Prohibition or caps on hospitals charging facility fees at off-campus location or telehealth other than in emergency situations (CO, CT, ME, MA)
  - Notice of higher rates than if services received in non-hospital-based office
- Disclosure of non-emergency charges in advance of service
- Disclosure to patient if cost-sharing for covered service exceeds self-pay cash price
- Requirement to comply with federal transparency "law"/regulations
  - Added penalties for non-compliance
- Legislation to parallel federal transparency requirements



## 4. Price Transparency (cont'd)

- Prohibition on non-compliant hospitals from billing patients/refund any payments received as of date of transparency violation
- Expands transparency to medical, dental practices, ASCs
- Time period limitation on action to collect medical debt (3 years FL)
- All-payer claims database creation and elimination
- Tracking of drug prices across payers and manufacturers
- Rate comparisons to percentage of Medicare (IN, 285%)
- Requirements for manufacturers to notify state purchasers in advance if wholesale acquisition cost is changed above certain threshold (NJ, NY, OK)



## 5. Surprise Billing

- Violation of federal laws considered deceptive trade practice
- Limitation/cap on actual charges exceeding estimates, other than in emergency situations
- Require plans to reimburse transport by a non-participating ambulance provider
  - Other states placing prohibition on ambulance balance billing
- Prohibition on physician balance billing
- Require providers to specify in patient bill dollar amount provider is willing to accept as payment in full
- Establishing patients' bill of rights
- Repealing pre-existing state laws (e.g., New Mexico)



#### 6. Tax-Exempt Hospitals/Community Benefits

- Limitations on hospital expenditures
- Redefining community benefits to include unreimbursed cost of services reported in federal tax filings
- Public presentation of community benefit implementation plan
- Post community benefit report on website
- Report on how community benefit spending relates to community health needs assessments (Illinois)
- Conversion of independent hospital districts to non-profit entities (Florida)
- Report on hospital (mis)use of tax-exempt status (Texas)



## 7. Prescription Drug Affordability

- Tracking price increases of top prescription drugs
- Creation of Prescription Drug Affordability Boards to create Upper Payment Limits for prescription drugs (Michigan, Vermont, and Wisconsin)
- Prohibit PBM's from excess cost burdens on insured prescription drug coverage (Oklahoma)
- Prohibition on unsupported price increases
- Provide justifications and circumstances for prescription drug price increases (Massachusetts and New York)
- Reference rates



## 7. Prescription Drug Affordability (Con't)

- Establishment of Canadian wholesale prescription drug importation programs (Michigan, Illinois, Nebraska, New York, and Ohio)
- State partnerships with drug manufacturers to produce generic drugs (Illinois)
- Studies and state oversight of "preferred pharmacies"
- Annual study of major pharmaceutical companies producing generic drugs and other major drug products that impact statewide health (Massachusetts)



#### 8. Payer Regulation

- Prior authorizations (AMA model legislation)
  - Establish quick response times
  - Allow adverse determinations only by physician licensed in same state/specialty
  - Prohibit retroactive denials if care preauthorized
  - Make authorization valid for at least one year, regardless of dose changes; and for those with chronic conditions, the prior authorization should be valid for the length of treatment.
  - Require public release of insurers' prior authorization data by drug and service
- Coverage mandates
  - Enforcement by state departments of insurance
- Consumer cost-sharing
  - Any amount paid by consumer must be applied to annual cost-sharing
  - Limitation on out-of-pocket costs for prescription drugs, high-value services



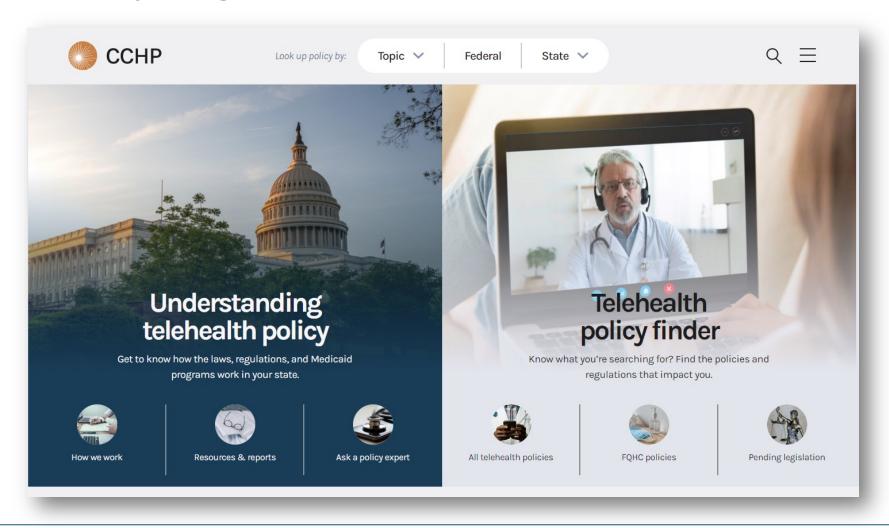
#### 9. Telehealth

- Medicaid coverage
  - Expanded list of eligible conditions, services
  - Prohibition on telehealth-only services
  - Physical presence in the state as a condition of Medicaid participation
- Commercial payers
  - Coverage and payment parity
- Licensure
  - Interstate compacts
  - Exceptions to state licensure requirements
- Professional practice standards
- On-line prescribing
- Demonstration programs



## **Center for Connected Health Policy**

https://www.cchpca.org/



#### 9. Licensure



- Definition of a hospital
  - Hospital-at-home
  - Rural emergency hospital
- Certificate of need
  - Repeal addressed in numerous states while others look to exemption based on cost of additional services as well as civil penalties for failure to comply with existing CON laws
  - Some states enacting strict timeframes for CON determination letter



## 10. Licensure (cont'd)

- Ensuring access to primary care patients presenting in ER with non-emergent condition (Florida)
  - Maintain EMTALA compliance
  - Referrals for care to urgent care centers/FQHCs
  - Development of non-emergency care access plans (NCAPs)
  - Educate patients, help to establish medical home
  - Allows construction of hospital-owned urgent care center co-located within or adjacent to hospital ED; hospital can divert patients to urgent care following medical screening exam, if appropriate



#### If It's Not One Thing...

- Opioid settlement spending
- Limitations on increases in state's health care spending
- Funding primary care residency slots
- State tax credits for physicians with an ownership interest in a physician practice
- Annual report for hospitals of all capital expenditures
- Single payer systems
  - Establishment of committees to review in MA, CT
  - Failed in IN and RI; carried over in NH, IL, MI, and MN
  - Medicare-for-all New Jersey



#### Other Stuff Going On...

- Federal budget negotiations
  - Physician Fee Schedule conversion factor
  - Lower Costs, More Transparency Act
    - Medicaid DSH cuts
    - Off-campus HOPD drug administration
- Supreme Court oral argument on Chevron doctrine
- Prior authorization final rule
- MedPAC hearing on Medicare Advantage
- EMTALA enforcement



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