9/11/2020

Good Evening REDC Members,

Below is your weekly policy update:

SERVE Act

I. NDAA is still being conferenced behind the scenes. We don't expect it will be finalized and voted on this month given the short period between now and October recess. In turn, we expect it will be voted & passed during the lame duck.

II. We worked with the TRICARE for Kids Coalition to ensure the SERVE Act (Senate provisions) were recommended for inclusion in conference. The letter the Coalition sent is attached for your reference.

COVID-19 Relief Package Information

I. Senate Republicans released a target COVID-19 relief package and voted on it this week. The package failed to receive 60 votes for passage with all Democrats voting against the measure.

II. The bill did not include any telehealth or mental health provisions

III. The packaged included a $300/wk UI benefit, liability protections for businesses, another round of PPP loans for businesses, loan forgiveness for the USPS, billions for schools, COVID-19 testing and vaccine/therapeutic development, over $20 billion for farmers and fishers

REDC Lends Support to Two Letters

I. **Maternal Health:** The REDC joined over 125 organizations in letter led by the Maternal Mental Health Leadership Alliance to Senate appropriators in support of funding for the Maternal Mental Health Hotline.

- **a.** Full letter attached.

II. Parity State Level Legislation: The REDC joined a 38 national organizations in a letter to California Governor Gavin Newsom in support of Senate Bill 855, which would increase access to mental health/substance use disorder care by ensuring that health plans cover medically necessary care through a standardized definition of medical necessity and follow generally accepted standards of care when conducting utilization review. Additionally, it requires the use of non-profit clinical specialty association criteria.

a. Full letter attached.

Kennedy Forum State Parity Legislative & Regulatory Compliance Workgroup Call *(slides attached)*

Wit v. UBH Update

- US District Court in northern district of CA found United Behavioral Health liable for breach of fiduciary duty in March 2019
- Court ruled that UBH denied MH/SUD care to more than 50k people nationwide (half of whom were children/ young adults) using deeply flawed medical necessity criteria that were inconsistent with standards
- Remedies ruling still pending
- Appears likely that judge will call for reprocessing of claims with oversight from monitor
    - Reimburse for wrongly denied care + interest
    - Injunctive relief to stop UBH from using flawed criteria
- Timing of remedies ruling unclear
- Due to lack of damages under ERISA, patients cannot be reimbursed for damages caused by denied care. This is a major limitation of current federal law
- This case continues to gather a lot of attention

California Senate Bill 855 *(as noted above)*

- Passed Senate (35-5), passed Assembly (63-1) with Governor (has until end of Sept)
- Requires insurers to provide coverage for the diagnosis and medically necessary treatment of mental health and substance use disorders
- Defines “medically necessary” and mandates that plan medical necessity determinations be consistent with Generally Accepted Standards of Care

- Requires the use of non-profit clinical specialty association criteria

New York Proposed Rule on Requiring Parity Compliance Programs

- Dept of Financial Services proposes rule requiring insurers to put in place parity compliance program. Would require:
    - Establish formal compliance program w/ designed individual heading
    - Written policies and procedures
    - Methodologies for ID and remediation of improper practices
    - Conduct "comparative analysis" on NQTLs
    - Actuarial certification of compliance financial requirements and QTLs
    - Training and education of personnel
- Overall very good, but could be strengthened
    - Specify what comparative analysis must contain
    - Requires parity analysis before any benefit group

Texas "Informal Draft Rule" Comment

- Issued by Texas Dept of Insurance (TDI)
- Four divisions:
    - Explains and illustrates how a health plan must be designed to comply with TX law, which mirrors MHPAEA
    - Requires issues to report on utilization review data on outcomes for MH/SUD and med/surg claims
    - Requires plans to analyze quantitative treatment limitations (QTLs) and NQTLs. Uses template for each based on PA Dept of Insurance
    - Clarifications on autism spectrum disorder coverage

Parity Compliance Programs Discussion—Vital for Insurers to Have; Should Be Required

- Why needed?
    - Without one, it's almost impossible for insurers to be compliant with MHPAEA

- MHPAEA compliance unlikely to be accidental; currently insurers often engage in elaborate after-the-fact justifications for why likely MHPAEA violations ok
- Because MHPAEA is comparative law, must have programs in place to do the comparison
- How medical/surgical benefits applied is a critical part of equation
- Need to move to proactive compliance, not just identifying issues after the fact

- There is no excuse for insurers not to have parity compliance programs
- Critical requirements include:

1. Structure

    a. Senior person in charge, reporting to CEO or other C suite
    b. Written policies and procedures
    c. Involvement of all people who make decision on benefits and treatment limits that may affect compliance

2. Measurement and analysis

    a. System of ongoing assessment of parity compliance, both as written and in operation
    b. Actuarial certification of financial requirements and QTLs

3. Remediation

    a. Fix problems immediately after identification
    b. Identify and notify affected enrollees, re-adjudicate claims
    c. Notify regulator and public

4. Proactive compliance

    a. Review all MH/SUD and med/surg benefit changes for parity compliance BEFORE they're made

5. Transparency- internal and external

    a. Requirements for info sharing within insurer, any carve out, and with any contracted benefit management functions

6. Education/ training

    a. Ensure all personnel who touch MHPAEA compliance receive proper training on MHPAEA requirements and how to identify potential violations

7. Accountability

    a. Require annual CEO certification that insurer meets compliance program requirements
    b. Mechanism for reporting concerns, with retaliation prohibited

Best,

Allison & the Center Road Team

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