10/16/2020

Happy Friday REDC Members,

Below you'll find our policy update for today:

HRSA Provider Relief Funding- Deadline November 6th

- As you saw earlier this week, HRSA has released a new provider relief fund which can include your organizations.
- This will be first come, first serve for applications.
- Also Stacey on our team attended the HRSA webinar on this topic, which you can find a summary of the notes form this webinar attached. "HRSA COVID-19 CARES Act Provider Relief Fund Phase 3 General Distribution Webinar Memo"

Commercial Telehealth Advocacy with Governors/State Insurance Commissioners:

  - As you know, the REDC, in partnership with the EDC sent letters to all 50 Governors and Insurance Commissioners expressing concern over tele-mental health coverage deadlines from select payers.
    - Responses continue to trickle in from states and an updated tracker is attached that reflects responses **from New York, South Carolina and Wisconsin.**
- **We have a larger letter to Governors/State Commissioners circulating the mental health community right now.**
  - The final letter will be sent to states that do not have a telehealth mandate law on the books.

CMS Covers Additional Telehealth Services

I. Earlier this week, the agency added 11 new services to its virtual care roster for the duration of the pandemic, including cardiac and pulmonary rehabilitation.

II. Several Congressional members are pushing for more services to be added.

a. Reps. Fitzpatrick (R-PA) and Anxe (D-IA) led more than 30 colleagues in pressing CMS Administrator Verma to expand telehealth-based audiology and speech language pathology services during the pandemic.
b. Additionally, the agency shared data about Medicaid and CHIP telehealth usage during the pandemic.

i. More than 34.5 million health services were delivered virtually to Medicaid an CHIP beneficiaries between March and June.

1. This is a 2,600% increase compared to the same period last year.

ACA Subsidized Market Declines by 45%

I. In a report released by CMS showed the population on the ACA's exchanges that do not receive subsidies declined by 45% from 2016-2019.

a. A larger of ACA enrollees receive tax credits. Last year 87% (9.3 million) of exchange enrollees who selected a plan through Healthcare.gov got an advance tax credit.

i. However, this is the third consecutive year it has been on the decline. Last year, unsubsidized enrollment dropped by 300,000 enrollees.

b. Meanwhile, enrollment among the subsidized portion of the exchanges continues to grow, with a 140% increase in 2019.

State Parity Legislation & Other State Updates

I. October State Parity Workgroup Call *(slide deck attached)*

a. **Kentucky** Bill Request (BR) 61

i. Author: Moser (R)—Republican legislature

ii. Summary

1. Based off of model bill
2. Applies to commercial health plans
3. Builds Federal Parity Requirements into state law

4. Requires detailed reporting on treatment limitations compliance with Federal Parity Act

b. **Michigan** SB 1157

i. Author: Irwin (D)—Republican legislature

ii. Summary

1. Contains limited provisions from model bill
2. Requires Director of Insurance to implement Federal Parity Act. By:
   a. Proactively ensuring compliance
   b. Evaluating all consumer/ provider complaints relating to MH. SUH coverage for parity violations
   c. Perform parity market conduct examinations
   d. Require insurers submit comparative analyses during form review process demonstrating parity compliance for non-quantitative treatment limitations (NQTLs)
   e. Does not contain detailed reporting requirements for NQTLs

c. **Missouri** HB 61

i. Author: Razer (D)—Republican legislature

ii. Summary

1. Updates existing law to align with Federal Parity Act (has been introduced previously)
2. MO Department of Insurance says lacks power to enforce Federal Parity Act
3. MO is effectively the only state that can't enforce the Federal Parity Act
4. Basically has a 0% chance of passing

d. **Pennsylvania** HB 1696

i. Author: Murt (R), with bipartisan cosponsors—R legislature

ii. Summary

1. Insurer must file annual attestation that it has conducted analyses on Fed Parity Act compliance
2. Parity compliance analyses must be available for review
3. Parity compliance analyses must contain all the information required in the model parity bill

4. HB 1696 is a version of the model bill's reporting requirements that doesn't require annual parity reporting to insurance department, but rather requires attestation that the analyses have been conducted and must be made available to the department upon request.

e. **New York**

i. Final rule on requiring parity compliance programs

ii. Department of Financial Services finalized rule requiring insurers to put in place parity compliance program. Requires:

1. Establishing formal compliance program with a designed individual heading
2. Written policies/ procedures
3. Methodologies for ID and remediation of improper practices
4. Conduct "comparative analysis" on NQTLs
5. Actuarial certification of compliant financial requirements and QTLs
6. Annual certification that compliance program meets rules requirements
7. Training and education of personnel

f. **California** SB 855

i. New law takes effect January 1, 2021

1. Advances MH/ SUD parity using a somewhat different mechanism
2. Does not go directly through the Federal Parity Act, but rather complements it
3. Directly addresses the issues identified in the *Wit v. United Behavioral Health* ruling from the U.S. District Court in the Northern District of California

ii. Provisions in Detail of California Bill

1. Findings
   a. Not law, but helped with making clear why bill was important and may well help with implementation. Described generally accepted standards of care identified in *Wit*.
2. Ban on Discretionary Clauses

a. Insurers insert discretionary clauses into policies. *Gives them wide latitude to interpret the terms of their own policies.*
b. Courts frequently use different standard of review—whether the insurer abused its discretion—rather than de novo review (equal weighting of the evidence). Very hard standard to overcome.
c. NAIC has model bill to prohibit. Roughly half of states have done through statute or regulation.
d. NAIC states purpose as "to assure that health insurance benefits and disability income protection coverage are contractually guaranteed, and to avoid the conflict of interest that occurs when the carrier responsible for providing benefits has discretionary authority to decide what benefits are due."

3. Expansion of CA Mental Health Parity Act

    a. Predates Federal Parity Act and requires all medically necessary treatment of 9 severe mental illnesses to be covered
    b. SB 855 expands to cover all MH/ SUD in current editions of DSM/ ICD

4. Includes definitions of "medically necessary treatment"

    a. Based on AMA/APA definition of medically necessity
    b. Prevents plans from creating their own definitions

5. Prohibits limiting coverage to short-term or acute treatment

    a. Made clear cannot refuse to cover ongoing care for chronic conditions

6. Strengthens out-of-network coverage when in-network services are not available within CA geographic and timely access standards

    a. CA has fairly strong timely access rules that require out of network coverage at in network cost sharing if in-network services are not available
    b. Patients often on their own in finding/arranging out of network coverage

7. May not limit benefits or coverage because insurer believes a public program could or should pay for services

    a. Insurers sometimes refuse to cover care because they claim a government entity should cover instead (Medicaid, school districts)

8. Requires all medical necessity determinations to be based on generally accepted standards of care and defines valid sources to establish these standards

    a. Codifies the standards set forth in *Wit v. UBH* with valid sources for establishing

9. Insurers must use medical necessity criteria for MH/ SUD from relevant non-profit clinical specialty association (ASAM criteria, LOCUS, CALOCUS)

    a. CA and NYS have now put in place strong rules on criteria

10. Requires staff education on utilization review criteria and puts in place interrater reliability testing requirements with 90% pass rate

    a. Criteria is only good as implementation

11. Puts in place enhanced penalties for insurers regulated by the CA. Department of Insurance

II. <u>Trump Administration Approves Georgia's Medicaid Plan</u>

a. CMS approved the state's proposal for partially expanding Medicaid, while also including a work requirement.

    i. The policy will cover an estimated 65,000 more people—far fewer than the nearly half-million who would be added if GA took up full expansion.

b. Also in progress is an overhaul of the state's individual market

    i. State and federal officials are nearing an agreement on an unprecedented plan to eliminate the state's ACA exchange and allow the private market to conduct enrollment entirely—a change that would likely draw legal challenges.

    1. GA has the nation's third-highest uninsured rate, along with one of the highest exchange enrollments in the country.

<u>The Upswing Fund for Adolescent Mental Health—Launch Event October 20 *(invitation attached)*</u>

I. Seeded by Pivotal Ventures—an investment and incubation company created by Melinda Gates and powered by Panorama Global, The Upswing Fund for Adolescent Mental Health will provide immediate resources to organizations

providing mental health services for adolescents, with a particular focus on adolescents of color and/or LGBTQ+ adolescents.

II. The launch event is free to attend and you can register here: **https://bit.ly/2Fnt5Ep**

SERVE Act/Military Mental Health:

- The House and Senate are still conferencing the NDAA legislation, so no new news here.
  - Also, don't know if anyone was on the Alliance for Eating Disorders Awareness' Gala last night, but they had a video from Rep. Mast who is our R lead on the bill, and he gave a solid shout out to the SERVE Act 😊.
- The EDC will be releasing their statement on the GAO's report on military eating disorders, clarifying that 24% of the facilities allegedly contracting with TRICARE don't actually treat eating disorders, and that they only contract with 35% of available care across the nation. Stay tuned!
- TRICARE recently updated its policy manual for clarifying language around Partial Hospitalization Programs for eating disorders. https://manuals.health.mil/pages/DisplayManualFile.aspx?Manual=TP08&Change=245&Type=ChangeOnly&Filename=TP08C-245COComposite.pdf. I'm still analyzing it and the overall effect on services, but wanted to flag for everyone that this effective date is set for November 16th. I'll have more next week after I can dig in.

Best,

Center Road Team!

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