11/04/2022

Hello REDC Members,

Here is this week's policy update.

2022 Midterm Elections

As you know, Tuesday, November 8 is Election Day with 435 House seats, 35 Senate seats and 36 Governor seats up for reelection/election!

The progress that has been made over the years in behavioral health care has largely been a bipartisan effort to improve the health and well-being of Americans. We don't expect the bipartisanship in this particular arena to change after election day. ***However, the magnitude of the change that can happen in behavioral health is largely dependent on election results.***

Here are our predictions in various scenarios based on the 2022 midterm election outcomes:

- **House & Senate Hold Blue**
  - **Senate D Majority stays the same:** Likely the same + reconciliation attempt
  - **Senate D Majority widens:** Likely the same + reconciliation attempt + prioritizing reproductive healthcare
  - ***Note:*** *Reconciliation is a procedural strategy a majority party uses to pass legislation in the Senate with a simple majority*
- **House Flips** & **Senate Blue**
  - Gridlock; significant federal spending decrease
- **House & Senate Flip to Red**
  - Significant federal spending decrease;
  - Continued behavioral health work, including telehealth but could be pared back by 2024 elections;
  - Focused effort to make President Biden look even worse ahead of the 2024 Presidential Election

How does the above scenarios impact the work of the REDC?

Let's take the current example of a **Blue House and Senate with slim majorities in each chamber** and utilize the Mental Health Parity and Addiction Equity Act (MHPAEA) as our legislative goal.

- By the end of the year, we anticipate two MHPAEA-related provisions to pass into law.
  - Prohibition of non-federal governmental plan opt-out.

        - Would bar state government health plans from opting out of MHPAEA.
    - $50 million in grants over 5 years to states to assist in parity enforcement efforts.
- Not too bad given the divisive political dynamics.

However, let's go with the first scenario of a **Blue House and Senate and an increased Blue Senate majority.**

- Likely the Democrats would utilize reconciliation to pass a partisan package that includes civil monetary penalty authority to the U.S. Department of Labor to issue fines to insurance companies that do not comply with MHPAEA.
    - Currently, U.S. DOL does not have any authority to issue fines and can only tell insurance companies they're incompliant.
- This addition to MHPAEA would finally give teeth to the federal law.

In the last two scenarios of a **Red House and Blue Senate or a Red House and Red Senate**, efforts to strengthen federal parity law are likely to be non-existent. MHPAEA enforcement will fall by the wayside as a priority for Congress and there may be an attempt to slash funding from the department that manages MHPAEA enforcement.

This is why all elections matter. We encourage each of you to vote (if you haven't done so already) and encourage your networks to do the same. If you're interested to know where your Members of Congress stand on eating disorders related policy, **please view the Eating Disorders Coalition's 2022 Election Scorecard here.**

Telehealth

CMS Releases Final Medicare Physician Fee Schedule Rule

1. The final rule updates Medicare payment rates for PHP services furnished in hospital outpatient department and community mental health centers.
    1. Payment rates for hospitals that meet CMS reporting requirements will see a 3.8% increase.
    2. PHP is defined in the CMS release as "an intensive, structured outpatient program provided as an alternative to psychiatric hospitalization, consisting of a group of mental health services paid on a per diem bases under the Hospital Outpatient Prospective Payment System (OPPS) on PHP per diem costs."
2. CMS is clarifying that the new HCPCS codes being adopted under OPPS describing certain behavioral health therapy services furnished via telehealth by hospital staff to patient's in their homes will not be recognized as PHP services. However, a hospital could bill for a non-PHP outpatient service furnished to a PHP patient, including remote therapy services furnished by a hospital outpatient department.

1. Hospitals will be permitted to bill for these remote non-PHP behavioral health services, but will need to continue to comply with documentation requirements that apply to PHP patients.

3. **Behavioral Health Services Delivered Via Telehealth**
    1. CMS is finalizing its proposal to consider behavioral health services furnished remotely by clinical staff of hospital outpatient departments, including staff of critical access hospitals (CAHs), through the use of telecommunications technology to beneficiaries in their homes, covered outpatient services for which payment is made under the OPPS.
    2. CMS is finalizing its proposal to require that payment for behavioral health services furnished remotely to beneficiaries in their homes may only be made if the beneficiary receives an in-person service within 6 months prior to the first time hospital clinical staff provides the behavioral health services remotely, and that there must be an in-person service without the use of communications technology within 12 months of each behavioral health service furnished remotely by hospital clinical staff.

i. CMS is finalizing our proposal to permit exceptions to the in-person visit requirement when the hospital clinical staff member and beneficiary agree that the risks and burdens of an in-person service outweigh the benefits of it, among other requirements.

ii. The 6-month in-person requirement is something we are continuing to work to eliminate altogether. Currently it is set to be implemented 151 days after the PHE ends.

1. CMS is also clarifying that, in instances where there is an ongoing clinical relationship between practitioner and beneficiary at the time the PHE ends, the in-person requirement for ongoing, not newly initiated, treatment will apply. CMS is also finalizing its proposal that audio-only interactive telecommunications systems may be used to furnish these services in instances where the beneficiary is unable to use, does not wish to use, or does not have access to two-way, audio/video technology.

Parity

Kennedy Forum and Congressional Members Raise Medicare Adhering to Federal Parity Law

- The Kennedy Forum's founder Patrick J. Kennedy thanked Senator Durbin (D-IL) and Representative Underwood (D-IL) for writing to Chiquita Brooks-LaSure, administrator of the Centers for Medicare and Medicaid Services (CMS), urging actions to increase access to substance use disorder services among Medicaid beneficiaries, especially older adults.

- Currently, Medicare is not subject to the Federal Parity Act and has inferior coverage for mental health and substance use services, including failing to cover key parts of the continuum of care. More on their letter here.

Health Insurance

Insurance Disparities Between Small and Large Companies

- Employees at small businesses pay, on average, about $2k more on family health insurance compared with their counterparts at larger companies, according to a new report from the Kaiser Family Foundation.
- Deductibles are also up significantly—about $1k—for small business employees.
    - Average annual family premiums for companies across the country are more than $22,000, with workers contributing about $6,000, the survey of employers found.
    - For single coverage, the average annual deductible stands at more than $1,700 — up 61 percent from 2021.
- The report also highlights the growing demand for mental health services and how insurance networks are stacking up against demand.
    - Nearly half of large employers reported mental health care usage increasing, with over ¼ saying workers are asking for family leave because of mental health issues.
    - Even with more larger employers adding mental health services, 3 in 10 say their networks don't have enough behavioral health access.
    - Nearly half (47%) of large firms say telemedicine matters "a great deal" in providing access to mental health services.
    - Almost all large firms (96%) now cover some form of telemedicine services, either directly through their health plan (46%), through a specialized telemedicine provider (32%), or both (20%).
    - More than half expect telemedicine to be "very important" in providing behavioral health services (55%) and serving enrollees in remote areas (54%). Smaller but still significant shares say telemedicine will be "very important" in providing primary care (35%) and specialty care (24%).

Have a great weekend!

Center Road Solutions Team