Federal Issues

Legislative

U.S. House Delegation Asked to Sign Letter Urging CMS to Rethink Medicaid Regulation

U.S. Congressmen Brendan Boyle (D, PA-02) and Mike Kelly (R, PA-16) are circulating a letter addressed to the Centers for Medicare & Medicaid Services (CMS), which expresses opposition to the Medicaid Fiscal Accountability Regulation (MFAR) and signals caution for the impact of the policy.

As previously reported, MFAR would dramatically reshape state Medicaid program financing and supplemental payments for providers, ultimately impacting access to care for more than 2.8 million Pennsylvanians who rely on Medicaid for quality coverage.

As of Friday afternoon, Reps. Brian Fitzpatrick (R, PA-01), Lloyd Smucker (R, PA-11), Guy Reschenthaler (R, PA-14), and Dr. John Joyce (R, PA-13) already had agreed to sign on.

Hospital position: The Allegheny Health Network submitted a comment letter consistent with the positioning of the American Hospital Association (AHA) in opposition to the proposed rule.
Azar Questioned on FY 2021 Budget, Coronavirus

Last week, HHS Secretary Alex Azar continued testifying before various House and Senate committees on President Trump’s fiscal year (FY) 2021 budget proposal, “A Budget for America’s Future.”

Why it matters: His appearances come amidst growing concerns about the coronavirus’ global impact and the Administration’s response preparedness. With the stock market in a free fall and the virus appearing in an increasing number of countries worldwide, President Trump announced last week a coordinated response team, led by Vice President Pence, to ensure a plan is in place for the likelihood of a rise in cases in the U.S.

The House and Senate Appropriations Subcommittees on Labor, Health and Human Services, Education and Related Agencies, along with the House Ways and Means Committee and the House Energy and Commerce Subcommittee on Health, all held separate hearings last week.

- The budget: Secretary Azar highlighted efforts the Administration has taken to reduce the number of opioid overdose deaths, increase generic approval rates and lower premiums for individual market plans and Medicare Part D. He also discussed the budget’s bipartisan proposals to address prescription drug costs, improve maternal health, expand telehealth, and provide flexibility to rural hospitals to fight HIV.

- The questions: Several common themes emerged during Q&A, including how the Administration plans to ensure pre-existing protections should the decision in the Texas vs. U.S. invalidate all or large portions of the Affordable Care Act, the impact Medicaid cuts would have on the opioid crisis as well as maternal and children’s health, providing additional support to states to address rural health needs, including mental health and substance use disorders, finding a solution that will protect consumers from surprise bills, and lowering prescription drug costs by introducing more generics and biosimilars into the market.

- The virus: Despite the numerous budget proposals, the coronavirus pandemic dominated discussions, with Sec. Azar fielding questions on the Administration’s preparedness to diagnose, treat and immunize against the virus. Much of the discussion focused on the structure and levels of funding in a supplemental proposal request from the Administration. The $2.5 billion requested drew criticism from lawmakers on both sides of the aisle who feared it would be inadequate for the current crisis. Senate Democrats have proposed an $8.5 billion package.

Next steps: Both Senate and House appropriations leaders are seeking a bipartisan, bicameral agreement on coronavirus funding, which is expected to build on the Administration’s proposal. Negotiations are also taking place on the broader budget package.

Federal Issues
Regulatory

CMS Selects Ambulance Provider Participants for Emergency Care Model
The Centers for Medicare & Medicaid Services has selected 205 ambulance service providers or suppliers to participate in the Emergency Triage, Treat, and Transport (ET3) Model.

**Background:** Announced last year, ET3 is a voluntary, five-year payment model that will provide greater flexibility to ambulance care teams to address emergency health care needs of Medicare Fee-for-Service (FFS) beneficiaries following a 911 call.

Under the ET3 model, CMS will pay participating ambulance suppliers and providers to 1) transport an individual to a hospital emergency department (ED) or other destination covered under the regulations, 2) transport to an alternative destination partner (such as a primary care doctor’s office or an urgent care clinic), or 3) provide treatment in place with a qualified health care partner, either on the scene or connected using telehealth.

The model will allow beneficiaries to access the most appropriate emergency services at the right time and place. The model will also encourage local governments, their designees, or other entities that operate or have authority over one or more 911 dispatches to promote successful model implementation by establishing a medical triage line for low-acuity 911 calls.

Currently, Medicare regulations only allow payment for emergency ground ambulance services when individuals are transported to hospitals, critical access hospitals, skilled nursing facilities, and dialysis centers. Most beneficiaries who call 911 with a medical emergency are therefore transported to one of these facilities, and most often to a hospital ED, even when a lower-acuity destination may more appropriately meet an individual’s needs.

**Pennsylvania participants:** The following organizations have been selected to participate in the program from Pennsylvania:

- City of Philadelphia Fire Department
- York Community LifeTeam EMS, Inc.
- Milton S. Hershey Medical Center
- Westmoreland Mutual Aid Ambulance Service, Inc.
- Second Alarmer’s Assn & Rescue Squad of Montgomery County, Inc.
- West Shore Advanced Life Support Services, Inc.

CMS plans to share the final list of ambulance service participants this spring, and release funding opportunity notices for the other components of the model later this year.

**Why this matters:** The model aims to ensure Medicare FFS beneficiaries receive the most appropriate care, at the right time, and in the right place. The model may help make EMS systems more efficient and will provide beneficiaries broader access to the care they need.

Beneficiaries who receive treatment from alternative destinations may also save on out-of-pocket costs. An individual can always choose to be brought to an ED if he/she prefers.

The ET3 Model aims to reduce expenditures and preserve or enhance quality of care by:

- Providing person-centered care, such that beneficiaries receive the appropriate level of care delivered safely at the right time and place while having greater control of their healthcare through the availability of more options
• Encouraging appropriate utilization of services to meet health care needs effectively.
• Increasing efficiency in the EMS system to more readily respond to and focus on high-acuity cases, such as heart attacks and strokes.

For more information about the Emergency Triage, Treat, and Transport (ET3) Model, please review the Frequently Asked Questions page.

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### State Issues

#### Pennsylvania

Legislative

**Health Care Issues, Coronavirus Prominent in Senate and House Budget Hearings**

The Senate and House Appropriations Committees this week continued their round of budget hearings, where members of various government entities provide a rationale for proposed 2020-2021 spending. In addition to providing an overview of state efforts related to testing and prevention of the coronavirus (COVID-19), other health care issues of interest were discussed:

*House Appropriations Committee, Department of Health Secretary Rachel Levine and Department of Drug and Alcohol Programs (DDAP) Secretary Jennifer Smith.*

**Medication-Assisted Treatment (MAT)**

• Sec. Smith said Medication-Assisted Treatment (MAT) was available in all 67 counties. Regarding its effectiveness, Sec. Levine stated that MAT is the "standard of care," referencing a study that appeared in the Journal of the American Medical Association which found that "only treatment with apomorphine or methadone was associated with a reduced risk of overdose during three-month and 12-month follow-ups."
• Sixty percent of pregnant women on Medicaid diagnosed with an opioid abuse disorder are receiving MAT. Smith also indicated that treatment facilities should be able to offer whatever treatment is clinically appropriate for the individual.
• Chairman Pat Browne (R-Lehigh) asked about MAT and a regulatory proposal regarding medically-assisted treatment (MAT), which he found "a little aggressive." Sec. Levine said patients suffering from addiction to opioids are supported in all treatments but the standard of care is to at least offer MAT, such as methadone or Vivitrol. She noted that the federal government is recommending or requiring every facility at least have the ability to provide such treatments, however, patients are not forced to take it. She also referenced the February 5, 2020 issue of the Journal of the American Medical Association on the comparative effectiveness of treatment pathways for opioid use disorder. Chairman Browne expressed concerned that an abstinence-based approach is being "pushed aside."

**Social Determinants of Health**
In discussing the minimum wage, Sec. Levine said there is a significant correlation between poverty and public health specifically related to the social determinants of health, such as housing, school, transportation, and food security. Many studies show an association.

**Senate Appropriations Committee – Department of Health, Sec. Levine, Department of Health (DOH)**

**Neighborhood / Micro Hospitals**
Sen. Sharif Street (D-Philadelphia) said many hospitals serving vulnerable populations are working at or near a loss, i.e., Hahnemann. He asked if DOH has any ideas on how the state can support such institutions. Sec. Levine agreed that both rural and urban hospitals are challenged. She discussed the concept of micro-hospitals, primarily in rural and suburban areas, but potentially in urban areas too. They have robust emergency rooms (ERs) and outpatient services and less inpatient services. She said a hospital with a very active ER and outpatient clinic and community health services, and a smaller inpatient footprint, could work. She reported DOH has put out an advisory on such an initiative and the idea of an urban micro-hospital could be helpful. She added it is not only urban hospitals preyed upon by private equity bad actors, but rural ones like the Ellwood City Medical Center.

- Levine also referenced discussions underway with Department of Human Services Sec. Teresa Miller, who has thoughts on health system delivery and payment reform, including how to save urban hospitals and improve access to care. She said the challenge with Hahnemann is they have had for-profit owners from private equity backgrounds. The previous owner was a bad actor.

**Lyme Disease**
Sec. Levine was asked about the 2017 Lyme surveillance report and the four percent increase in reported cases of Lyme disease in 2016, which was more than any other state. Sec. Levine said Lyme disease is endemic and it is harder to compare state-by-state because of different types of surveillance methods. The amount requested — $2.5 million — may be increased to continue work with East Stroudsburg University. Levine remarked current evidence suggests that long-term antibiotics are not effective with respect to the chronic symptoms of Lyme disease, but added she is always open to more studies and research. She remarked she understand the burden patients suffer.

**Telemedicine**
Sen. Vogel cited his telemedicine legislation, Senate Bill 857. Sec. Levine said the department supports a robust telehealth/telemedicine bill. She said they need broad support from all stakeholders to ensure reimbursement is sufficient. She acknowledged past challenges in the House with implementing legislation and said they would be happy to work with the Senate to help move it.

**Senate Appropriations Committee – Secretary Teresa Miller, Department of Human Services**

**State False Claims**
Chairman Pat Browne referenced Attorney General Josh Shapiro’s presentation regarding a false claims act based on an analysis of $3 billion in MA waste fraud and abuse. He asked the secretary to comment. Sec. Miller noted the importance of the origin of the numbers, which are based upon the Payment Error Rate Measurement (PERM). She said that the errors are not "fraud." Sec. Miller explained that DHS made 249 referrals last year for provider fraud and remarked that the MA payment errors are administrative.

She stated that in the Independent Fiscal Office (IFO) initial draft, there was a reference to $694 million of payment errors. Sec. Miller remarked that she learned that amount was based on 24 errors found in the audit in 2015, which totaled $49,000. She explained that CMS projected $694 million in payment errors
based upon that amount and questioned the integrity of the numbers. Chairman Browne opined there needs to be a better methodology. Sec. Miller noted the report pointed out that, in terms of payment errors, Pennsylvania was better than other states. Chairman Browne emphasized the need to review numbers based upon what is “probable.”

State Issues

West Virginia
Legislative

West Virginia Legislature Set to Begin Final Week of Two-Month Session
The West Virginia Legislature is preparing to enter its final week of their 60-day legislative session. The following proposals received consideration last week:

**Senate Bill 284, WV Healthcare Continuity Act**—Despite heavy lobbying by WV Attorney General Patrick Morrissey, the House Health and Human Resources Committee failed by a vote of 11-12 to approve his bill that would maintain pre-existing condition protections of the Affordable Care Act (ACA) should the law be ruled unconstitutional. Morrissey is a party to the Texas lawsuit. Senate Democrats sought to move a similar bill, however, they missed a key legislative deadline.

**Senate Bill 279, Assignment of Dental Benefits**—Further action is unlikely on Senate Bill 279, which allows “assignment” or direct payment to non-participating or out-of-network dentists and balance billing. The chairman of the House Banking and Insurance Committee announced that he does not plan to meet during this last week of session, which means the bill will die in the House.

**Senate Bill 291, Mental Health Parity Requirements**—The House Finance Committee is scheduled to consider Senate Bill 291 on Monday, March 2. The bill addresses mental health coverage provided by the Public Employee Insurance Agency (PEIA) and commercial health plans and their perceived limitations as compared to physical health benefits.

**Senate Bill 689, Pharmaceutical Transparency and Reporting Act**—The Senate has passed and the House Health Committee approved Senate Bill 689, which requires pharmaceutical manufacturers and health plans to disclose and report a wide variety of data on prescription drug costs and utilization. The full House is expected to vote on the bill on March 2.

**Senate Bill 762, Patient Stability Act**—The Senate has endorsed Senate Bill 762, which prohibits a health plan from changing a patient’s existing medication for non-medical reasons or “freeze the formulary.” The bill was referred to two committees in the House; however, the Public Employee Insurance Association (PEIA) has prepared a $30 million cost estimate for implementing this bill, counter to the $0 fiscal note from the Department of Health and Human Resources (DHHR) regarding impact on Medicaid. While the House Health Committee approved the bill February 29, the PEIA fiscal note is likely to deter further action by the House Finance Committee.

**Senate Bill 787, Pharmacists Reimbursement for Care**—The Senate voted in favor of this bill, which requires insurers to reimburse pharmacists for all services rendered to patients that are permitted under the scope of practice for pharmacists. In the House, Senate Bill 787 has received approval from the House
Health Committee and now awaits action by the House Finance Committee. Due to concerns voiced by House leadership, the bill may not receive further consideration.

**House Bill 4543, Insulin Cost Cap**—Senate leadership appears to support House Bill 4543 after overwhelming support in the House of Delegates. The bill would cap the cost of all forms of insulin at $25 per month for each patient. The chair of the Senate Banking and Insurance Committee has voiced opposition to the plan and said he would not move the bill. However, the bill is scheduled for consideration on March 2. Amendments are likely, including an increase in the monthly co-pay to $100 and removal of language requiring the price of insulin to be set at 2006 levels.

**House Bill 4061, Health Benefit Plan Network Access and Adequacy Act**—The Senate Judiciary Committee is scheduled to consider House Bill 4061 on March 2. The bill is a NAIC model bill and proposes similar network adequacy reports and rules on health plans that are currently required of Medicaid MCOs and HMOs. Approval by the full Senate is expected.

**Senate Bill 544, Immunization Administration by Pharmacists and Interns**—Senate Bill 544, which reflects the agreement between the Boards of Pharmacy, Medicine and Osteopathy to expand the scope of immunization administration authority, has passed both chambers and will be sent to the Governor for his signature. The bill will become effective 90 days after February 18, once Governor Justice approves it. The governor has until Thursday to take action.

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The Pennsylvania General Assembly is in recess March 2-6.

The Delaware Legislature returns to session March 17.

The West Virginia Legislature is in session January 8 - March 7.

**Congress**

The U.S. Senate is in session March 6. The U.S. House and Senate are in session March 2-5.
Interested in reviewing a copy of a bill(s)? Access the following web sites:

Pennsylvania Legislation: [www.legis.state.pa.us](http://www.legis.state.pa.us).
West Virginia Legislation: [http://www.legis.state.wv.us/](http://www.legis.state.wv.us/).
For copies of congressional bills, access the Thomas website – [http://thomas.loc.gov/](http://thomas.loc.gov/).

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