Highmark's Weekly Capitol Hill Report

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President Biden Releases 2022 Budget

President Biden has released his Fiscal Year 2022 Budget proposal, which calls for approximately $5 trillion in new federal spending over the next decade to fund his American Jobs Plan and American Families Plan, among other proposals.

Health care highlights:

- The budget proposal calls on Congress to take action this year to further strengthen health care by lowering prescription drug costs and expanding and improving health coverage. The budget reaffirms the President's commitment to extending the enhanced ACA tax credits and lowering the cost of prescription drugs. Specifically, that the Administration "supports legislative efforts to improve the Medicare Part D benefit by establishing an out-of-pocket maximum and reducing out-of-pocket costs for seniors."

- The budget also draws a distinction between the President's near term priorities for the upcoming budget cycle and his longer term health care agenda, which includes cutting

prescription drug costs by letting Medicare negotiate prices; reducing deductibles for Affordable Care Act (ACA) marketplace plans; improving Medicare benefits; creating a public option and giving people age 60 and older the option to enroll in Medicare; and closing the Medicaid coverage gap to help millions of uninsured Americas gain health insurance.

While the president's proposal provides a guidepost, Congress will ultimately determine which proposals will be written into the spending bills to be developed over the next several months. More information can be found on the Office of Management and Budget (OMB) fact sheet.

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Bipartisan Letter Calls for Greater CMMI Transparency

On Wednesday, 26 members of Congress from both parties sent a letter to Dr. Elizabeth Fowler, CMS Deputy Administrator and Director of the Center for Medicare and Innovations (CMMI) calling for greater transparency and stakeholder consult in the development of CMMI models.

The authors claimed that "adequate consultation and transparency in the processes used to develop these experiments [CMMI models] are rarely observed." The authors also stated concern with broad-scope and long-term models: "We insist CMMI's actions reflect its intended mission, to carry out demonstration of projects of limited scope and duration to test new payment and delivery concepts." These criticisms land on top of previous criticisms from MedPAC and other stakeholders about the low savings produced by CMMI models and the proliferation of overlapping models.

The letter arrives at a time of recalibration in CMMI. The Biden administration has already delayed, de-scoped or canceled several CMMI models. In a lengthy interview last week for *Health Affairs*, Deputy Administrator Fowler seemed to acknowledge the criticisms, including the need for greater stakeholder consult. She also noted the tradeoffs inherent in CMMI's mission.

Perhaps most significantly, Fowler indicated support for mandatory models in order to lessen selection bias and increase model savings. Mandatory models—which force provider participation—are controversial and have been opposed by some provider groups and conservative members of Congress.

Federal Issues

Regulatory

CMS Announces $80 Million Funding Opportunity Available for Navigators in States with a Federally-Facilitated Marketplace

The Centers for Medicare & Medicaid Services (CMS) issued the 2021 Navigator Notice of Funding Opportunity (NOFO), which will make $80 million in grant funding available to Navigators in states with a Federally-Facilitated Marketplace (FFM) for the 2022 plan year. This is the largest funding allocation CMS has made available for Navigator grants to date.

Also, as part of the application, 2021 Navigator NOFO applicants will be asked to outline their outreach and enrollment efforts to the underserved or vulnerable population they plan to target, while still being prepared to assist any consumer seeking assistance.

State Marketplaces that leverage the federal eligibility and enrollment platform are responsible for facilitating their own Navigator funding.

Why this matters: A Navigator's mission is to increase awareness among the uninsured about affordable health care coverage options available and assist consumers through and beyond the Marketplace enrollment process. The increased grant funding is available to applicants seeking to serve as Navigators in states with an FFM. The application details the eligibility requirements, required duties and the available funding amount to applicants for this Navigator grant cycle.

CMS Publishes FAQs on Affordable Care Act's Maximum Out-of-Pocket Limits for 2022

The Centers for Medicare and Medicaid published part 46 of frequently asked questions (FAQs) about Affordable Care Act implementation on the maximum out-of-pocket limits for plan years beginning on or after January 1, 2022. CMS, jointly with the Departments of Labor and the Treasury, published part 46 of the FAQs about ACA Implementation to clarify the Maximum Out-of-pocket (MOOP) limit for plan years beginning on or after January 1, 2022. Under section 2707(b) of the Public Health Servicer Act, the annual limitations on cost-sharing apply to all non-grandfathered group health plans, including self-insured and insured small and large group market plans, as well as individual market plans.

The maximum annual limitation on cost-sharing for plan year 2022 is $8,700 for self-only coverage and $17,400 for other than self-only coverage.

Why this matters:

- These cost-sharing limits, which were finalized in the recent 2022 Payment Notice final rule, are different than those that were proposed.
- In response to comments, CMS made a change to the methodology used to calculate the premium adjustment percentage and cost-sharing parameters, including MOOP. Rather than continuing to use the National Health Expenditure Accounts (NHEA) estimates of private health insurance premiums as a measure of premium growth, CMS reverted to the methodology used in plan years 2015-2019, using the NHEA estimate of employer-sponsored insurance premiums as the measure of premium growth.
- As a result, the final maximum annual limitation on cost-sharing was changed in the final rule.

COVID-19 Updates

- Moderna announced that it had applied to the Food and Drug Administration (FDA) for full U.S. approval of its mRNA COVID-19 vaccine. Moderna said that it will submit data to support the Biologics License Application (BLA) on a rolling basis over the coming weeks with a request for a Priority Review from the FDA. The Moderna vaccine is currently available through Emergency Use Authorization.

- The Centers for Disease Control and Prevention (CDC) updated guidance for Institutions of Higher Education, including recommendations on offering and promoting COVID-19 vaccinations and prevention strategies. The updated guidance notes that colleges and universities can host full-capacity in-person learning without requiring masks or physical distancing for all people who are fully vaccinated.

- The Federal Emergency Management Agency (FEMA) published an Exercise Starter Kit for organizations to conduct their own planning workshops to navigate the details of returning to full operations during the coronavirus disease (COVID-19) pandemic.

- The Biden Administration announced June will serve as a "National Month of Action" in order to get more Americans vaccinated by July 4th. The Administration had previously set a goal to get 70 percent of Americans at least one COVID-19 vaccine shot by July 4th. The Month of Action calls on national organizations and local leaders to coalesce to get individuals vaccinated, mobilize the country around vaccine outreach and education efforts, and incentivize vaccination.

State Issues

Delaware

Legislative

Pharmacy Benefit Manager Legislation Introduced

House Bill 219 authorizes a pharmacy or pharmacist to decline to dispense a prescription drug or provide a pharmacy service to a patient if the amount reimbursed by a PBM is less than the pharmacy acquisition cost. In addition, it prohibits the practice of spread pricing; requires PBMs to provide reports to the Insurance Commissioner on network adequacy and the amount of rebates received by PBMs to provide reports to the Insurance Commissioner on network adequacy and the amount of rebates received by PBMs and distributed to insurers or patients; stipulates that if a PBM denies an appeal for reimbursement subject to maximum allowable cost pricing, requires the PBM to provide the national drug code number of wholesalers in Delaware that have the drug in stock below maximum allowable cost.

Chiropractic Reimbursement Mandate Legislation Introduced

Senate Bill 25 establishes the Medicare rate of reimbursement as the floor for chiropractic services.

The stated purpose of this legislation is to reduce opioid usage rates, opioid addiction and overdose deaths by improving access to opioid-free treatment by increasing the level of reimbursement to Chiropractors.

State Issues

New York

Legislative

New York Legislative Update

This is the last official week of the 2021 New York Legislative Session with the last scheduled session day Thursday, June 10. There are priority bills on the Senate and Assembly floor calendars, including:

- **A.289-B (Gottfried)/ S.2121-B (Rivera) Coverage re: Medically Fragile Children**
  - Status – Assembly Ways and Means (ON AGENDA FOR 6/7); Senate PASSED (5/26/21)
  - Would mandate coverage of any services for medically fragile children requested by a clinician, limiting important tools health plan utilize to ensure that care is appropriate, safe, and coordinated, while also setting minimum reimbursement levels for providers. This bill has passed the Senate.
- **A.1741 (Gottfried)/ S.5299 (Rivera) – Co-pay Accumulator**
  - Status – Assembly 3rd Reading (4/29/21) / Senate PASSED (5/12/21)
  - Requires any third-party payments, financial assistance, discount, voucher or other price reduction instrument for out-of-pocket expenses made on behalf of an insured individual for the cost of prescription drugs to be applied to the insured's deductible, copayment, coinsurance, out-of-pocket maximum, or any other cost-sharing requirement when calculating such insured individual's overall contribution to any out-of-pocket maximum or any cost-sharing requirement.
- **S.3566 (Breslin)/A.5854A (Joyner) – Anti Mail-order Pharmacy**
  - Status – Assembly 3rd Reading / Senate PASSED
  - The proposal to limit pharmacy mail order options for health insurance purchasers passed in the Senate. The measure is expected to be debated on the floor of the Assembly this week.

Other bills of interest pending in Assembly committees include:

Ways and Means Committee

- A.5339 (Paulin)/S.5660-A (Reichlin-Melnick) – The bill proposes to mandate commercial insurance coverage of early intervention services through a covered lives assessment rather than as a claims based reimbursement. The industry has been working with the sponsors to address plan concerns about the proposal and offered alternative language that was introduced late last week (A.7996/S.7095).

Bills that moved the week of 6/1

- S.2008-B (Jackson)/A.1677-A (Gottfried) – The bill that requires medical insurance notices to “conspicuously state” whether a claim or a bill has been partially approved or entirely denied passed in the Assembly. The measure passed the Senate in April, and now awaits action by the Governor.

- S.649-A (Harckham)/A.2030 (L. Rosenthal) – A proposal prohibiting prior authorization for medication assisted treatment drugs to treat substance use disorders in Medicaid passed in the Senate with no discussion or debate. The bill passed in the Assembly in May and now awaits action by the Governor.
- S.6801 (Rivera)/A.7659 (Buttenschon) – The measure extends important consumer protections in instances where hospitals and health insurers are involved in contract negotiations. This bill passed in the Senate last week and is currently pending in the Rules Committee in the Assembly. Industry supports this bill.

Regulatory

Governor Announces Relaxation of COVID Regulations

Governor Cuomo announced that once the state reaches 70% vaccinated status, “virtually all” COVID regulations will be relaxed. This includes social distancing, capacity limits, cleaning requirements, health screening protocols and contract tracing preparations for most commercial settings. COVID-19 protocols will still apply to large scale events, education, public transit and health care settings until an undetermined higher threshold of New Yorkers are vaccinated with at least one dose. The mask guidelines will continue to follow CDC, but the state relaxed mask requirements for summer schools and day camps. The state is currently at 68.6% vaccination rate (at least one dose) for aged 18+.

State Issues

Pennsylvania

Regulatory

PHC4 Report Outlines Financial Strain for PA Hospitals

The Pennsylvania Health Care Cost Containment Council (PHC4) released a report last week showing the serious financial toll of the COVID-19 pandemic on Pennsylvania’s hospitals and health systems.

In its financial analysis of general acute care hospitals for fiscal year (FY) 2020, the PHC4 uncovered a significant drop in the statewide average of total margins (from 6.63% during FY 2019 to 3.93% during FY 2020), as well as the statewide average of operating margins (from 5.61% during FY 2019 to 3.73% during FY 2020).

Among the key findings from the report:

- **Uncompensated Care:** The statewide percentage of uncompensated care to net patient revenue increased from 1.72 percent in FY 2019 to 1.73 percent in FY 2020. The statewide foregone dollar value of uncompensated care was $809 million during FY 2020, which although slightly lower than the prior year, was still far higher than the low of $750 million just two years ago.

- **Net Patient Revenue:** The revenue hospitals received for patient care decreased 2 percent during FY 2020. Statewide net patient revenue was $46.8 billion during FY 2020, making up 91 percent of statewide hospital total operating revenue.

- **Operating Margin:** Statewide operating income decreased from $2.8 billion in FY 2019 to $1.9 billion in FY20.

- **Total Margin:** The statewide total margin realized by the hospitals decreased by 2.7 percent, from 6.63 percent in FY 2019 to 3.93 percent in FY20.

During FY 2020, 38 percent of hospitals posted negative operating margins—up from the year before—and nearly one in five hospitals (18%) in Pennsylvania experienced margins between 0 and 4 percent, a rate below what is needed to maintain hospital infrastructure and long-term sustainability.

Why this matters: The significant change in operating and total margins reflects the financial impact on hospitals due to the COVID-19 crisis. After a full year of life with COVID-19, this report gives the best picture yet of the devastating and lasting financial toll that the pandemic has had on health care in Pennsylvania.

Industry Trends

Policy / Market Trends

New HHS Data Show More Americans than Ever Have Health Coverage through the Affordable Care Act

The U.S. Department of Health and Human Services (HHS) released a new report that shows 31 million Americans have health coverage through the Affordable Care Act – a record. The report also shows there have been reductions of uninsured rates in every state in the country since the law's coverage expansions took effect.

The data shows those individuals currently enrolled in health coverage through the Health Insurance Marketplaces and Medicaid expansion under the ACA, including 11.3 million people enrolled in the ACA Marketplace plans as of February 2021 and 14.8 million newly-eligible people enrolled in Medicaid through the ACA's expansion of eligibility to adults as of December 2020. In addition, there are one million people enrolled in the ACA's Basic Health Program, and nearly four million previously-eligible adult Medicaid enrollees who gained coverage under expansion due to the ACA's enhanced outreach, streamlined applications, and increased federal funding under the ACA.

The report also shows that between 2010 and 2016, the number of nonelderly uninsured adults decreased by 41 percent, falling from 48.2 million to 28.2 million. All 50 states and the District of Columbia have experienced reductions in their uninsured rates since the implementation of the ACA, with states that expanded Medicaid experiencing the largest reduction in their uninsured rate. California, Kentucky, New York, Oregon, Rhode Island, Washington, and West Virginia have reduced their uninsured rate by at least half from 2013 to 2019 through enrollment in Marketplace coverage and expansion of Medicaid to adult populations. To date, 37 states and the District of Columbia have expanded Medicaid to cover adults under the ACA.

Why this matters: The report demonstrates the important role the ACA has played in helping Americans access and enroll in quality, affordable health coverage, especially during the COVID-19 crisis.

To read the Issue Brief, visit: https://aspe.hhs.gov/pdf-report/aca-related-coverage-ib

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New Analysis Shows ACA Improvements Could Lead to Coverage Gains and Lower Premiums

New research, supported by the Partnership for America's Health Care Future (PAHCF), reveals that proposed Affordable Care Act (ACA) enhancements, coupled with full Medicaid expansion, could lead to lower premiums and substantial coverage gains while preserving competition in the market and protecting choice for American consumers. In contrast, creating the public option could threaten private coverage and reduce choice for consumers while creating financial challenges for health care providers who could suddenly face an influx of patients on government plans with unsustainable reimbursement rates, the analysis finds.

The analysis shows that implementing ACA enhancements and expanding Medicaid in the 12 non-expansion states could result in comparable coverage gains among vulnerable populations compared to the public option – and do so without threatening private coverage. In addition, the study shows that relative to specialized Medicaid managed care plans, a public option may not provide the coverage necessary to meet the unique health care needs of at-risk, low-income populations.

The Pennsylvania General Assembly is in session June 7-9.

The Delaware Legislature is in session June 8-10.

The New York Legislature is in session June 7-10.

The West Virginia Legislature concluded session on April 10.

Congress

The U.S. House has committee work only June 7-11. The U.S. Senate has committee work only June 7-11.

Interested in reviewing a copy of a bill(s)? Access the following web sites:

Delaware State Legislation: **http://legis.delaware.gov/.**
New York Legislation: **https://nyassembly.gov/leg/**
Pennsylvania Legislation: **www.legis.state.pa.us.**
West Virginia Legislation: **http://www.legis.state.wv.us/**
For copies of congressional bills, access the Thomas website – **http://thomas.loc.gov/.**

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