

Federal Issues

Legislative

Senate Committees Continue Focus on Mental Health

With growing bipartisan interest in addressing mental health, the Senate Health, Education, Labor and Pensions (HELP) Committee held a [hearing](#) last Tuesday on “Mental Health and Substance Use Disorders: Responding to the Growing Crisis.”

- **Why it matters:** COVID-19 and the ongoing opioid crisis continue to contribute to issues surrounding mental health and substance use disorders, fostering bipartisan interest in developing a comprehensive mental health legislative package. It is one of the few areas of bipartisanship in the health care space.

During the hearing, Committee Chair Patty Murray (D-WA) called for Congress to work on legislation. Citing the COVID-19 pandemic’s impact on many Americans’ mental health, Sen. Murray said: “If we’re going to respond to the behavioral health issues the pandemic has made worse, it’s clear we have to build on these efforts. That will take legislative action.” Filling in for Ranking Member Richard Burr (R-NC), Sen. Lisa Murkowski (R-AK) hinted in her remarks that there may be room for bipartisan consensus on this issue as

In this Issue:

Federal Issues

Legislative

- Senate Committees Continue Focus on Mental Health

Regulatory

- 2023 Advance Notice for Medicare Advantage and Part D Policy Changes
- Biden Administration Updates Guidance Health Insurance Provider Coverage of OTC COVID-19 Tests
- Medicare Will Cover Free Over-the-Counter COVID-19 Tests
- COVID-19 Updates

State Issues

New York

Legislative

- Opposition Efforts to Medicaid Procurement Proposal Continue
- Health Budget Joint Hearing
- Bills in Health Committees this Week

Regulatory

- COVID-19 Regulations Update

Pennsylvania

Regulatory

well, saying: “While there is a lot that divides us these days, mental health and substance abuse are areas where we are finding true bipartisan consensus. And I hope we can build a legislative package that addresses these issues head-on.”

The HELP Committee action complements an ongoing bipartisan examination of mental health issues by the Senate Finance Committee (SFC) that began last summer. This week, the SFC continues that effort with a [hearing](#) on youth mental health, featuring testimony from Surgeon General Vivek Murthy.

- **PID Issues Guidance for Filing Student Health Insurance Plans**

West Virginia

Legislative

- **Senate Committee Advances Legislation to Repeal Soda Tax**

Industry Trends

Policy / Market Trends

- **2021 National Survey Trends in Telehealth Use**

Federal Issues

Regulatory

2023 Advance Notice for Medicare Advantage and Part D Policy Changes

The Centers for Medicare & Medicaid Services (CMS) [issued for comment](#) proposed policy changes for Medicare Advantage and Part D drug programs for calendar year 2023. The Advance Notice must be released 60 days prior to the issuance of the final MA rates and Medicare Part D rates and payment-related information for the upcoming contract year to provide preliminary information related to the rates and provides notice of any methodological changes for the upcoming contract year. CMS has also released the corresponding [fact sheet](#) and [press release](#).

- CMS expects an average of a 7.98% change in revenue from the proposed policy changes. Specifically, CMS is looking for feedback to advance health equity and a few different measurement concepts. CMS stated that the agency is continuing to calculate risk scores using diagnoses exclusively from MA encounter data submissions and fee-for-service (FFS) claims. CMS is soliciting comment on whether enhancements can be made to the CMS-HCC risk-adjustment model to address the impacts of social determinants of health by incorporating additional factors that predict the relative costs to MA enrollees.
- For the FFS risk score in CY 2023, CMS proposes to not update the years in the trend because of concerns that the changing use of services in 2020 because the COVID-19 pandemic resulted in an anomalous 2021 risk score. Therefore, would result in a projection that significantly underestimates the 2023 risk score. Instead, CMS proposes to use the same years of FFS risk scores that were used to calculate the slope for the 2022 normalization factors, 2016 through 2020.
- Regarding the star ratings, the agency is asking for comment on how the ratings system can consider how well each plan advances health equity. CMS also requests comments on whether to

include a quality measure that would assess how often plans screen for common health-related social needs such as food insecurity, housing insecurity, and transportation.

AHIP President and CEO Matt Eyles issued a [statement](#) following the release of CY 2023 MA Rate Notice:

- “Over 28 million Americans—44% of Medicare beneficiaries—choose Medicare Advantage plans because they offer better services, better access to care, and better value than original Medicare. This includes nearly half of all racial/ethnic minorities eligible for Medicare. Importantly, for 2022, the average Medicare Advantage monthly premium dropped to \$19, representing a decrease of more than 10% since 2021.
- “We agree that MA plans play an essential role in improving health equity and addressing the social determinants of health that impact millions of seniors and people with disabilities. We support CMS soliciting input on ways to advance these important goals.
- “Medicare Advantage enjoys [strong bipartisan support](#) because it provides America’s seniors and people with disabilities with access to affordable, high-quality health care services. We will continue to review the 2023 rate notice and look forward to providing constructive feedback to CMS during the comment period.”

Comments on this advance notice will be made public and must be submitted by 6 p.m. ET on Friday, March 4.

Biden Administration Updates Guidance Regarding Health Insurance Provider Coverage of OTC COVID-19 Tests

The Departments of Health and Human Services (HHS), Labor, and the Treasury published supplemental [guidance](#) regarding the requirement commercial market plans and issuers cover over-the-counter (OTC) COVID-19 tests without cost sharing and without a health care provider’s prescription or assessment during the COVID-19 public health emergency (PHE). This guidance updates previous [guidance](#) issued January 10.

Why it matters: This guidance clarifies tests covered by this policy include OTC COVID-19 tests that are self-administered and self-read and does not include tests where an individual collects a specimen and sends it to be processed by a laboratory. It also clarifies a safe harbor that guides the use of preferred pharmacies or retail locations (including in-person or online locations), to reflect that the Administration will not take enforcement action against a plan or issuer if it establishes a direct coverage program but is temporarily unable to provide adequate access through the program due to a supply shortage. In this instance, the plan or issuer may continue to limit reimbursement to \$12 per test (or the full cost of the test if lower) for OTC tests purchased outside of the direct coverage program.

Lastly, the guidance clarifies the plan or issuer may restrict coverage to established retailers that would typically be expected to sell OTC COVID-19 tests. For example, reimbursement may be denied for tests

purchased from an individual, on-line auction, or resale marketplace. However, the plan or issuer must ensure enrollees understand what types of retail sites are generally covered and not covered.

Medicare Will Cover Free Over-the-Counter COVID-19 Tests

Starting this spring, [Medicare and Medicare Advantage beneficiaries will have access to over-the-counter \(OTC\) COVID-19 tests at no cost](#). This initiative will cover up to eight tests per beneficiary per month and will be available through eligible pharmacies and other participating entities. Only over-the-counter tests approved by the U.S. Food and Drug Administration (FDA) will be covered under this new policy.

This is the first time that Medicare will cover OTC tests with no cost for participants and will enable payment directly from Medicare to participating entities. Medicare Advantage plans may offer payment and coverage of COVID-19 tests as a supplemental benefit, so beneficiaries should check to see whether their plan includes such a benefit. All Medicare beneficiaries with Part B are eligible for the new benefit, whether enrolled in a Medicare Advantage plan or not. CMS released [FAQs](#) and more information on how beneficiaries can access tests through existing channels.

AHIP [issued](#) a press release commending the CMS announcement. The statement reads, “As Americans continue to come together to fight COVID-19, health insurance providers remain a collaborative partner, [taking decisive actions](#) to ensure that everyone has access to the testing, treatment, and vaccines they need. We applaud CMS for launching this new initiative for Medicare coverage of free over-the counter COVID-19 tests for all seniors and people with disabilities.

COVID-19 Updates

- The Food and Drug Administration (FDA) [granted](#) full approval to the Moderna COVID-19 vaccine for individuals 18 years of age and older. The Moderna vaccine had previously only been granted emergency use authorization (EUA). The vaccine will be marketed as Spikevax.
- Novavax [announced](#) the company had submitted a request to the FDA for EUA of its COVID-19 vaccine. The Novavax shot is given as two doses 21 days apart, but uses different technology for its vaccine compared to the two-dose mRNA vaccines, Moderna and Pfizer-BioNTech. In a [study](#) conducted prior to the Omicron variant, but during the Delta variant surge, Novavax vaccine efficacy against mild, moderate, or severe COVID-19 was 90 percent.
- Pfizer and BioNTech [asked](#) the Food and Drug Administration (FDA) to authorize a two-dose Covid-19 vaccine regimen for children 6 months through 4 years. The application is for emergency use authorization (EUA) of two doses of a planned three-dose series for the age group. The companies stated that data on a third dose given 8 weeks after completion of the second dose will be available in the “coming months and will be submitted to the FDA to support a potential expansion of this requested EUA.” Pfizer’s request would cover the only age group in the U.S. that currently can’t get vaccinated.
- **ACIP Votes to Recommend Moderna COVID-19 Vaccine:** The CDC’s Advisory Committee on Immunization Practices (ACIP) convened to discuss the recent action by the U.S. Food and Drug Administration (FDA) to fully approve the Moderna COVID-19 vaccine, the committee’s prior interim

recommendation, and the latest safety and efficacy data for this vaccine. ACIP voted unanimously (13-0) to recommend the Moderna COVID-19 vaccine for the prevention of COVID-19 for those 18 years of age and older. The vaccine, marketed as Spikevax, would be administered as a primary series of two doses approximately 28 days apart and can be used interchangeably with the Emergency Use Authorization (EUA) Moderna COVID-19 vaccine. Presentations from the meeting are available [here](#).

State Issues

New York

Legislative

Opposition Efforts to Medicaid Procurement Proposal Continue

Opposition continued last week to the proposal in the Governor's Fiscal Year 2023 spending plan that would require the Department of Health to undertake a procurement process for the bulk of the Medicaid managed care program.

- An [op-ed](#) from the Health Plan Association (HPA) appeared in *AMNY* outlining the industry's concerns with the proposal.
- The proposed shake up was also discussed in a segment on [Capitol Pressroom](#), a statewide public radio program looking at New York politics and policy.
- In addition, HPA has launched a "Protect NY Medicaid" campaign this week that includes advertising highlighting the issue along with a [website](#) where people can get information and send a message to the Governor urging that the proposal be removed from the budget.

Health Budget Joint Hearing

The Senate and Assembly held a [joint hearing](#) on the Governor's proposed health budget Tuesday. The Medicaid procurement proposal was a key focus of HPA's hearing testimony.

Bills in Health Committees this Week

The Senate and Assembly Health Committees are set to consider several bills this week:

- S.3231-A (Sanders)/ A.832-A (Gottfried) – The bill prohibits or restricts a number of contracting practices between health plans and providers.
- S.5118-A (Rivera)/A.5368-A (McDonald) – A proposal to require Medicaid managed care organizations to reimburse durable medical equipment (DME) providers at no less than 100% of the fee-for-service Medicaid DME rate.
- A.9023 (Gottfried) – The bill amends current law related to independent assessors who are responsible for performing needs assessments and developing care plans for managed long term care patients.

Regulatory

COVID-19 Regulations Update

The Department of Financial Services (DFS) last week issued a [supplement](#) to Circular Letter 1 (2022) suspending certain UR requirements, extending the suspension through February. Also, Executive Order 4 – the Declaration of a Statewide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York – was extended (now EO 4.5) and runs through March 1, 2022. Circular Letter 9 (2021), suspending utilization review requirements and appeal timeframes, falls under this EO.

Also state health officials hosted an array of public health leaders, medical experts and New Yorkers affected by long COVID-19 to examine the issue and explore approaches to help individuals who continue experiencing viral symptoms months – or even years – after infection. A focus of discussions was how the state can more equitably respond to long COVID in communities that have been disproportionately affected by the virus.

State Issues

Pennsylvania

Regulatory

PID Issues Guidance for Filing Student Health Insurance Plans

The Pennsylvania Insurance Department issued guidance concerning [form filing](#) and [rate filing](#) for student health insurance plans for the 2022-2023 plan year. The rate filing guidance notes that the Timeline section now includes the [website URL](#) to locate all guidance, exhibits, and submission due dates and notes that rate manual filings are due by February 9, 2022.

Among the form filing guidance it is noted that form filing must also be submitted by February 9, 2022.

State Issues

West Virginia

Legislative

Senate Committee Advances Legislation to Repeal Soda Tax

Last week, the Senate Finance Committee advanced [Senate Bill 533](#) (Tarr, R-Putnam). Senate Bill 533 proposes to repeal the soda tax in 2024. Under Senate Bill 533, West Virginia University's medical schools would receive a guaranteed amount from the proceeds of the state's insurance premium tax each year. The soda tax has been in place since 1951 and generates approximately \$14 million annually to fund West Virginia University's medical schools.

Industry Trends

Policy / Market Trends

2021 National Survey Trends in Telehealth Use

On Tuesday, the Office of the Assistant Secretary for Planning and Evaluation [published](#) the issue brief “National Survey Trends in Telehealth Use in 2021: Disparities in Utilization and Audio vs. Video Services.” The report analyzed data between April and October 2021. The report shows a small decline in telehealth use over the year for both adults and children; however, it showed that telehealth services remained far above pre-pandemic visit rates. The authors found that the highest rates of telehealth visits were among those with Medicaid (29.3%) and Medicare (27.4%), Black individuals (26.8%), and those earning less than \$25,000 (26.7%).

Importantly, as policymakers discuss the future of telehealth, the report calls out significant disparities among subgroups in terms of audio versus video telehealth use. The highest share of visits that utilized video services occurred among young adults ages 18 to 24 (72.5%), those earning at least \$100,000 (68.8%), those with private insurance (65.9%), and White individuals (61.9%). Video telehealth rates were lowest among those without a high school diploma (38.1%), adults ages 65 and older (43.5%), and Latino (50.7%), Asian (51.3%) and Black individuals (53.6%). These disparities cross many demographic segments such as age, education, race and ethnicity.

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/>.

The content of this email is confidential and intended for the recipient specified only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.