

Federal Issues

Regulatory

Sen. Ron Wyden Leads Medicare Advantage Marketing Inquiry to States

Senator Ron Wyden (D-OR) wrote a [letter](#) to Andrew Stolfi, the Commissioner of the Oregon Department of Consumer and Business Services, and Donna Delikat, Interim Director of Senior Health insurance Benefits Assistance, as well as 14 other state insurance commissioners. He expressed his concern about questionable and possible deceptive marketing tactics by various actors to sell Medicare Advantage plans. Wyden continued his letter by stating that it is his responsibility to provide oversight of these programs and protect beneficiaries from predatory marketing practices, as federal law prohibits states from regulating Medicare Advantage plan marketing activity.

Examples of questions posed in the state inquiry include:

- 1) How many complaints about MA and/or Part D plan marketing have you received in 2019, 2020, 2021, and 2022?
 - (a) If possible, please segment these complaints by Third-Party Marketing Organizations (TPMOs).

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- 2) Have you observed trends in complaints of unsolicited contact of beneficiaries, including trends in the method or sources of unsolicited contact (e.g., telemarketers, SMS texting, online outreach, online targeted advertising)?

Responses to the inquiry are requested by September 16, 2022.

The letters were sent to the following 15 states: Arizona, California, Colorado, Florida, Georgia, Illinois, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, and Texas.



Federal Issues

Regulatory

Administration Signals Another PHE Extension, Releases Plans for End of PHE

HHS did not give states a 60-day notice that the PHE was ending on its current expiration date, Oct. 13.

Why this matters: This is a strong signal of HHS' intention to extend the PHE an additional 90 days to mid-January 2023.

In preparation for the end of the PHE, CMS [released](#) (8/18) a Roadmap for the End of the COVID-19 Public Health Emergency (Roadmap [here](#)) with planning for the eventual end of Medicare PHE waivers and flexibilities. The material includes [fact sheets](#) on these waivers and flexibilities for each type of Medicare provider, including a MA and PDP [fact sheet](#).

HHS Boosts ACA Navigator Funding to Nearly \$99M

HHS said it will award nearly \$99 million in grants to 59 Affordable Care Act navigator organizations to improve outreach to consumers seeking coverage through Medicaid, the Children's Health Insurance Program, and state and federal health insurance exchanges for the 2023 coverage year. The funding includes \$12.5 million to help people who are poised to lose Medicaid coverage shift into coverage through the Affordable Care Act exchanges.

Marketplace Open Enrollment for 2023 starts November 1, 2022 and ends January 15, 2023.

CMS Releases Updated Money Follows the Person State Transitions Report

The Centers for Medicare & Medicaid Services (CMS) released the Money Follows the Person (MFP): Updated State Transitions annual report for calendar years 2017 to 2020. From the time transitions began in 2008 to the end of 2020, states transitioned 107,128 people to community living through MFP. The report also shows how MFP transitions varied by state and target population over time. [Read More](#)

State Issues

New York

Regulatory

UM, Appeals Return to Normal

Since the fall of 2021, utilization review has been suspended for hospitals and other facilities that certified they had staffing shortages under the Governor's Executive Order 4 and Circular Letter 9. The Department of Health notified these providers that the suspensions would end, even if the Governor extends the Executive Order, which she did. The statutory timeline for submitting appeals – which had been tolled -- will also return to the normal requirement.

State Issues

Pennsylvania

Legislative

Venue Rule to Change for Medical Malpractice Cases in Pennsylvania

On August 25, 2022, the Pennsylvania Supreme Court adopted an amendment to the Pennsylvania Rules of Civil Procedure reversing the long-standing legal framework governing venue in medical professional liability actions that had limited medical liability lawsuits to the counties where the alleged malpractice took place. The decision reverts to a pre-2003 legal framework that allows personal injury lawyers to move medical liability claims from the counties in which the event occurred to counties that have histories of higher payouts. This practice is called "venue shopping."

Specifically, the amended rule provides that an action against an individual may be brought in a county where any of the following are true:

- The individual may be served
- The cause of action arose
- A transaction or occurrence took place out of which the cause of action arose
- Venue is authorized by law
- The property or part of the property, which is the subject matter of the action, is located provided that equitable relief is sought with respect to the property

The change takes effect for lawsuits filed on or after January 1, 2023. The Civil Procedural Rules Committee is directed to reexamine the 2022 rule amendments two years after their effective date.

Next Steps: The Hospital & Healthsystem Association of Pennsylvania (HAP) on behalf of the hospital industry is working in partnership with stakeholders to identify legislative options to protect Pennsylvania health care and ensure venue shopping does not return to the commonwealth.

Background: As a result of the passage of the Medical Care Availability and Reduction of Error (MCARE) Act, both the Pennsylvania General Assembly and the Pennsylvania Supreme Court adopted medical liability reforms. Pa.R.Civ.P. 1006(a.1)—adopted in 2002—provided that “a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.”

Why this matters: An [actuarial study](#) commissioned by the state Senate Judiciary Committee earlier this year forecasted the negative effect should venue shopping return for medical liability cases. The report predicts alarming premium increases in some parts of the state that could result in another medical liability crisis – all at a time when there is already a shortage of providers and hospitals are already struggling amid the financial fallout of the COVID-19 pandemic.

Industry Trends

Policy / Market Trends

Alliance Highlights Report on Cost Savings in Site-neutral Payments

The [Alliance to Fight for Health Care \(AFHC\)](#) recently [highlighted](#) a June [report](#) from HHS’ Office of Inspector General (OIG), which found that CMS and Medicare beneficiaries could have saved a combined \$1.6 billion for evaluation and management (E&M) services if the agency had adopted a site-neutral payment policy in eight states from 2010-2017.

- **E&M services** are generally the same whether performed in a freestanding facility or in a provider-based facility.

Why it matters: Currently, Medicare and private health insurers pay higher reimbursements in provider-based facilities than freestanding facilities, raising costs for both patients and payers.

The OIG recommends that CMS pursue legislative or regulatory changes that equalize payments, as appropriate, between provider-based facilities and freestanding facilities for E&M services.

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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