Friday, November 5, 2021

THIS WEEK’S DOSE

House updates reconciliation text. Key payment rules and vaccine mandate regulations are released.

CONGRESS

The House Released Final Draft of Build Back Better Act. On Wednesday, the House Committee on Rules released an updated version of the Build Back Better Act, largely preserving the policies outlined in the framework and legislative text.
released the week before. On the healthcare front, among the most notable provisions are an extension of expanded Affordable Care Act tax credits through 2025 to lower premiums for more individuals, a free coverage option for low-income individuals in states without Medicaid expansion, a new Medicare hearing benefit and more investment in home and community-based services through direct care workforce initiatives. The new version released this week adds a prescription drug pricing reform proposal that provides Medicare with negotiation authority for up to 20 drugs per year by 2028 and rebates tied to inflation. The House is expected to vote and pass both the Build Back Better Act and the Senate’s bipartisan infrastructure framework today. As of the time of publication, the House is still debating both measures. If the bills pass the House, the Senate will begin the process of finding unanimous agreement amongst the 50 Senate Democrats on changes to the House bill necessary to achieve passage in the Senate. How quickly that process will unfold and what changes will be made are unclear at the moment.

ADMINISTRATION

Health Care Provider and Large Employer Vaccine Mandate Rules Released. On Thursday, the Centers for Medicare and Medicaid Services (CMS) and the Occupational Health and Safety Administration (OSHA) issued regulations implementing vaccination requirements for health care facilities and large employers.

Under the CMS rule, health care facilities will be required to ensure that all eligible staff receive the first dose of a COVID-19 vaccine by December 5, 2021, and be fully vaccinated by January 4, 2022. There are very limited exceptions and no option to simply test personnel as an alternative to vaccination. The regulation defines eligible staff broadly to include facility employees, licensed practitioners, students, trainees, as well as contractors and others with direct or indirect patient contact—including administrative staff, facility leadership, board members and environmental services staff. Failure to comply with the requirements could lead to termination from the Medicare and Medicaid programs.

OSHA’s interim final rule mandates that employers with 100 employees or more ensure that their employees are fully vaccinated by January 4, 2022, or being tested weekly. Large employers will also need to provide paid time off for employees to receive the vaccine and recover from any side effects. Employers can impose stricter vaccine mandates. Failure to comply with the requirements can lead to financial penalties.

Finally, the White House announced that its previously published federal contractor vaccination mandate would be updated to move the compliance deadline from December 8, 2021, to January 4, 2022, to align with these two rulemakings.

CMS Issued Final Medicare Physician Fee Schedule Rule. CMS finalized a proposal to reduce the conversion factor used to determine physician payment by 3.71 percentage points. Actual payment amounts will vary by item or service, and may increase or decrease further in 2022 depending on the effect of other policy changes on those items and services. Physician societies, including the American Medical Association, are urging Congress to step in to mitigate the negative impact
of this payment reduction as well as other looming payment cuts scheduled for 2022 such as a 2% Medicare Sequestration cut and a 4% PAYGO Sequestration cut. One of the major policy changes further affecting payment involved an update to clinical labor pricing data which largely impacts office-based physicians, which when fully implemented will cause a redistribution of payment weights among items and services. CMS proposed to fully implement this update in 2022, but ultimately decided to implement the change over a four-year period to reduce volatility for healthcare providers. CMS also finalized a proposal to continue coverage of Category 3 telehealth services through the end of 2023 (rather than just the end of the public health emergency). Congressional action on originating and geographic site restrictions would be necessary to make the coverage extension meaningful to most beneficiaries, if the public health emergency were to end before the end of 2023. Payment for services provided by physical therapy assistants and occupational therapy assistants (supervised by physical therapists or occupational therapist) is set at 85%, as required by statute. Finally, CMS set the launch date for Merit-based Incentive Payment System (MIPS) Value Pathways (MVPs) to 2023, which will serve as an alternative to the traditional MIPS program.

**CMS Issued Final Outpatient Payment Rule.** In the CY 2022 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment System (OPPS) Final Rule, CMS moved forward with an increase in payment rates of 2.0% for hospitals and ambulatory surgical centers that meet their quality reporting requirements. The agency reversed the policy finalized last year that sought to eliminate the list of procedures that are only reimbursed if performed on an inpatient basis. The agency increased potential civil monetary penalties for hospitals that do not meet price transparency requirements to incentivize compliance. Finally, the OPPS final rule set January 1, 2022, as the start date for the Radiation Oncology Alternative Payment Model.

**QUICK HITS**

- HHS [announced](#) Lowest-Ever Marketplace Premiums as Open Enrollment Begins.
- The CDC [recommended](#) the Pfizer-BioNTech COVID-19 vaccine for children ages 5-11 following the U.S. Food and Drug Administration’s authorization for emergency use in this population. CMS will [cover](#) vaccinations through Medicare, Medicaid and CHIP.
- The Center for Medicaid and CHIP Services issued an [informational bulletin](#) on increasing enrollment in the Medicare Savings Program.
- The Center for Medicare and Medicaid Innovation (CMMI) released the [fourth annual report](#) on the Comprehensive Joint Replacement model.

**M+ RESOURCES**

- [Listen Here](#): This is the second episode of our two-part series examining the five key healthcare priorities in the President’s economic agenda. This week, Debbie Curtis, Meg Gilley, and Rodney Whitlock explore the proposed changes in the areas of home and community-based services and Medicare benefits and
drug pricing reform.

- Last month, Kristen O’Brien and Eric Zimmerman were featured speakers at Availity Connects 2021 Virtual Series. They provided a high-level overview of the No Surprises Act, a review of the current status, and a discussion of what payers and providers need to prepare in advance of January 1, 2022. Watch the full session here.

**NEXT WEEK’S DIAGNOSIS**

The House has a committee work week and the Senate has a state work week next week.

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