



Riker Danzig Health Care Update April 8, 2019

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New Jersey State: Selected Proposed and Adopted Legislation

- S.746 – Adopted – Permits certain audiologists to dispense and fit hearing aids.
- S.2773 – Adopted – Clarifies definition of health care service firms and homemaker-home health aides. Pursuant to the clarification, a homemaker-home health aide cannot follow a delegated nursing regimen or perform tasks which are delegated unless the homemaker-home health aide is under the supervision of a duly licensed registered professional nurse provided by the home care services agency that directly employs the homemaker-home health aide.
- S.3471 – Introduced – Requires certain health care practitioners to disclose criminal and disciplinary history to patients.
- S3378 – Amended – This bill prohibits the health benefits coverage of certain non-medically indicated early elective deliveries under the Medicaid Program, the State Health Benefits Program (SHBP), and the School Employees' Health Benefits Program (SEHBP). The bill prohibits health benefits contracts which are issued or purchased pursuant to the SHBP, SEHBP, and the Medicaid Program, from providing health benefits coverage for a non-medically indicated early elective delivery performed at a hospital on a pregnant woman earlier than the 39th week of gestation. As used in the bill, "non-medically indicated early elective delivery" means labor induction, or the surgical delivery of a baby via a cesarean section, for purposes or reasons that are not fully consistent with established standards of clinical care.
- A5149 – Introduced – Exempts physicians from controlled dangerous substance registration requirements of the Division of Consumer Affairs.
- A.5193 – Introduced – Provides basic level of pre-hospital care or inter-facility care for emergency services, which includes patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care, and fracture stabilization.

- A4915 – Amended – Requires a carrier that offers a health benefits plan in this state which provides coverage for pharmacy services, prescription drugs, or for participation in a prescription drug plan, to provide to a pharmacist in a situation in which the carrier denies a covered person’s coverage for a drug prescribed by the health care professional, a list of all alternative drugs that are covered by the health benefits plan and that are interchangeable with, and therapeutically equivalent to, the drug for which coverage was denied.
- A5230 – Introduced – Adds one dental assistant to NJ State Board of Dentistry.

New Jersey State: Guidance Document

- As part of continuing efforts to integrate delivery of primary care, substance use disorder and mental health services in the state, the NJDOH released guidance to clarify that a healthcare facility licensed to provide both mental health services and substance use disorder services is permitted to share clinical space for those services as long as they comply with federal and state laws, particularly those pertaining to confidentiality and client rights. In addition, there will be a regulatory waiver for substance use disorder facilities to receive deemed status in place of required periodic inspections if the facility is accredited by an accrediting body recognized by the NJDOH.

Federal: Selected Proposed Legislation

- S. 560/H.R. 1379 – Introduced – To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a congenital anomaly or birth defect.
- S. 562 – Introduced – To amend the Social Security Act to provide coverage for custom fabricated breast prostheses following a mastectomy.
- S.753 – Introduced – To amend the Social Security Act to count a period of receipt of outpatient observation services in a hospital toward satisfying the 3-day inpatient hospital requirement for coverage of skilled nursing facility services under Medicare.
- H.R. 1367 – Introduced – To amend the Public Health Service Act to authorize a program on children and the media within the National Institutes of Health to study the health and developmental effects of technology on infants, children, and adolescents.
- H.R. 1332 – Introduced – The bill, Short on Competition Act, addresses the high costs of health care services, prescription drugs, and health insurance coverage in the United States and would authorize drug imports to curb prices if there is a noncompetitive market for the drug.

Federal: Selected Proposed and Adopted Regulations

- 84 FR 10700 – Final Rule – Revisions to State Medicaid Fraud Control Unit Rules. This final rule amends the

regulation governing State Medicaid Fraud Control Units (MFCUs or Units) based on policy and practice changes that have occurred since the regulation was initially issued in 1978. These changes include a recognition of OIG's delegated authority; Unit authority, functions, and responsibilities; disallowances; and issues related to organization, prosecutorial authority, staffing, recertification, and the Units' relationship with Medicaid agencies.

- 84 FR 8657-01 – Request For Information – Office of the Secretary Monday issued an RFI on March 11, 2019 seeking comments from interested parties on how to eliminate barriers to and enhance health insurance issuers' ability to sell individual health insurance coverage across state lines, primarily pursuant to Health Care Choice Compacts and Affordable Care Act. Comments must be submitted by May 6, 2019.

Federal Litigation

- A cancer survivor filed a proposed class action accusing UnitedHealthcare of violating federal benefits law by refusing to pay for proton beam therapy. Despite being cancer-free as a result of the therapy, the insurer denied PBT as experimental. The plaintiff alleges that PBT is a form of treatment widely accepted by physicians. For more information on the matter, see Weissman v. UnitedHealthcare Insurance Co et al., case number 1:19-cv-10580, in the U.S. District Court for the District of Massachusetts.
- Cigna and American Specialty Health Inc. have agreed to an \$11.8 million settlement, subject to the Court's approval, to resolve a seven-year lawsuit. The dollar amount represents approximately one-third of what the centers would have received had Cigna approved and paid the benefit claims in dispute. For more information on the matter, see, American Chiropractic Association et al. v. American Specialty Health Incorporated et al., case number 2:12-cv-07243, in the U.S. District Court for the Eastern District of Pennsylvania.
- A federal judge in Washington, D.C. struck down the Trump administration's association health plan rule that allowed small businesses and the self-employed to buy health insurance on the large-group market. The judge opined that the rule was intended as an unlawful "end run" around the Affordable Care Act. For more information on the matter, see, State of New York et al. v. U.S. Department of Labor et al., case number 1:18-cv-01747, in the U.S. District Court for the District of Columbia.

In the News

- CMS recently updated its Drug Spending Dashboards with data for 2017. The Dashboards, first released in May 2018, adds information on the manufacturers that are responsible for price increases and includes pricing and spending data for thousands of drugs across Medicare Parts B and D and Medicaid.
- CMS' Division of National Standards has recently completed the Optimization Pilot, a small-scale effort regarding HIPAA standard transactions for compliance testing. Among pilot participants, the most common

violations involved transaction standards. Types of violations, from the most to the least frequent, are set forth in [CMS's bulletin](#).

- In March 2019, CMS initiated the Artificial Intelligence Health Outcomes Challenge, which intends to engage with innovators to develop artificial intelligence that can predict health outcomes. The Challenge aims to develop artificial intelligence-driven predictions that healthcare providers and clinicians participating could use to reduce the burden to perform quality improvement activities and make quality measures more impactful.
- CMS recently issued new Medicare Part D opioid safety policies to reduce prescription opioid misuse. The new opioid policies include improved safety alerts at the pharmacy for Part D beneficiaries who are filling their initial opioid prescription or who are receiving high doses of prescription opioids. For more information on the safety policies, click [here](#).

The list above does not include every proposed or adopted legislation, litigation or guidance document that may impact the health care industry. Instead, it includes only a select few chosen by the authors, and any information in this Update is not intended to provide legal advice. If you are concerned that a proposed or adopted legislation, litigation or guidance document may impact your practice, then you should seek legal advice. We send these Updates to our clients and friends to share our insights on new developments in the law. Nothing in this Update should be relied upon as legal advice in any particular matter. © 2019 Riker Danzig Scherer Hyland & Perretti LLP.

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