



Riker Danzig Health Care Update August 14, 2019

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New Jersey State: Selected Adopted Legislation

- A. 20 – Approved – This bill makes various revisions to the “Compassionate Use Medical Marijuana Act,” including the establishment of a new Cannabis Regulatory Commission (CRC) to oversee the medical cannabis program and revising the requirements to authorize a patient for medical cannabis, among other things. For the complete statute, click [here](#).
- A. 3292 – Approved – Requires prescription opioid medications to include a warning sticker advising patients of risk of addiction and overdose. For the complete statute, click [here](#).
- A. 3717 – Passed both Houses – This bill prohibits a pharmacy benefits manager from retroactively reducing payment on a properly-filed claim for payment by a pharmacy. These retroactive reductions in payment are often referred to as direct and indirect remuneration fees. For the complete statute, click [here](#).
- A. 4744 – Approved – Requires DHS to ensure medication assisted treatment benefits under the Medicaid program are provided without the imposition of prior authorization requirements provided that the treatment is prescribed or administered by a licensed medical practitioner. For the complete statute, click [here](#).
- A. 5499 – Approved – This bill authorizes the DOBI to establish, operate, and fund a State-based exchange for certain health benefits plans and to coordinate with the DHS to secure any federal financial participation available for the exchange. In conjunction with the passage of the individual mandate under A.3380, it appears that the State is preparing in the event the ACA gets struck by the Fifth Circuit. For the complete statute, click [here](#).
- A. 5604 – Approved – This bill increases the amount of the corporation business and gross income tax

credits that are available for qualified investments under the “New Jersey Angel Investor Tax Credit Act” from 10 to 20 percent of a qualified investment made by a taxpayer in a New Jersey emerging technology business. For the complete statute, click [here](#).

- S. 954 – Approved – This bill enters New Jersey in the enhanced multistate Nurse Licensure Compact, which was implemented as of January 19, 2018. For the complete statute, click [here](#).
- S. 1373 – Approved – This bill permits a government-owned home health agency to contract with a non-governmental entity that is licensed as a home health care agency to provide direct services, administration, and financial services. The government-owned home health agency, however, must still maintain governance responsibility. For the complete statute, click [here](#).
- S. 3042 – Approved – This bill creates subaccounts in the SHBP and the SEHBP funds that will be dedicated for the payment of health care services claims and fees for covered services and for prescription drug benefits. In addition, the bill requires the State to procure, in an expedited manner, a third-party medical claims reviewer for the SHBP and the SEHBP. The third party medical claims reviewer will provide real-time or near-real-time review and oversight of the medical claims payment processing, and will maintain a secure archive of medical claims and other health services payment data. For the complete statute, click [here](#).

New Jersey State: Selected Proposed Regulations

- 51 N.J.R. 1088(a) – Proposed – This rule requires acupuncturists to hold a Board-issued license if they are physically located in New Jersey or if they are physically located outside of New Jersey and are providing health care services by means of telemedicine or telehealth to patients located in New Jersey. The rule clarifies that a healthcare provider in another state who uses communications technology to consult with a New Jersey acupuncturist but who does not direct patient care will be deemed as not providing health care services in New Jersey and will not be required to obtain a license in New Jersey. For the complete proposed rule, click [here](#).
- 51 N.J.R. 1094(a) – Proposed – The rule requires nurses to hold a Board-issued license if they are physically located in New Jersey and are providing health care services by means of telemedicine or telehealth or if they are physically located outside of New Jersey and are providing health care services by means of telemedicine or telehealth to patients located in New Jersey. The rule also clarifies that a healthcare provider in another state who uses communications technology to consult with a New Jersey licensee and who is not directing patient care will be deemed as not providing health care services in New Jersey and will not be required to obtain a license in New Jersey. For the complete proposed rule, click [here](#).

Federal: Selected Proposed and Enacted Legislation

- H.R. 776 – Approved – This bill reauthorizes through FY2024 the Emergency Medical Services for Children

Program, which is a grant program administered by the Health Resources and Services Administration. The program focuses on improving emergency health care for children who are seriously ill or injured. For a complete review of the statute, click [here](#).

- H.R. 3253 – Approved – This bill alters the Medicaid programs including the following: (1) makes appropriations through FY2024; (2) allows state Medicaid fraud control units to review complaints regarding patients who are in non-institutional or other settings; (3) temporarily extends the applicability of Medicaid eligibility criteria that protect against spousal impoverishment for recipients of home and community-based services; (4) temporarily extends the Medicaid demonstration program for certified community behavioral health clinics; and (5) repeals the requirement, under the Medicaid Drug Rebate Program, that drug manufacturers include the prices of certain authorized generic drugs when determining the average manufacturer price (AMP) of brand name drugs (also known as a "blended AMP"), and excludes manufacturers from the definition of "wholesalers" for purposes of rebate calculations; and (6) increases funding available to the Medicaid Improvement Fund beginning in FY2021. Removing the blended AMP should increase the rebates because the rebates will be based on the price of the drug available to wholesalers and pharmacies. For a complete review of the statute, click [here](#).
- S. 2051 – Proposed – Requires manufacturers to report drug pricing information with respect to drugs under the Medicare program. For a complete review of the proposal, click [here](#).
- S.2081 – Proposed – This statute requires drug manufacturers to provide rebates for drugs furnished under Medicare Part B for which the growth in average sales price has exceeded inflation. For a complete review of the proposal, click [here](#).
- S.2157 – Proposed – This statute proposes to expand the use of global payments to hospitals in rural areas to increase payments made to such hospitals. For a complete review of the proposal, click [here](#).
- S. 2161 – Proposed – This statute provides for reciprocal marketing approval of certain drugs, biological products, and devices that are authorized to be lawfully marketed abroad. For a complete review of the proposal, click [here](#).
- H.R. 3436 – Proposed – This bill removes cost-sharing responsibilities for chronic care management services under the Medicare program. For the complete statute, click [here](#).
- H.R. 3502 – Proposed – This proposed bill attempts to prevent surprise billing practices by requiring out-of-network providers to charge a co-payment or deductible as if the patient was in-network and would require insurers to pay the out-of-network providers the usual and customary rate. If there is a difference between the amount charged and the amount paid, the statute includes an arbitration process to determine the remaining amount. For a complete review of the proposal, click [here](#). It should be mentioned that this proposal follows in the wake of California sidelining a statute to “curb” out-of-network billing, which faced resistance from many hospital systems in that state.

- H.R. 3523 – Proposed – This statute requires the Secretary of Health and Human Services to establish annual reference prices for each prescription drug, which will be based on the median retail list price of the drug in certain reference countries such as, among others, Japan, Germany, and Italy. With respect to enrollees or beneficiaries in any of the federal health programs, the retail list price for a drug shall not exceed the reference price for such drug. For a complete review of the proposal, click [here](#).
- H.R. 3613 – Proposed – This changes the methodology for determining state allotments for Medicaid disproportionate share hospital payments that is based on state poverty levels, to require states to prioritize disproportionate share hospital payments on the basis of Medicaid inpatient utilization and low-income utilization rates, and for other purposes. For the complete statute, click [here](#).
- H.R. 3654 – Proposed – Chiropractic Medicare Coverage Modernization Act of 2019 to amend Title XVIII of the Social Security Act to provide Medicare coverage for all physicians' services furnished by doctors of chiropractic within the scope of their license. For the complete statute, click [here](#).
- H.R. 3656 – Proposed – This statute, titled, ACCESS Act of 2019, attempts to be a comprehensive bill that intends to reduce liability on the health care delivery system and the impact litigation has on the system. For the complete statute, click [here](#).
- H.R. 3762 – Proposed – This statute requires that a plan shall provide, with respect to a doctor of optometry, doctor of dental surgery, or doctor of dental medicine that has an agreement to participate in the plan or coverage, and that furnishes items or services that are not covered by the plan, the doctor may then charge the enrollee for such items or services any amount determined by the doctor that is equal to, or less than, the usual and customary amount. For a complete review of the proposal, click [here](#).
- H.R. 3850 – Proposed – This statute, like many others, attempts to reform prescription drug pricing and reduce out-of-pocket costs by ensuring consumers benefit from negotiated rebates. For a complete review of the proposal, click [here](#).

Federal: Selected Proposed and Adopted Regulations

- 84 FR 20732 – Invalidated – We previously reported that this final rule required drug prices in television advertising. In early July 2019, a federal judge invalidated the final rule on the basis that the DOH lacked authority to require drug manufacturers to disclose such pricing. As a result of this ruling, a proposal has already been introduced in the Senate providing the DOH with such authority. This invalidation follows the Trump administration's decision to no longer eliminate rebates as a safe harbor exception to the Anti-Kickback statute. [See](#) 84 FR 2340.
- 84 FR 34718 – Final Rule – This final rule amends the requirements that long-term care (LTC) facilities must meet to participate in the Medicare and Medicaid programs. Specifically, CMS is repealing the prohibition on the use of pre-dispute, binding arbitration agreements. This rule becomes effective on September 16, 2019.

For the complete rule, click [here](#).

- 84 FR 31471 – Proposed Rule – This proposed rule would remove the regulatory text that sets forth the current required process for states to document whether Medicaid payments in fee-for-service systems are sufficient to enlist enough providers to assure beneficiary access to covered care and services consistent with the Medicaid statute. States have complained that this is an administrative burden even though CMS believes the information is a valuable tool for states to use to demonstrate the sufficiency of provider payment rates. Comments are due September 13, 2019. For the complete proposed rule, click [here](#).
- 84 FR 34478 – Proposed Rule – This proposed rule implements two new mandatory Medicare payment models – the Radiation Oncology Model (RO Model) and the End-Stage Renal Disease Treatment Choices Model (ETC Model). The proposed RO Model would promote quality and financial accountability for providers and suppliers of radiotherapy. The proposed ETC Model would be a mandatory payment model focused on encouraging greater use of home dialysis and kidney transplants to preserve or enhance the quality of care furnished to Medicare beneficiaries while reducing Medicare expenditures. Comments are due September 16, 2019. For the complete proposed rule, click [here](#).
- 84 FR 34598 – Proposed Rule – This proposed rule would update the home health prospective payment system (HH PPS) payment rates and wage index for CY 2020 and implement the Patient-Driven Groupings Model (PDGM), a revised case-mix adjustment methodology, for home health services beginning on or after January 1, 2020. It also implements a change in the unit of payment from 60-day episodes of care to 30-day periods of care and proposes a 30-day payment amount for CY 2020. Additionally, this proposed rule proposes, among other things, to allow physical therapy assistants to furnish maintenance therapy and sets forth routine updates to the home infusion therapy payment rates for CY 2020. Comments are due September 9, 2019. For the complete proposed rule, click [here](#).
- 84 FR 34737 – Proposed Rule – This proposed rule would reform the Medicare and Medicaid long-term care requirements that CMS has identified as unnecessary, obsolete, or excessively burdensome. The proposal identifies numerous changes in various areas including, among other things, nursing, behavioral health, record keeping, infection control etc. Comments are due September 16, 2019. For the complete proposed rule, click [here](#).
- 84 FR 35936 – Proposed – This proposed rule revises the criteria that CMS uses in the Listing of Impairments to evaluate claims involving digestive and skin disorders. Comments are due September 23, 2019. For the complete proposed rule, click [here](#).
- Acupuncture Proposed Decision: In July 2019, CMS issued a proposed decision to cover acupuncture for chronic low back pain for Medicare beneficiaries enrolled in approved studies. For the complete proposed decision, 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.

If you have any questions about the issues discussed in this Update, please contact [Khaled J. Klele](#) or [Latoya Caprice Dawkins](#).

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