October 24, 2018

Health Policy in Transit

A Purchaser Viewpoint

National Alliance of Healthcare Purchaser Coalitions
Driving Innovation, Health and Value

Bi-Partisan Opioid Legislation Enacted

Congress has overwhelmingly agreed to bipartisan legislation to help combat the opioid epidemic. The bill, Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (H.R. 6) was signed by the President on October 24, 2018. It creates, expands, and reauthorizes programs and policies across almost every federal agency, aiming to address different aspects of the opioid epidemic, including prevention, treatment, and recovery.

Generally, the measure is aimed at reducing the use and supply of opioids, encouraging recovery, supporting caregivers and families, and driving innovation and long-term solutions to the opioid epidemic. The bill imposes tighter control on opioid prescription and treatment under the Medicare and Medicaid programs, while also clarifying FDA regulation of non-addictive pain and addiction therapies, and allowing for more flexibility with respect to medication-assisted treatment. The Congressional Budget Office determined the federal government would save $2 million overall from this legislation.

The bill also includes a provision to enhance reporting on mental health parity enforcement, but does not add any new penalties. Under the 21st Century Cures Act of 2016, the U.S. Department of Labor's Employee Benefits Security Administration, in collaboration with CMS and the Treasury Department, must submit an annual report to the House Committee on Energy and Commerce and the Senate Committee on Health, Education, Labor, and Pensions summarizing the results of all closed federal investigations related to violations of mental health and substance use disorder coverage requirements. H.R. 6 expands the criteria for inclusion in the report and adds the House Education and the Workforce Committee to the list of report recipients.

Other provisions include:

- More access to inpatient treatment: States will now be able to request Medicaid payment for 30-day inpatient addiction treatment in certain circumstances.
- Incentives to improve provider shortages: The bill creates a six-year loan repayment program for treatment professionals in designated "mental health professional shortage areas."
- Expanded uses of telehealth: The bill lifts prior Medicare restrictions barring payment for telehealth treatment outside of specific rural areas, and opens up the ability for providers to prescribe medication-assisted therapy via telehealth.

While the legislation is mostly focused on government programs, employer plans should still investigate whether any of these new and expanded treatment options are right for their employees. Employers are a critical stakeholder in helping to stop the opioid epidemic, and should ensure they are aware of the various tools being deployed in their communities. As stated above, the bill is expected to generate savings for the federal government, so there is a likelihood that these programs and provisions may end up also resulting in savings for employer plan sponsors.

What was not included?

Importantly for employer health plan sponsors, the final opioid bill does not include a provision – previously included in the House bill – that would have revised the Medicare secondary payer rules to require private insurers (including employer plans) to pay for an additional three months of care for end-stage renal disease (ESRD) patients before Medicare assumes responsibility for the payments. Under current law, private health plans pay for the first 30 months of ESRD services before Medicare becomes the primary payer at significantly lower rates. While, the ESRD payment shift would have reduced Medicare spending, the increased costs placed on private health plans will be significantly higher because these plans would pay two to three times more than Medicare for ESRD treatment. The final agreement did not include this blatant cost-shifting provision. Advocacy by our partner organizations, the American Benefits Council and the ERISA Industry Committee, was instrumental in ensuring this provision was not included in the final bill.