Home Health Weekly Recap

October 18, 2024

National Policy Pulse Call. LeadingAge's members-only briefing and analysis call with our experts, "National Policy Pulse," happens every Monday at 3:30 p.m. ET. Register for the calls (registration required even if you were registered for the previous 3:30pm policy update calls) here. Your registration will keep you on the list for all calls in 2024, and we'll send a new registration link to members for calls in 2025 so you never miss a beat.

New Social Needs Confidential Feedback Report and Education Available for Home Health. On October 15, the Centers for Medicare & Medicaid Services (CMS) released the new Screen Positive for Health-Related Social Needs (HRSN) Indicator Confidential Feedback Report to Home Health agencies. This report presents summary information for an agency's patient population on four HRSN data elements: Health Literacy, Need for Interpreter Services, Social Isolation, and Transportation. Results for this initial report are calculated using data from October 1, 2023 – September 30, 2024, and will be updated quarterly based on the most recent 12 months of available data. This report is provider-generated in iQIES, instructions on how to generate the report are available here. To support providers in accessing and understanding this new report, CMS has released an educational webinar recording and the related webinar slides and transcript. There is also a fact sheet that provides an overview of the Screen Positive for HRSN Indicator Confidential Feedback Report.

CMS Releases Annual Health Equity Confidential Feedback Reports for Post-Acute Care Providers. On October 15, the Centers for Medicare & Medicaid Services (CMS) updated the two annual post-acute care (PAC) Health Equity Confidential Feedback Reports: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. These reports are available to providers in the Home Health (HH) and Skilled Nursing Facility (SNF) settings. The updated Fall 2024 Health Equity Confidential Reports are based on data from Calendar Year 2022-2023 for HH and from Fiscal Year 2022-2023 SNF settings. The Health Equity Confidential Feedback Reports provide insight on DTC and MSPB measure outcome differences across social risk factors. These reports stratify these two PAC Quality Reporting Program (QRP) measure outcomes by Medicare-Medicaid dual-enrollment status (duals and non-duals), and by patient race/ethnicity (non-White and White patients). This data is meant to provide information to providers about their performance for certain populations who may have been historically disadvantaged. Providers can use the information from these reports to focus their internal quality improvement initiatives aimed at increasing opportunities for all individuals to achieve optimal health outcomes. Earlier in October, CMS also released the new Screen Positive for Health-Related Social Needs (HRSN) Indicator Confidential Feedback Report to Home Health agencies and anticipates releasing a similar report for SNF in October 2025.

CMS to Allow Home Health Telehealth Services During Inpatient Stay. On October 10, the Centers for Medicare and Medicaid Services (CMS) released a Change Request (CR 13812) and Medicare Learning Network Article (MLN 13812) announcing that as of April 1, 2025, home health agencies will not have claims rejected telehealth G codes (G032, G0321, and G0322) are included in billing that overlaps with an inpatient, skilled nursing, or swing bed claim. There is currently an edit that will reject any home health claim if billed with dates of services that fall within the dates of an inpatient stay (not including admission, discharge or

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any leave of absence dates). However, since telehealth services are non-payable reporting items they do not create a duplicate payment. CMS has been interested in better understanding home health agency use of telehealth and this adjustment to billing practices will allow home health agencies to continue to use these codes when communicating with the patient and caregiver during an inpatient stay that interrupts the home health period.

LeadingAge Continues to Ask for MA Prior Authorization Data. To inform the Centers for Medicare and Medicaid (CMS) staff on how Medicare Advantage (MA) prior authorizations and re-authorizations play out when MA enrollees need skilled nursing facility and home health care, LeadingAge is asking its SNFs and HHAs to track and report one month worth of data on the prior authorizations, concurrent reviews/re-authorization requests and appeals. This quantitative data can supplement the anecdotal stories members have shared where these processes deny, delay or terminate medically necessary care. This information can help us target the regulatory changes needed to improve these processes in MA and show the need for addressing the substantive administrative burden that goes along with it. Members can access the SNF Data Spreadsheet here and the Home Health Spreadsheet here to use in tracking their data. Once you've tracked one month of date, it can be submitted to Nicole Fallon. Organizational and patient level data will not be shared publicly. Instead, the data will be used to identify trends and challenges in the MA prior authorization processes in order to seek remedies with CMS.

LeadingAge Supports Legislators' Request for Administration to Clear Up Negative Impacts of MA Flex Cards. LeadingAge commends the 34 members of Congress, led by Representative Lloyd Doggett (D-TX), who urged President Biden in an October 11 bicameral letter to issue guidance explicitly excluding Medicare Advantage Flex Cards from being counted in when calculating eligibility for federal assistance and benefits allowance. As Katie Smith Sloan noted in LeadingAge's press statement, "This request for federal guidance on Medicare Advantage Flex Cards is timely, as Medicare Open Enrollment begins next week, and it is increasingly urgent." The letter reinforces concerns LeadingAge has shared with CMS, HUD, and the White House along with Congress on how these special supplemental benefits – flexible benefit cards – are being counted as income and impacting low-income older adults' eligibility for government assistance and benefits programs, such as federal assistance for housing, food, and more.

LeadingAge Calls on White House to Elevate Older Adults in Extreme Heat Response. In early July, President Biden called for multiple agencies to coalesce at an Extreme Weather Summit. Following the summit in mid-September, the White House announced an extreme heat call to action. The call to action was coupled with a draft Extreme Heat Community Checklist to help municipalities, towns, and tribal organizations prepare for and respond to extreme heat events. LeadingAge submitted comments urging the administration to take better account of the needs of older adults and their vulnerabilities to heat. We urged partnerships between communities and the providers serving older adults and more thoughtful inclusion of older adults and their unique needs and abilities. Our comments suggested broader communications techniques than internet and social media content while prioritizing support that meets older adults where they live. Though the checklist fell short of thought provoking questions that could sway a local government to consider significant investment in making communities more resilient to extreme heat like grants for energy assistance or building retrofit projects, the draft provides communities a starting point for engaging with the public about the risks of extreme heat. You can read our comments here.

OIG Updates Recommendations Tracker with Post Acute and MA Recommendations. The Health & Human Services (HHS) Office of Inspector General (OIG) updated its Recommendations Tracker with the Top Unimplemented Recommendations of 2024 on October 17. Of thirty-three unimplemented recommendations, four relate directly to nursing homes including two recommendations related to

psychotropic drug use, one recommendation related to infection control, and one recommendation related to facility-initiated discharges. OIG highlighted one recommendation for home health to expand the inpatient rehab facility transfer payment policy to apply to early home health discharge as well as a recommendation for Medicare Advantage plans to submit ordering provider NPI on encounter records for home health. As part of the recommendations, OIG also flagged two unimplemented recommendations to first modify payments for hospice care in nursing facilities and ensure Medicare is not paying for drugs for hospice patients twice. Finally, OIG included an unimplemented recommendation to assess the risks and benefits of Medicare Advantage chart reviews not linked to service records and improving oversight of Medicaid Managed Care plans. Updates on all recommendations are expected in the coming months.

Senate Subcommittee Releases Scathing Report on Medicare Advantage Prior Authorization Practices in Post-Acute Care. On October 17, the Senate Permanent Subcommittee on Investigations chaired by Senator Richard Blumenthal (D-CT) released a report, Refusal of Recovery: How Medicare Advantage Insurers Have Denied Patients Access to Post-Acute Care. The report underscored trends and patterns that LeadingAge has been reporting on and advocating against regarding practices that Medicare Advantage (MA) plans are utilizing in relation to post-acute care – and the report finds that the plans the Permanent Subcommittee on Investigations looked at are doing so in pursuit of cost savings. The Senate team looked at 280,000 pages of documentation related to practices undertaken between 2019 - 2022 by United Healthcare (UHC), CVS/Aetna, and Humana. These three plans make up 60% of the MA market. A telling quote from the report is: "The data obtained so far is troubling regardless of whether the decisions reflected in the data were the result of predictive technology or human discretion. It suggests Medicare Advantage insurers are intentionally targeting a costly but critical area of medicine – substituting judgment about medical necessity with a calculation about financial gain." In addition to plans' use of predictive technology, the report examined trends in prior authorization both in terms of initial denials but also in terms of volume of prior authorizations requested. LeadingAge will provide a more detailed analysis of the report in the coming days, but some key findings include:

1. In 2022, UHC and CVS/Aetna denied prior authorization requests for post-acute care at rates 3x higher than their overall rates of denial; Humana denied post-acute care service requests at a rate 16x higher than its overall rate of denial.
2. UHC's denial rate for skilled nursing facility care increased by a factor of nine between 2019 and 2022, from an initial denial rate of 1.4% in 2019 to an initial denial rate of 12.6% in 2022.
3. A number of findings around UHC's AI driven algorithm embedded within the product naviHealth, which is also used by Humana. These findings included the use of naviHealth to determine length of stay regardless of the person's actual clinical need, the use of naviHealth's portal function to avoid speaking to providers about authorization decisions – in fact instructing naviHealth employees NOT to speak to providers about certain items and using naviHealth to restrict home health visits and duration of care even if initial approvals for home health were higher than for skilled nursing or other post-acute care.
4. CVS/Aetna was found to have a higher initial rate of denial in the study period so that remained steady, but the volume of prior authorizations detected increased by 57.5% over the study period.

LeadingAge's press statement on the report can be found here. We look forward to continuing our advocacy on these issues and that effort is bolstered by this report.

Update on IV Solution Supply Shortages. Health & Human Services (HHS) Secretary Xavier Becerra issued a letter to healthcare providers on October 9 and a press statement on October 11 outlining the Department's understanding of and actions to address intravenous (IV) solution supply shortages related to Hurricane Helene. Secretary Becerra stated that HHS has moved and protected product from the impacted manufacturing facility in North Carolina, worked with the Food & Drug Administration (FDA) and other

agencies to increase supply, and is working to restore operations at the impacted North Carolina facility. The Administration for Strategic Preparedness and Response (ASPR) released an updated tip sheet on October 9 for managing IV fluid supplies during shortage.

CMS Issues Rule Outlining Appeals Processes Relating to Hospital Observation Status. On October 11, CMS published a Final Rule establishing appeals processes for certain Medicare beneficiaries who are initially admitted as hospital inpatients but are subsequently reclassified as outpatients receiving observation services during their hospital stay. The purpose of the rule is for CMS to comply with a court order issued in the case *Alexander v. Azar*, a nationwide class action case that established the right of patients to appeal such changes of status. A retroactive right of appeal will be available to Medicare beneficiaries meeting certain criteria, and both "expedited" and "standard" appeals processes will apply prospectively. CMS anticipates these processes will be available in early 2025. The appeals processes established by this rule do not extend to enrollees in Medicare Advantage (MA) plans. A fact sheet is available here, and LeadingAge will prepare a detailed analysis.

Congress Concerned about DEA's Approach to Telehealth Prescribing. On October 11, a group of lawmakers from the House of Representatives pressed the Drug Enforcement Administration (DEA) over reports that it plans to limit flexibilities allowing health care providers to prescribe controlled substances via telemedicine. In a letter sent to DEA Administrator Anne Milgram, a group of lawmakers led by Representatives Doris Matsui (D-CA) and Earl L. "Buddy" Carter (R-GA) took issue with the agency's work to create a special registration process for telemedicine prescribing. During the COVID-19 pandemic, the DEA allowed for most controlled medicines, like ADHD medications, to be prescribed via telemedicine rather than in person. As LeadingAge previously reported, DEA has extended the flexibilities twice, and appears poised to extend those flexibilities a third time. The DEA has not said how long the third extension will be. The current flexibilities are set to expire on December 31, 2024. In the letter, lawmakers expressed concern about reports that the DEA ultimately has plans to limit telemedicine prescribing and the misalignment with legislative intent of the registration program as well as the potential to hurt patient access to necessary drugs. Furthermore, the letter voices concern regarding time running out for DEA to finalize the rule before it reverts back to pre-COVID prescribing requirements on December 31, 2024.

DEA Submits Final Rule to Extend Telemedicine Flexibilities for a Third Time. The Drug Enforcement Agency (DEA) submitted a final rule to the Office of Management and Budget (OMB) for a third temporary extension of the COVID telemedicine flexibilities for prescription of controlled substances. As LeadingAge previously reported, the DEA is working to update COVID waivers that allowed prescribers to write prescriptions for controlled substances without an in-person meeting. Those current flexibilities are set to expire December 31, 2024. The current proposed rule to update the flexibilities, which was redrafted after considerable pushback in 2023, has yet again hit major hurdles with advocates from across the care continuum. A former DEA staff member shared that the proposal, which has been with OMB since June 2024 would be even more restrictive than the original proposal. LeadingAge does not expect the new proposed rule to be published before the election, but the temporary extension will allow more time for advocates, prescribers, and patients to review and comment on the proposal without losing access to essential medications.

MedPAC Reviews Home Health PDGM and MA Home Health Use. As part of the Medicare Payment Advisory Commission's (MedPAC) October 11 meeting, analysis was shared on two topics related to home health. First, commission staff reviewed the requirements of the BBA 2018 policy changes to the home health prospective payment system and their final workplan for assessing the changes and impacts of the Patient Driven Groupings Model on home health. This report is due to Congress March 2026. The report will include subcategories of both patients and providers to assess the impacts of the payment changes. Several

commissioners encouraged staff to removed 2020 from the analysis due to the impacts of the pandemic on home health utilization. Commissioners also commented on the need to better capture why someone did not receive home health services. In addition to the Congressionally mandated report, staff presented on initial work regarding home health and Medicare Advantage use. Using existing encounter data and OASIS data to identify analytic samples to compare to traditional fee-for-service populations. This was MedPACs first look into encounter data in post-acute care and will be expanding their research to include skilled nursing in the future. One flag from commissioners was the importance of looking at SNF stays compared to traditional fee-for-service, recognizing that there is anecdotal evidence of plans diverting from SNF care to reduce costs. Commissioners also requested more information on network adequacy and staff shared they are working on a full analysis of networks for MA services. Other commissioners pushed for including denials, appeals and complaints data. LeadingAge will be submitting public comments on these presentations.

LeadingAge Article on MedPAC Discussion of MA Supplemental Benefits. On October 10, LeadingAge highlighted the MedPAC commissioners' October 10 discussion of Medicare Advantage (MA) supplemental benefits and their goals for future work to make the provision and use of these benefits along with the cost more transparent. This LeadingAge article entitled, "MedPAC Examines MA Plan Supplemental Benefit Financing: Signals Future Look at Usage, Transparency, " provides further details of the October 10 MedPAC report and discussion.

Last Week's Recap Update. Here is the October 11, 2024 Home Health Update.