

The 3 Most Important New Health Insurance Laws From the 2020 California Legislative Session

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November 12, 2020 - E-Mail: BRPCIA@aol.com

[these new laws take effect on January 1, 2021 - unless otherwise noted]

AB2157 - (Wood) - Health Care Coverage: Independent Dispute Resolution Process - Surprise Balance Billings - CAHU Position: Support

This bill requires the Department of Managed Health Care (DMHC) and the California Department of Insurance (CDI) to include confidential information as part of the independent dispute resolution process (IDRP) created for processing and resolving claims disputes between health plans/health insurers and noncontracting health professionals, and requires the IDRP organization to conduct a de novo review, and assign reviewers with relevant background and experience.

This bill:

- 1) Requires DMHC and CDI to include in the IDRP process a process for each party to submit into evidence information that will be kept confidential from the other party, in order to preserve the confidentiality of the source contract.
- 2) Requires the IDRP organization to conduct a de novo review and base its decision solely on the information and documents timely submitted into evidence by the parties to the dispute.
- 3) Requires the IDRP organization to assign reviewers to each case based on their relevant education, background, and medical claims payment and clinical experience.

According to the author, the IDRP for surprise balance billing health insurance claims has been in place for a couple of years now and this bill addresses some of the concerns raised by the providers impacted by this recent legislation.

In compliance with AB 72, both CDI and DMHC each launched an IDRP in 2017 as a mechanism for non-contracted providers, health plans and health insurers to dispute the default reimbursement amount. According to DMHC's annual report, in 2019, DMHC received 32 IDRP applications. Of those, nine were ineligible, nonjurisdictional or withdrawn, and 22 completed the process and a determination letter was issued. According to DMHC, in 2019, one determination letter awarded additional reimbursement to the provider and 21 determination letters found that the payor's reimbursement was appropriate.

In March 2020, DMHC's IDRP guidelines and submission portal were updated to allow parties to submit information about contracted rate information confidentially (visible only to DMHC and the external reviewer). One recent (July 2020) IDRP determination letter where the provider used the new portal capabilities to submit confidential evidence of its commercial contracted rates resulted in the external reviewer finding that the payor's reimbursement for the claim was too low. DMHC has observed that majority of the submissions are from anesthesiologists. According to CDI, there have been no submissions to IDRP.

According to background information provided by proponents, a number of anesthesia providers have submitted reimbursement disputes through DMHC AB 72 IDRP. The final determination letters from MAXIMUS have rejected most or all evidence submitted by the providers. MAXIMUS ruled for the payor in each instance.

SB 852 - (pan) Health Care: Prescription Drugs CAHU Position: Watch

This bill requires the California Health and Human Services Agency (CHHSA) to enter into partnerships to increase competition, lower prices, and address shortages in the market for generic prescription drugs, to reduce the cost of prescription drugs for public and private purchasers, taxpayers, and consumers, and, to increase patient access to affordable drugs.

This bill requires CHHSA to enter into partnerships resulting in the production or distribution of generic prescription drugs, with the intent that these drugs be made widely available to public and private purchasers, providers and suppliers, and pharmacies, as appropriate. Requires these generic drugs to be produced or distributed by a drug company or generic drug manufacturer that is registered with the FDA. Requires CHHSA to only enter into partnerships to produce a generic drug at a price that results in savings, targets failures in the

market for generic drugs, and improves patient access to affordable medications.

It requires CHHSA, for drugs identified pursuant to the criteria under this bill, to determine if viable pathways exist for partnerships to manufacture or distribute generic drugs by examining the relevant legal, market, policy, and regulatory factors. Requires CHHSA to consider specified costs when setting the price of the generic drug. It requires each drug to be made available to providers, patients, and purchasers at a transparent price and without rebates, other than federally required rebates.

It requires the partnerships entered into by CHHSA to include the production of at least one form of insulin, provided that a viable pathway for manufacturing a more affordable form of insulin exists. Requires CHHSA to prioritize drugs for chronic and high-cost conditions, and to consider prioritizing those that can be delivered through mail order.

It requires CHHSA to submit a report to the Legislature, by July 1, 2023, to assess the feasibility of directly manufacturing generic drugs and selling generic drugs at a fair price, only if the Legislature appropriates funds for this purpose.

SB 855 - Weiner) Health Coverage: Mental Health & Substance Abuse Disorders

CAHU Position: Re-Check

This bill repeals California's mental health parity law and replaces it with a broader requirement on health plans and disability insurers to cover medically necessary treatment of mental health and substance use disorders under the same terms and conditions applied to other medical conditions; establishes new requirements for medically necessary care determinations and utilization review; and bans discretionary clauses in health plan contracts.

It defines "medically necessary treatment of mental health or substance use disorder" as a service or product addressing the specific needs of that patient, for the purposes of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of that illness, injury, condition, or its symptoms, in a manner as specified.

It prohibits a health plan or disability insurer that authorizes treatment by a provider pursuant to this bill from rescinding or modifying the authorization after the provider renders the health service in good faith and pursuant to this authorization for any reason.

It allows preferred provider organizations to require enrollees who reside or work in geographic areas served by a specialized health plan or disability insurance policy or mental health plan or policy to secure all or part of their mental health services within those geographic areas served by specialized plans or mental health plans, provided the services are within those geographic service areas within timeliness standards.

It requires a health plan or disability insurer to base any medical necessity determination or the utilization review criteria that the plan or insurer, and any entity acting on the plan's or insurer's behalf, applies to determine the medical necessity of health services and benefits for the diagnosis, prevention, and treatment of mental health and substance use disorders on current generally accepted standards of mental health and substance use disorders.

Requires the health plan or disability insurer to apply the utilization review criteria and guidelines set forth in the most recent versions of treatment criteria developed by the nonprofit professional association for the relevant clinical specialty. Prohibits a health plan or disability insurer from applying different, additional, conflicting, or more restrictive utilization review criteria.

According to the author, California should require insurers to cover all medically necessary mental health and addiction treatment. It is unacceptable that insured individuals cannot access the health services they desperately need. Currently, California law only requires commercial health plans to cover all medically necessary treatment for a limited number of mental health (but no substance use) disorders. By updating the California Mental Health Parity Act, we can treat mental health and substance use disorders early on – combating overdose deaths, suicides, and saving lives. It is time to update the California Mental Health Parity Act to cover all mental health and substance use disorders.