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Summary of Recent Federal Regulatory Changes

Below is a summary of recent federal regulatory changes. This information is intended for educational and informational purposes only. If you have any questions, please reach out to Katherine Seibel, manager, Federal and Regulatory Activities at KatherineS@TheNationalCouncil.org.

DOL Overtime Final Rule:

The U.S. Department of Labor (DOL) issued final rule increasing the salary threshold required to exempt salaried bona fide executive, administrative or professional employees from federal overtime pay requirements. The final rule will be effective July 1, 2024, and raises the salary threshold to $43,888 and on January 1, 2025, increases the threshold to $58,656 when new methodology takes effect. Beginning in July 2027, the salary thresholds will update every three years.

In the final rule DOL noted that it intends to issue technical assistance to help employers comply with the Fair Labor Standards Act (FLSA) and will coordinate with appropriate federal agencies on supporting Medicaid-funded service providers impacted by this rule.

Additional information can be found on DOL's webpage and FAQ page for this final rule.

CMS Medicaid FFS and Managed Care Final Rules:

CMS issued two final rules regarding Medicaid - the Ensuring Access to Medicaid Services final rule, regarding fee-for-service (FFS) and managed care, inclusive of home- and community-based services (HCBS), and final rule on access to managed care plans in Medicaid and Children's Health Insurance Program (CHIP). Fact sheets for these rules can be found respectively here and here. Effective dates for these rules are July 2024 and CMS has provided an outline of the various applicability dates for each of these rules here and here.

At a high level, several finalized provisions to note include the:

- Requirement for states, in six years, to generally ensure a minimum of 80% of Medicaid payments for homemaker, home health aide, and personal care services be spent on compensation for direct care workers furnishing these services.
    - CMS finalized modifications to the rule by adding a definition of excluded costs for the calculation of the percentage of Medicaid payments to providers that is spent on compensation for direct care workers.
- Requirement for states to compare their FFS payment rates for primary care, obstetrical and gynecological care, and outpatient mental health and substance use disorder services to Medicare rates, and publish the analysis every two years.

- Establishment of a maximum appointment wait time standard of 10 business days for outpatient mental health and substance use disorder services if covered in the MCO's, PIHP's, or PAHP's contract.
- Requirement for states to submit an annual payment analysis that compares managed care plans' payment rates for certain services as a proportion of Medicare's payment rate and, for certain home- and community-based services, the state's Medicaid state plan payment rate.
- Clarification that statutorily required PPS rates to CCBHC demonstrations under Section 223 are not considered State Directed Payments (SDPs). CMS further noted that if states elect to adopt payment methodologies similar to those under the CCBHC demonstration but the State or facilities are not part of an approved section 223 demonstration, those payment arrangements would need to comply with SDP requirements in § 438.6(c) as the Federal statutory requirements only extend to those States and facilities participating in an approved demonstration.

HHS Nondiscrimination Final Rules:

This week and the past week, the Department of Health and Human Services (HHS) has issued several final rules regarding nondiscrimination. Please see below for updates on these final rules.

- Final rule was issued regarding Section 1557 of the Affordable Care Act, prohibiting discrimination based on race, color, national origin, sex, age, and disability in covered health programs and activities. The final rule applies to health programs or activities that receive HHS funding, health programs or activities administered by HHS (such as the Medicare Part D program), and the health insurance Marketplace (and all plans offered by issuers that participate in those Marketplaces that receive Federal financial assistance). The final rule, scheduled for publication in the Federal Register on May 6, will be effective 60 days after its publication. For additional information, please see HHS' Section 1557 webpage and the FAQs page. Provisions in this rule include:
    - Requirement for covered entities, inclusive of health care providers, to proactively let people know that language assistance and accessibility services are available at no cost to patients.
    - Requirement for health care facilities that were constructed or altered for the use of, or by, a recipient or State-based Marketplace to comply with the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design, if the construction or alteration began on or after July 18, 2016, and on or before January 18, 2018, as defined in the ADA Title II regulations.
    - Clarification that covered health programs and activities offered via telehealth must also be accessible to individuals with limited English proficiency, and individuals with disabilities. Additionally, the final rule clarifies that nondiscrimination in health programs and activities apply to the use of artificial intelligence.
    - A change in interpretation on treating Medicare Part B as federal financial assistance — extended for the purpose of coverage under Title VI of the Civil Rights Act, Section 504

of the Rehabilitation Act, and other federal civil rights statutes. Given the time that may be needed to comply with this change in position, HHS is providing a one-year delayed applicability date of May 6, 2025.

- Final rule was issued clarifying and reaffirming nondiscrimination on the basis of sex in HHS-funded programs and services, inclusive of substance use and community mental health services. The effective date for this rule is June 3, 2024.
    - Additional Information can be found in the HHS press release here.
- Finally, HHS finalized a rule that aims to bolster protections and update regulations for Section 504 of the Rehabilitation Act which prohibits discrimination on the basis of disability in programs and activities that receive funding from HHS. Check out the HHS fact sheet to learn more about this final rule, which is scheduled to be published in the Federal Register on May 9, and will become effective 60 days after that publication date. Provisions in this rule include:
    - Prohibiting recipients of federal financial assistance from directly or indirectly using measures, assessments, or tools that discount the value of life extension on the basis of disability that would be used to limit access or deny aids, benefits, or services. HHS does not specify the use of specific value assessments.
    - Requirements that adopt the 2017 Accessible Medical and Diagnostic Equipment (MDE) Standards published by the U.S. Architectural and Transportation Barriers Compliance Board wherein all MDE that a recipient purchases, leases (including renewals of leases), or otherwise acquires after July 8, 2024 must meet these standards. Additionally, recipients that use an examination table or weight scale in their program or activity are required to have at least one accessible exam or table weight scale by July 8, 2026.
    - New sections to 45 CFR Part 84 to ensure parity and consistency with amendments made to Section 504 and the ADA, as well as Supreme Court rulings and existing case law. This includes permitting use of trained service animals and use of manually powered mobility devices for individuals with disabilities, ensuring effective methods of communication for individuals with hearing, vision, and speech impairments, and permits refusal to include individuals with disabilities from participating in or benefiting programs if such individual presents a direct threat as defined by the final rule.
    - Notably, HHS provides exceptions to these requirements for recipients of federal financial assistance if the results of such action would result in a fundamental alteration in the nature of the program or if such action would require participants to incur undue financial and administrative burden. Nonetheless, the final rule requires recipients of federal financial assistance to take “any other action” that would not result in an undue financial or administrative burden but would ensure that individuals with disabilities receive the benefits or services under the program to the maximum extent possible.