Massachusetts Society of Clinical Oncologists

MSCO Report of Counsel Report

The Massachusetts State House remains closed and the legislature continues to meet in virtual sessions, as well as conduct public hearings on bills virtually. As we move into the fall, there is a hope the State House will reopen, but the Delta variant is putting a damper on expectations.

MSCO continues to be active on the legislative front on behalf of oncologists and their patients. This session MSCO has joined with patient advocates and other medical specialty societies to support the following bills:

Step Therapy/Fail First Legislation, H.1311 & S.756

The bills would protect patients by regulating "Step Therapy" policies used by health insurers to determine coverage for prescription medications. Step therapy protocols are used by insurers to control costs, by requiring a patient to try and fail one or more lower cost drugs chosen by the insurer before coverage is allowed for the drug selected and prescribed by the patient's physician. Because step therapy requires a process of fail first on drugs selected by the insurer before the medication prescribed by the patient's physician can be covered by insurance, it can seriously delay access to the best therapy for the patient. For cancer patients, these delays can result in patients experiencing disease progression, unnecessary suffering and delay in appropriate disease treatment.

H.1311 & S.756 do not prevent insurers from using step therapy, but provides a common sense approach to the issue by requiring requests for exemption be acted upon by the insurer within 72 hours based on protocols contained in the legislation, and in certain circumstances allowing physicians to override the insurer's step therapy protocols. The bills also require that step therapy protocols used by insurers be based on clinical practice guidelines developed by an independent multi-specialty panel of experts.

MSCO past president, Eric Wong, M.D., and his patient, Deborah Fox, testified at a hearing before the Legislature's Health Care Financing Committee in favor of the bills on July 13, 2021.

Co-Pay Accumulators, S.644 & H.1053

The bills would ban co-pay accumulator programs in Massachusetts. Co-pay assistance provided by pharmaceutical companies and nonprofits provide needed financial support for consumers to enable them to afford their prescribed medications, particularly for consumers with large out of pocket deductibles or co-pays for their health insurance. The co-pay assistance is intended to help patients cover their co-pay or deductibles and afford their needed medications.

Some insurance companies and PBMs are using co-pay accumulators to apply the co-pay assistance to the insurers' portion of the cost of medication, rather than to the patient's. Copay accumulators allow the insurance company to effectively double dip and get paid TWICE- once from the copay assistance and then again by patients' deductibles.
MSCO and ASCO jointly submitted testimony in support of S.644 & H.1053 at a hearing before the Legislature's Financial Service Committee on September 21, 2021.

Telehealth

Chapter 260 of the Acts of 2020, passed at the end of the 2020 session, mandates insurance coverage, including MassHealth, for telehealth services in any case where the same in-person service would be covered and the use of telehealth is appropriate. Telehealth coverage includes interactive audio-video, audio only telephone and on-line interactive adaptive interviews. Because of the pandemic, payment parity with in-person services will be in effect for primary care and chronic disease management until January 1, 2023 (Chronic Disease Management would include diabetes, chronic obstructive pulmonary disease, asthma, congestive heart failure, hypertension, history of stroke, cancer and coronary artery disease). Thereafter, payment rates for telehealth need not be the same as in-person services. Behavioral health payment parity is permanent.

Parity in reimbursement for all other telehealth services (not considered primary care, chronic disease management or behavioral health) expires 90 days after the Covid-19 state of emergency ends, or September 15th. Note – this does not mean insurers will not reimburse for those telehealth services. It means they are not bound to reimburse at the same rate as face to face services. However, the Division of Insurance (DOI) has issued a bulletin requiring insurers to file with the Division for approval any plans for paying telehealth at less than in person parity for those services not primary care or chronic disease management. If approved by DOI, the rate deviation would go into effect 60 days after approval. Given the timing for filing and notice, it is likely parity for those medical services will remain in effect at least until the end of the year.

Regulations to implement Chapter 260, including further defining primary care and chronic disease management, among other provisions, are still being developed by DOI. As part of the regulatory process, the DOI held several Listening Sessions which were closely monitored by the MSCO.

The medical community is urging the DOI to adopt a broader definition for chronic disease management akin to the definition utilized by the CDC which state that "Chronic diseases are defined broadly as conditions that last 1 year or more and require ongoing medical attention or limit activities of daily living or both." The value of this approach is to eliminate the need for specific diagnosis and instead to focus on conditions that can be controlled, but not cured… the classic definition of chronic disease.

The question of how to interpret Chapter 260 as it relates to telehealth, and what constitutes chronic disease management is still before the DOI. At this time, it is unclear when those regulations will be finalized and released, it could be up to another month or so.

Concurrently, another option being pursued by the medical community, relative to telehealth, is a legislative remedy. As a member of the Telehealth Coalition, MSCO is also supporting language pending before the legislature that will broaden the definition of chronic disease management and/or extend the current requirement of parity beyond the two year sunset mark. As part of this discussion, the Coalition is noting what physicians know all too well - Telehealth increases access to care and is here to stay. It should be reimbursed by insurers equal to face to face visits.

Bottom line – Efforts to amend Chapter 260 as it relates to reimbursement for telehealth services is multipronged and very fluid. MSCO will be following this issue very closely.