

## **Behavioral Health Law Ledger | December 2022**



### **Welcome to the Ledger**

Welcome to the sixth issue of Greenberg Traurig’s quarterly Behavioral Health Law Ledger, keeping behavioral health and integrated health providers current on behavioral health legal and regulatory developments. Each quarter we highlight recent legal developments, including but not limited to audit risks, significant litigation, enforcement actions, and changes to behavioral-health-related laws or regulations such as health privacy, confidentiality, and/or security issues, consent issues, data-sharing allowances, and other cutting-edge arrangements and issues facing behavioral and integrated health care providers.

### **U.S. Congressional Activities at Year-End: Senate and House Prioritize Mental Health Services**

The Senate and House are aiming to adjourn before Jan. 1, 2023 – and have an ambitious agenda of extending certain governmental programs and related funding, as well as addressing various policy issues. A key health care issue under discussion is greater support for mental health services.

The increase in violence and the demand for greater mental health services in virtually all communities is leading Congress to pursue new solutions to ensure care is available and to expand identification and prevention services for at-risk individuals.

The Senate Finance Committee has released another proposal to finance the availability of mental health services by investing in mobile vans and funding to increase the Medicare behavioral health/health care integration of services. In addition, senators have recommended that the Center for Medicare & Medicaid Innovation consider including behavioral health service alignment in developing new models of care.

The purpose of this current effort is to improve the crisis response for and stabilization of Medicare patients who need mental health services. This action is aligned with previous legislative efforts that have funded state activities to expand services, especially those aimed at integration with primary care. Under Medicare, senators are proposing a single global payment for physicians to fund mobile crisis response team services.

The House of Representatives is working on similar efforts to increase the supply of behavioral health providers, support broader outreach, and focus on a prevention strategy. While these efforts are “top of mind,” it is unclear what will be included in any final year-end bill.

If there is an agreement to move forward, watch for increased Medicare funding and funding to states to expand availability of services and funding to align mental health care with primary care services programs.

## California Overhauls Its Behavioral Health Care System

The state of California has made significant expansions to and investments in the behavioral health care delivery system available to Californians in its ongoing efforts to achieve several goals: (1) to curb the growing costs of health care in the state, (2) to provide necessary behavioral health care services concomitant with the growing need for such services stemming from the COVID-19 pandemic and the homelessness crisis, and (3) to reduce long-term health care costs by way of providing effective and timely behavioral health care services. The state of California seeks to achieve these goals via several new initiatives, some of which are discussed below.

### 1. Community Assistance, Recovery, and Employment (CARE) Courts to Address Untreated Mental Illnesses

Pursuant to [California Senate Bill 1338](#) (SB 1338), several California counties are required to create a new CARE court no later than Oct. 1, 2023. CARE courts are designed to address the needs of Californians with untreated severe mental illness. The designated counties include Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne, with the remaining California counties to follow suit by Dec. 1, 2024. CARE courts will be authorized to order clinical evaluations of qualifying individuals and order a treatment plan focused on community assistance, recovery, and empowerment (a “CARE Plan”) of the person through medication services, social services, housing assistance, etc. SB 1338 also directs that California-regulated health plans pay for evaluations and services mandated or recommended through a CARE plan without regard to whether the provider is contracted with that plan or whether prior authorization was received. Individuals will be able to petition the CARE courts for eligible individuals, which will include the person experiencing a current severe mental illness, clinical instability, and other requirements.

### 2. Mandatory School-Based Services through a New Children and Youth Behavioral Health Initiative (CYBHI)

California strives to improve behavioral health services for children and youth through its new [CYBHI](#), which will expand behavioral health care services by making such services readily accessible at schools. To facilitate this and encourage participation by providers, [California Assembly Bill 133](#) (AB 133) instructs the California Department of Health Care Services (DHCS) to develop a new statewide minimum fee schedule for “school-linked” outpatient mental health or substance use disorder treatment services for students aged 25 or younger. Under AB 133, all health plans regulated by the state of California will be required to pay providers of school-linked behavioral health services no less than the minimum fee schedule amount,

regardless of whether the provider has a contract with the health plan. DHCS intends to leverage this fee schedule to create a sustainable funding source for school-linked behavioral health care services, regardless of payor/health plan.

Another facet of the CYBHI is that DHCS will develop and select evidence-based interventions and practices to improve outcomes for at-risk kids and kids diagnosed with behavioral health conditions, and provide financial incentives for parties investing in these programs. DHCS will provide a virtual platform for the delivery of tele-behavioral health care services to Californians aged 25 and younger, regardless of payor. Specifically, DHCS is tasked with procuring a vendor to establish and maintain such a platform.

### 3. Improvements and Integration of the California Advancing and Innovating Medi-Cal (CalAIM) Initiative

CalAIM will create new, standardized patient screening tools for referrals to the California county behavioral health systems, which is but one avenue through which Medi-Cal beneficiaries can obtain behavioral health care services currently. Medi-Cal beneficiaries may also seek behavioral health services for “mild to moderate” behavioral health care services through California’s Medi-Cal Managed care health plans as well. To that end, California has implemented a “no wrong door for mental health services policy” effective as of July 2022 that allows providers to bill both counties and Medi-Cal managed care plans for clinically appropriate mental health services during an assessment period or prior to a determinative diagnosis. These changes are intended to ensure that beneficiaries can maintain a treatment relationship with providers under one or both plans (and to give providers flexibility when billing for these services) until an appropriate referral is made.

The CalAIM Behavioral Health Payment Reform initiative also seeks to move counties away from cost-based reimbursement to facilitate value-based payment models that reward better care and quality of life for Medi-Cal beneficiaries. Counties will also be relieved of the burdens associated with current cost-based reimbursement processes with DHCS for behavioral health services via the Medicaid Certified Public Expenditure (CPE) methodologies. This payment reform transition will also entail specialty mental health and substance use disorder services to change from Healthcare Common Procedure Coding system (HCPCS) Level II coding to Level I coding, using the Current Procedural Terminology (CPT) codes when possible. These payment reforms are anticipated to go into effect on July 1, 2023.

#### Let’s Stay in Touch

We want to stay in touch with you. Through this newsletter, we will share tips and updates we have learned in the course of our services to clients, and we will do our best to facilitate an interactive dialogue with behavioral and integrated health providers and the issues they are facing in their businesses. If you know someone who would appreciate receiving GT’s Behavioral Health Law Ledger, please forward this newsletter to them, or they can [subscribe here](#).



#### Contributors

##### Julie A. Sullivan

Shareholder

+1 303.685.7412

[Julie.Sullivan@gtlaw.com](mailto:Julie.Sullivan@gtlaw.com)

##### Nancy E. Taylor

Shareholder

+1 202.331.3133

[taylor@gtlaw.com](mailto:taylor@gtlaw.com)

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