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TOP HEALTHCARE LAWYERS 2023

Initiating Change and Confronting Headwinds to Advance Health Equity in California

By Sandi Krul

COVID-19 brought to the nation's forefront the realization of just how ubiquitous longtime systemic health care disparities are in the U.S. Following the start of the pandemic, we have since witnessed the rollout of important legislation and other strategic initiatives designed to advance health equity and to tackle those injustices. But are they sufficient?

In California, one of the most transformative changes has been the multi-year redesign of Medi-Cal through the January 2022 implementation of CalAIM (California Advancing and Innovating Medi-Cal), which was advanced by the Jan. 27, 2021, Health Omnibus Trailer Assembly Bill 133. CalAIM is a whole-person care approach designed to counter the current fragmented system of care, with the laudable goal of empowering health care providers to work more seamlessly with social services providers that serve California's most vulnerable residents. Through CalAIM, the State will now cover the cost of certain non-medical "Community Supports" to address social drivers of health, such as short-term post-hospitalization housing, housing transition navigation services, and respite services. CalAIM also provides a new "Enhanced Care Management" (ECM) benefit for certain "Populations of Focus," such as persons experiencing homelessness and adults and children suffering from serious mental or substance use disorders.

California is also expanding access to Medi-Cal coverage. One focus is on the justice-involved population as they prepare to re-enter their communities. Effective Jan. 1, 2023, California Penal Code Section 4011.11 requires all counties to implement pre-release Medi-Cal application enrollment processes in county jails and youth correctional facilities. This year, California also became the first state to receive CMS approval to waive the inmate exclusion and provide certain Medicaid services during the 90 days preceding an inmate's release.

Recognizing the challenges that persons experiencing homelessness face in accessing care, and the resulting increase in health complications and costly emergency room services, the State's Department of Health Care Services (DHCS) sought to improve care to that population by providing guidance to Medi-Cal managed care plans (MCPs) through its November 2022 All Plan Letter (APL) 22-023 on opportunities to utilize street medicine providers to proactively seek out and care for unsheltered Medi-Cal members. The APL policy position reduced obstacles to reimbursement for street medicine providers and encouraged MCPs to contract with them for both clinical care and non-clinical services such as CalAIM ECM services. To put the overall significance in perspective, Brett Feldman, Director and Co-Founder of USC Street Medicine, estimates that the number of street medicine programs across the state have nearly doubled following the new policies under CalAIM and DHCS's 2022 APL.

Taking heed of the adage that "you can't manage what you can't measure," there are new legal requirements around health equity measurements.

The California Department of Managed Health Care (DMHC), as directed by Assembly Bill 133 (adding Article 11.9 to Chapter 2.2 of Division 2 of the Health and Safety Code), established standard health equity and quality measures for health plans to report on annually, as outlined in DMHC's APL 22-028. Commencing this year, DMHC-licensed full service and behavioral health plans, includ-

ing Medi-Cal MCPs, are required to start collecting data on these measures. Beginning next year, they will be required to start reporting on these measures, stratified by race and ethnicity. DMHC intends to use this information to establish targets for plans to reduce disparities and, in 2025, will begin publishing a Health Equity and Quality Compliance Report on the data and information reported by health plans.

On the hospital side of the equation, California's Medical Equity Disclosure Act (Health and Safety Code Section 127370 et seq., effective Jan. 1, 2022) requires California's Department of Health Care Access and Information (HCAI) to develop and administer a program for hospitals to collect data and post annual hospital equity reports. The equity reports (first due by Sept. 30, 2025, but not until 12 months after release of the CMS health equity quality measures), will be required to analyze health status and access to care disparities for patients on the basis of age, sex, race, ethnicity, language, disability status, sexual orientation, gender identity and payor source. Each hospital's health equity report will also need to include a plan to reduce the identified disparities, with measurable objectives and specific timeframes for disparity reduction. HCAI's newly-created Health Care Equity Measures Advisory Committee will make recommendations to HCAI regarding the disparities and performance areas to be addressed in the health equity plans.

Similar health equity measurement and reporting requirements are being developed through California's new Office of Health Care Affordability (OHCA), which was established within HCAI pursuant to the California Health Care Quality and Affordability Act, and requires coordination and consultation with DMHC, DHCS and others with similar programs and expertise (California Health and Safety Code Section 127503, effective Sept. 29, 2022).

These programs are aimed at various structural touchpoints to address health disparities, and are certainly positive steps, but weighty challenges remain. Perhaps the most significant challenges are underinvestment and disparities in reimbursement to providers that serve disadvantaged communities. Medi-Cal reimburses primary care providers as little as 70% of Medicare's already low rates (though the State is considering increasing Medi-Cal reimbursement for providers in primary care, maternity care, and non-specialty mental health care to 87.5% of Medicare). As a result, too few Medi-Cal providers are willing to deliver the needed care. Compounding this situation is that studies show a majority of patients from racial or ethnic minority groups place importance upon receiving care from a doctor who reflects their diversity, but that diversity is woefully short in today's physician workforce. Dr. Elaine Batchlor, CEO of MLK Community Health care in South Los Angeles (which operates its own street medicine program), sums it up well: "While adding value by investing in street medicine and other health equity initiatives, the most serious issue – the one with the greatest impact on vulnerable communities – remains. Without addressing low Medi-Cal provider rates, CalAIM's ability to make meaningful change for communities like ours is questionable."

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