

This issue is part of a series of periodic reports from the National Health Law Program's Washington office, reporting briefly on recent and forthcoming developments in federal policy of interest to NHeLP advocates and friends. We always appreciate your feedback and comments.

Please send them to Sarah Lichtman Spector at lichtmanspector@healthlaw.org. For updates and information on NHeLP publications, go to <http://www.healthlaw.org>

SUBJECTS COVERED

Health Reform

Updated Schedule in House and Senate

Senate Finance Committee Bill

House Tri-Committee Bill

Bill of Interest

Medicare Premium Fairness Act

Executive Agency Actions

CMS Children's Health Insurance Program Implementation Guidance re: Medicaid

Managed-Care Newborn Children, and Pregnant Women

HIT Rules: HHS Interim Final Breach Notification for Unsecured Protected Health Information and FTC Health Information Breach Final Rule

HHS – \$650 Million for Prevention and Wellness Funds Available

HHS – Awards Over \$95 Million to States and Health Centers

Presidential Appointees

Senate Update

Resources **HEALTH REFORM** *Projected Schedule in Senate and House* In the Senate, the Senate Finance Committee released its bill, and began markup on September 22. The markup has not yet been completed. Click

[here](#)

for a copy of the full text of the bill issued on September 16, a list of amendments filed posted on September 19, and modifications that have been accepted thus far posted on September 22.

Note: The Senate Finance Committee bill that has been released, as well as all corresponding amendments, were written using “conceptual language.” Legislative bill language has not yet been released. Click

[here](#)

to see a live webcast or get further details on amendments and a schedule of the Senate Finance Committee.

Selected highlights of interest include:

- **Appeals and Ombudsman Services:** The creation of an Ombudsman's office to serve people who have individual and small group private insurance. The Ombudsman's office could assist with solving problems and filing appeals for services that have been denied, and solving problems with premium and cost-sharing credits for the Exchange. Further, each private health plan would be required to have an internal appeals process. Other possible amendments include: provision of external appeals process standards and inclusion of Ombudsman services applying to internal appeals in most situations.

- **Home and Community-Based Care:** Creates a new state option under Section 1915 – Community First Choice Option – that would allow community-based attendant and support services to provide assistance with activities of daily living and health-related tasks to Medicaid recipients with disabilities who otherwise would need an institutional level of care. States that choose this option could receive a six percent increase in federal reimbursement for services provided under this option. The option would sunset after five years. The bill also applies spousal impoverishment rules currently in place for persons in institutions to persons applying for home- and community-based services.

- **Immigrant Coverage:** On the negative side of the ledger, the bill does not allow undocumented immigrants to purchase insurance through the newly created Exchange, even without a government subsidy. Further, the bill does not lift the waiting period for legal immigrants to be eligible for Medicaid, CHIP or Medicare. Possible amendments being considered include a waiting period for legal immigrants to be eligible for the Exchange and burdensome documentation requirements.

On July 15, the HELP Committee completed its markup and approved the Affordable Health Choices Act (13-10), on a strict party line vote. For the full text of the bill, click [here](#). The Senate bills will be merged prior to consideration on the floor, although the process for doing that remains unclear.

The projected schedule in the Senate is:

- Early October: Senate Finance Committee completes Markup.
- Early October: Finance and HELP Committees merge their bills into one Senate health reform bill.
- By End of October: Votes by full Senate on health care reform legislation.

On July 31, the House Energy and Commerce Committee concluded a five-day markup and voted its portion of the bill out of committee (31-28). Five Democrats and all Republicans voted against the bill. On September 23, the Committee reconvened a markup session, voted on additional amendments that remained when the Committee recessed on July 31, and sent the bill to the Rules Committee for further action. Amendments of note include:

- The committee approved an amendment (30-28) stating that health plans may cover or not cover abortion, but stipulated that insurers must use money from private sources to pay for

any abortions. The amendment said abortion could not be included in the “essential benefits package” to be defined by the government, but, in every part of the country, the government must ensure that there is at least one plan that covers abortion and at least one that does not. Democrats described this amendment as a compromise.

- The committee approved an amendment establishing standards that Exchange health plans must use for utilization review, and internal and external appeals regarding denials, terminations and reductions of services. Notable provisions include: during utilization review requiring notice to a beneficiary prior to the denial, termination, or reduction of services sufficiently in advance to allow a decision on the appeal prior to the proposed action; allowing an internal appeal to be requested orally, if followed by a written request; allowing a minimum of 180 days to file an internal grievance; establishing an expedited review process; and, setting forth standards for external review that include a de novo determination. However, these procedures do not cover determinations concerning eligibility for or the amount of the subsidy a person may be entitled to receive.

Click [here](#) for the House Tri-Committee (Ways and Means, Education and Labor, and Energy and Commerce) health reform legislation, H.R. 3200. Click [here](#) for a section by section summary of the bill developed by House staff. See the Resources section below for links to substantive summaries and analyses.

The projected schedule in the House is:

- First half of October: Rules Committee reports out combined bill from the Tri-Committee and decides which amendments may be considered by the full House.
- Mid to Late October: Votes by full House on legislation.
- November: Conference committee works to combine House-passed and Senate-passed legislation.
- Mid to Late November: Votes by full House and Senate on conference report/single bill.

BILL OF INTEREST *Medicare Premium Fairness Act* On September 24, the Medicare Premium Fairness Act (H.R. 3631) passed the House of Representatives by a vote of 406-18. This bill prevents Medicare Part B premiums from increasing in 2010, by holding the premiums steady at 2009 rates. Due to the economy, there is anticipated to be little or no cost-of-living adjustment in Social Security income, so rising Part B premiums were likely to cause a hardship to many Social Security beneficiaries. The bill has now been sent to the Senate Committee on Finance for action.

EXECUTIVE AGENCY ACTIONS *New Children's Health Insurance Program Implementation Guidance Issued by CMS: CHIP Managed Care Plans, Newborn Deeming, and Pregnant Women*

A State Health Official letter regarding [CHIP Managed-Care Plans](#) extends the Medicaid managed care regulations to those plans. The letter also clarifies that the enhanced reimbursement rate for language services (75 percent or higher in some circumstances)

established under CHIPRA can be used by states to claim portions of capitated managed-care rates that can be attributed to provision of language services. (Issued 8/31/09.)

A State Health Official letter regarding

[Newborn Deeming](#)

discusses the new CHIPRA provision that extends deemed newborn eligibility for Medicaid or CHIP to children born to mothers who have CHIP. It also addresses the CHIPRA provision that amends the Deficit Reduction Act to provide that newborns initially deemed eligible for Medicaid or CHIP are considered to have provided satisfactory documentation of identity and citizenship when their eligibility is renewed at their 1st birthday. (Issued 8/31/09.)

A State Health Official letter and

[Q & A regarding Coverage for Pregnant Women under CHIP](#)

supplements guidance issued to the states on May 11, 2009. (Issued 9/3/09.)

HIT Breach of Confidential Information Rules: HHS Interim Final Rule and FTC Final Rule

The Office for Civil Rights, U.S. Department of Health and Human Services issued an Interim Final Rule with a Request for Comments on August 24, 2009. The interim rule requires covered entities under HIPPA and their business associates to inform individuals when there has been a breach of their personal protected health information, as required by the American Recovery and Reinvestment Act of 2009 (ARRA). One controversial portion of the interim rule states that prior to notification being required, a risk assessment and determination of harm to individuals must be made by the breaching entity.

Possible action:

Comments are

due to HHS by October 23, 2009

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[here](#)

to view the full Rule and instructions for comment. Those wishing to comment on the HHS Interim Rule may want to compare it with the FTC Final Rule (discussed below), which requires notification of all breaches and does not place the assessment of risk in the hands of the entity

that has allowed the breach.

The FTC Final Rule on Health Information Breach (16 CFR Part 318) was issued on August 25, 2009. The rule requires vendors of personal health records and related entities to notify consumers when the security of their individually identifiable health information has been breached, per requirements in ARRA. The rule applies to breaches of security on or after September 24, 2009. The Rule and explanatory language describe the FTC's approach and rationale, and provide a response to comments regarding a threshold harm determination prior to notification of a breach.

HHS Announces \$650 Million for Prevention and Wellness Initiative

These funds from ARRA will be used to increase physical activity, improve nutrition, and decrease obesity and smoking in U.S. communities. Communities and tribes can apply through the comprehensive public health initiative, *Communities Putting Prevention to Work*, to be led by the Centers for Disease Control (CDC). Applications are due by December 1, 2009. For more information, click [here](#).

HHS – Awards Over \$95 Million to States and Health Centers

On September 3, 2009, HHS announced \$70.9 million in grants to 13 states to support the expansion of health care coverage for their uninsured populations. The states receiving funds are Colorado, Kansas, Maine, Minnesota, Nevada, New York, North Carolina, Oregon, Texas, Virginia, Washington, West Virginia and Wisconsin. For more information, including the amount received by each state, click [here](#).

On August 23, 2009, HHS announced \$25.7 million in grants to community health centers. One hundred eighty grants will be given to existing health centers to help improve and increase their

current level of services. Forty-eight planning grants will be awarded for the development of new health center sites. For a full list of grantees, the locations and funding levels, click [here](#).

STATUS OF PRESIDENTIAL APPOINTEES *U.S. Health and Human Services:* On August 31, Georgina Verdugo became the new Director of the Office for Civil Rights. Verdugo worked as an Assistant U.S. Attorney in California, as Deputy Assistant Attorney General in the U.S. Department of Justice's Office of Legislative Affairs during the Clinton Administration, as Chief of Staff for Rep. Lucille Roybal-Allard, and at the Mexican American Legal Defense and Education Fund.

On September 22, the Senate confirmed Carmen Nazario as Assistant Secretary for Children and Families. Nazario served as Administrator of the Administration for Children and Families for the Commonwealth of Puerto Rico for the last five years. During the Clinton Administration, she first served as Associate Commissioner for Child Care and later became the Principal Deputy Assistant Secretary at the Administration for Children and Families.

SENATE UPDATE On September 25, 2009, Paul Kirk, a former aide to Sen. Ted Kennedy, was sworn in as a U.S. Senator from Massachusetts, filling the vacancy left by Kennedy's death. Sen. Kirk will serve in the Senate until a special election is held in January 2010. He will not run in that election. Kirk's appointment brings the Democrats back to 60 votes with the two independent Senators who often vote with them.

RESOURCES

Health Reform:

Kaiser Family Foundation has an [Interactive Comparison Tool](#)

, as well as a

[Subsidy Calculator](#)

that can calculate the approximate amount of a subsidy that a family or individual may be eligible to receive under the different legislative health reform proposals. The Interactive Comparison Tool has summaries of all the proposals.

Professor Jacob Hacker of Yale University, "

[Public Plan Choice in Congressional Health Plans: The Good, the Not-So-Good, and the Ugly](#)," explains why a public option is a necessary component to health reform and why it is unlikely that cooperatives will achieve their intended goals.

FACTOID By 2007, over 62 percent of all bankruptcies were related to medical bills.

Three-fourths of those declaring medical bankruptcy had health insurance. As recently as 1981, only eight percent of families filing for bankruptcy did so in the aftermath of a serious medical problem. (*American Journal of Medicine*, August 2009.)