

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 Deborah Reid at reid@healthlaw.org. For updates and information on NHeLP publications, go to <http://www.healthlaw.org>

SUBJECTS COVERED

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New CMS Medicaid Regulations

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F.Y. 2009 BUDGET

The Senate passed the concurrent resolution on the budget for F.Y. 2009 (S. Con. Res. 70) on March 14 by a vote of 51-44. The budget resolution included important provisions establishing several deficit-neutral reserve funds. These reserve funds will provide financial accountability for Congress to pass legislation in several key areas, including: reauthorizing the State Children's Health Insurance Program (SCHIP) at a funding level up to \$50 billion for FYs 2008-2013 in order to maintain current SCHIP enrollment levels, continue outreach to uninsured children who are eligible for Medicaid or SCHIP, and support state efforts to cover more uninsured children; delaying the implementation of new CMS rules and administrative actions that restrict Medicaid or SCHIP payments and financing (see below); expanding access to pediatric dental care for low-income children; and extending the Transitional Medical Assistance program.

NEW CMS MEDICAID REGULATIONS

In 2007, the Centers for Medicare & Medicaid Services (CMS) issued seven key regulations that would impact federal Medicaid policy and payments. One regulation limits how states can formulate state revenues to fund the state share of Medicaid expenses; two regulations reduce Medicaid reimbursements for services in public hospitals and teaching hospitals; and the remaining regulations limit the scope of allowable Medicaid coverage for school-based administrative and transportation costs, and services related to rehabilitation, case

management, and hospital care. The regulations were scheduled to become effective at various points in 2007 or 2008. Although Congress passed bills that temporarily delayed some of the effective dates of these regulations, several of the moratoria are scheduled to expire in May or June of 2008 (see discussion of "Protecting the Medicaid Safety Net Act of 2008" below).

In addition, on February 22, CMS published two new proposed rules that implement provisions in the Deficit Reduction Act of 2005 (DRA) and the Tax Relief and Health Care Act of 2006 (TRHCA) to allow states to impose greater premium and cost-sharing requirements on selected Medicaid beneficiaries, and to implement benchmark plans. Specifically, individuals with family incomes above 100 percent of the Federal Poverty Level (FPL) would be subject to cost-sharing requirements, while those with incomes above 150 percent FPL would also be subject to monthly premiums. While CMS in this instance remained more or less true to the authority that Congress granted it, the regulations do implement the mandatory inflation adjustment to copayments in a way that over time will result in higher copayments than Congress intended. On March 18, Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) sent a letter to HHS Secretary Michael Leavitt, detailing their concerns about the proposed co-payment inflation formula. The letter also requested that HHS clarify that co-payments for all Medicaid beneficiaries with income below the FPL be the same in both managed care and fee-for-service settings.

The second proposed rule would permit states to enroll "full benefit eligible" Medicaid beneficiaries into specially designed benchmark plans that offer coverage similar to the Federal Employees Health Benefit Plan (FEHBP), state employee coverage, or the commercial health maintenance organization in their state with the greatest state enrollment. Nevertheless, advocates fear that vulnerable populations will receive fewer benefits because of their mandated enrollment in benchmark plans.

BILLS OF INTEREST

Protecting the Medicaid Safety Net Act of 2008

On March 13, Representatives John Dingell (D-MI) and Timothy Murphy (R-PA) introduced the "Protecting the Medicaid Safety Net Act of 2008," (H.R. 5613). The bill would impose a one-year moratorium (until April 1, 2009) on the seven CMS regulations discussed above. The legislation is intended to provide additional time for further legislative and administrative consideration of provisions that would impose cutbacks in areas that are essential to the proper operation of the Medicaid program, such as case management services, medical transportation to school for children covered by Medicaid, public safety-net institutions, rehabilitation services for individuals with disabilities, and outreach and enrollment in schools. The House Energy and Commerce Committee is currently considering H.R. 5613.

Vitter Amendment and the Reauthorization of the Indian Health Care Improvement Act

As part of a bill to amend and reauthorize the “Indian Health Care Improvement Act,” (S. 1200), the Senate approved Senator David Vitter’s (R-LA) amendment (S. 3896) that would exclude funding for abortion services or use of Indian Health Services facilities for this care in most circumstances. The Senate approved both the Vitter Amendment and the reauthorization of the Indian Health Care Improvement Act on February 26 by votes of 52-42 and 83-10, respectively. S. 1200 is now before the House Committees on Natural Resources, Energy and Commerce, and Ways and Means.

Mental Health Parity

On March 5, the House passed the “Paul Wellstone Mental Health and Addiction Equity Act of 2007,” (H.R. 1424) by a vote of 268-148. Among other provisions, the legislation calls for health insurers that currently offer medical, surgical, mental health, and substance abuse benefits to provide comparable coverage with regard to frequency of treatment, number of visits, and other treatment limitations for all health benefits. The bill also requires health insurers that offer mental health and substance abuse benefits to provide coverage for any mental health condition or substance-related disorders included in the most recent edition of the American Psychiatric Association’s publication, Diagnostic and Statistical Manual of Mental Disorders. Previously, the Congressional Budget Office estimated that the legislation would increase direct spending for Medicaid by \$310 million from 2008 to 2012 and by \$820 million between 2008 and 2017.

Beneficiary protections in H.R. 1424 also establish a federal floor of protections that do not preempt state laws that have better benefits, consumer protections, or legal remedies than those provided in the bill. The Bush Administration, however, currently opposes the House version of the mental health parity bill.

The Senate-approved “Mental Health Parity Act of 2007,” (S. 558) is currently awaiting reconciliation with the House version of the bill. Some health insurers and employers reportedly support the Senate bill, since it is less stringent in terms of the breadth of mental illnesses and

substance abuse disorders that would have to be covered. In addition, while S. 558 clearly does not preempt more protective state insurance law requirements for employers with 50 or fewer employees, the bill is silent with regard to whether such laws would continue to apply to larger businesses. Meanwhile, on March 18, a bipartisan group of 25 senators sent a letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) supporting both bills and requesting that a compromise be reached in order to pass legislation to improve the health of those experiencing mental illness and/or substance abuse disorders.

FEDERAL FACTOID

According to The Administration's Medicaid Regulations: State-by-State Impacts, a March 2008 report issued by the House Committee on Oversight and Government Reform for Chairman Henry Waxman (D-CA), the results of a survey of state Medicaid directors indicated that the proposed CMS regulations that would be subject to H.R. 5613 would reduce federal Medicaid payments to the states by \$49.7 billion over the next five years, which is more than three times the Bush Administration's projected estimate of \$15 billion. The report is can be found at: <http://oversight.house.gov/documents/20080303111450.pdf> .

RESOURCES

NHeLP recently released an updated 50 state survey that identifies state statutes and regulations related to language access and healthcare. The survey is located at: <http://www.healthlaw.org/library/item.174993> . The provisions are coded to facilitate searches for particular health care settings or issues. For information on individual states, click on the relevant state from this link -- http://www.healthlaw.org/library/folder.71231-State_Activities.

The Commonwealth Fund recently issued Racial and Ethnic Disparities in the U.S. Health Care: A Chartbook, a publication that contains charts and accompanying analyses that connect health disparities to the overall performance of local health care systems. For further information, go to: <http://tinyurl.com/34cq8k> .

