

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>.

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HEALTH REFORM

The path forward on health reform is unclear as the White House and Congress determine their next steps after Scott Brown, a Republican, was elected in Massachusetts, replacing Sen. Ted Kennedy. Before the election, the House and Senate were working on merging the Senate and House bills into a single bill that would have been voted on by both chambers. Because Senator Brown's election increases the Republican seats in the Senate to 41, Democrats no longer control the 60 seats necessary to overcome a filibuster, which Senate Republicans stated they would use to stop passage of the health reform legislation. So a single bill merging the two prior bills is no longer viewed as an option.

A number of options exist for going forward. First, the House could pass the Senate legislation. (Go to [December 2009 Capital Communique](#) for a comparison of the House and Senate bills.) Then, to address some of the key concerns raised by House members who would not otherwise support the Senate bill, both the House and Senate could pass a second bill that amends the original Senate bill. These concerns include the subsidy amounts for low-income persons in the Exchange and the tax on the most-expensive plans. This would happen through a process called "reconciliation," which is not subject to a filibuster in the Senate and could pass with a majority vote. However, Senate rules require that all issues addressed through reconciliation impact the federal budget, and thus the rules limit the scope of which changes could be considered. This option - enacting the Senate bill and then amending it through reconciliation - would allow a comprehensive health reform bill to move forward.

A second option is to move away from comprehensive health reform and pass one or more smaller bills with bi-partisan support. Possible proposals being discussed include: repealing an

anti-trust exemption that exempts insurance companies from anti-trust laws, and allowing young adults to stay on their parent's health insurance plan until age 26. A third option is stopping efforts at health care reform altogether and focusing on bills to address the economy, the environment and other issues. There have been preliminary indications that Speaker Pelosi may use the reconciliation process to move comprehensive health reform legislation forward.

Possible Action: Those interested in doing so could urge the White House and Members of Congress to enact comprehensive meaningful health care reform. Any health reform package should contain an increase in Medicaid eligibility for low-income persons up to 150 percent of the federal poverty level (currently included in the House bill). Further, a comprehensive health reform effort should address the needs of low-income persons (providing adequate subsidies in the Exchange), women (providing comprehensive coverage of family planning and abortion services), and immigrants (treating them equitably in Medicaid and in the Exchange).

EXECUTIVE AGENCY ACTIONS

HHS Office of Minority Health Issues Action Plan to End Health Disparities - Comments Sought

The National Plan for Action, Changing Outcomes - Achieving Equity, describes current racial and ethnic health disparities in the U.S. and proposes 20 strategies for their elimination. OMH sought input in developing the plan from a diverse audience including representatives from community, faith-based and non-profit organizations, academic institutions, foundations and federal, state and local agencies. The goal of the National Plan is to increase the effectiveness of programs that target the elimination of health disparities and to serve as a catalyst for action in a number of areas including: improving health and health care outcomes for racial and ethnic minority populations; improving cultural and linguistic competency; and improving coordination and utilization of research and evaluation of health disparities. Click [here](#) to find the full report and comment form.

Possible Action: Those wishing to do so could submit comments on the National Plan by **February 12, 2010**.

An online comment form accompanies the report on the OMH website.

"Meaningful Use" Proposed Regulations

On January 13, 2010, CMS and the Office of National Coordinator (ONC) for Health Information Technology released companion proposed rules to define and set standards for "meaningful use" - a term critical to implementation of Electronic Health Records (EHR) incentive programs established by the American Recovery and Reinvestment Act of 2009 (ARRA). Meaningful use is the statutory standard that must be met by those seeking federal funds to support their EHR efforts.

The CMS rule establishes proposed payment methodologies for the Medicare and Medicaid EHR incentive programs. The rule issued by ONC is an interim final regulation and sets initial

standards, implementation specifications, and certification criteria for EHR technology. For the full text of the CMS proposed rule, fact sheets and more information on CMS EHR policy, click [here](#).

For the full text of the ONC interim final rule, and other ONC standards and policy recommendations, click [here](#).

Possible Action: Those wishing to do so could submit comments by **March 15, 2010**.

HHS Proposes Quality Measures for Medicaid and CHIP

On December 29, 2009, HHS issued notice of initial recommended children's health care quality measures. These measures are for voluntary use by those providing services in state Medicaid and CHIP programs, including states, health insurance plans, managed care organizations, and health care providers. HHS is soliciting comments and recommendations regarding the measures and their use. For the full text of the notice, click [here](#).

Possible Action: Those wishing to do so could submit comments by **March 1, 2010**.

CMS CHIP Implementation Guidance Issued -- Citizenship Verification

A State Health Official letter offers guidance regarding new provisions in the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) addressing citizenship verification requirements. Three important changes are now in effect: 1) A state must provide a "reasonable opportunity" period (defined by the state) while a state or individual provides documentation or verification of citizenship. A state must provide Medicaid/CHIP benefits during this period if all other eligibility criteria have been met. Federal Medicaid/CHIP matching funds will be available for services delivered in this period, regardless of the final determination. 2) States can verify an individual's citizenship for Medicaid and CHIP by establishing a verification match system with the Social Security Administration (SSA). A match with SSA of an individual's data is sufficient to meet Medicaid and CHIP's citizenship documentation requirement, if the state chooses this option. (It is our understanding that all states are working on or have completed agreements with SSA to allow them to conduct this data match.) 3) Citizenship documentation, initially enacted in the Deficit Reduction Act of 2005 for Medicaid recipients, applies to CHIP beneficiaries. (Issued 12/28/09.)

Click [here](#) for a copy of the letter.

Possible Action: Those wishing to do so could encourage their state to implement the data match option to verify citizenship as soon as possible.

RESOURCES

The President's Proposed 2011 Budget

The President's Proposed 2011 Budget was released on February 1, 2010. The full budget is available [here](#). This link also has state-by-state information, analyses, and fact sheets on specific issues. More analysis of the President's budget will be in the next issue of the *Capital Communique*.

Health Reform

For updated information on the House and Senate health reform legislation, the Kaiser Family Foundation has revised its [side-by-side analysis](#), tracking many important provisions. For more detail on the Senate bill, the Senate Democratic Policy Committee has posted a detailed [section-by-section analysis](#)

and

[implementation timeline](#)

. And for details on the provisions related to health disparities in the bills, see the [side-by-side analysis](#) by the National Working Group on Health Disparities and Health Reform.

New Orleans Success Story: Safety-Net Clinics Making Health Care More Efficient and Affordable

[Coming Out of Crisis: Patient Experiences in Primary Care in New Orleans](#), Commonwealth Fund, January 2010. In response to Hurricane Katrina, HHS granted \$100 million to Louisiana to focus on increased access to primary and behavioral health care. The Commonwealth Fund surveyed clinic patients and found that despite being disproportionately low-income and uninsured, most clinic patients reported having easy access to all care (including preventive care), helpful communication with clinicians, and good management of their chronic illnesses. When they needed care, costs did not deter them from seeking it. The report highlights that when funding is directed to reduce barriers to obtaining primary care through community-based clinics, more patients are able to obtain the health care services that they need.