

## **NHeLP's Capital Communique March 2010**

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](mailto:reid@healthlaw.org). For updates and information on NHeLP publications, go to <http://www.healthlaw.org>.

### **SUBJECTS COVERED**

#### **New Health Reform Law**

##### **Bills of Interest**

- Continuing Extension Act
- American Workers, State and Business Relief Act

##### **Executive Agency Actions**

- Revised Clawback Provisions
- Applicability of Federal Matching Rates in CHIP/Medicaid
- HHS Appointment
- Expected CMS Nomination

##### **Judicial Nomination** □

##### **Resources**

##### **Factoid**

### **NEW HEALTH REFORM LAW**

On March 23, President Obama signed into law the Patient Protection and Affordable Care Act (P.L. 111-148), formerly the Senate health reform bill (H.R. 3590). On March 21, the House passed the Senate bill, by a vote of 219-212. The House also immediately approved a package of changes to H.R. 3590, referred to as the Reconciliation bill (H.R. 4872), by a vote of 220-211. On March 25, the Senate passed the Reconciliation bill by a vote of 56-43, with two minor changes related to the student loan portion of the legislation. The amended Reconciliation bill was passed by the House by a vote of 220-207. President Obama signed the bill into law on March 30.

Click [here](#) for a timeline of when the health reform provisions become effective.

The new health reform law:

- Provides coverage to a total of 32 million uninsured people, according to Congressional Budget Office estimates.
- Expands Medicaid coverage to 16 million people by covering most low-income, non-elderly individuals with incomes up to 133 percent of the federal poverty level, eliminating requirements to meet predefined eligibility categories. However, many legal immigrants

continue to be subject to a five-year waiting period prior to being considered for Medicaid eligibility.

- Continues the CHIP program until 2019 and funds it through FY 2015.
- Increases Medicaid payment rates for primary care physicians so that they are not less than 100 percent of Medicare payment rates for providing primary care services in 2013 and 2014.
- Reduces federal Medicaid disproportionate share hospitals (DSH) payments by \$14.1 billion starting in FY 2014; the lower funding to hospitals should be offset, in-part, by the increase in the numbers of individuals with insurance in Medicaid and the Exchange.
- Increases federal Medicaid funding by \$2 billion in U.S. territories (Puerto Rico, U.S. Virgin Islands, Guam, American Samoa and the Northern Marianas Islands).
- Requires all HHS programs that are federally funded or conducted to collect race, ethnicity, language, gender, socioeconomic and disability data.
- Eliminates pre-existing condition exclusions to health insurance coverage in 2014 for group health plans. For children, this prohibition applies six months from the date of enactment of the legislation.
- Increases funding to \$11 billion for community health centers between FY 2011-2015.
- Provides scholarship and loan repayment programs through the National Health Service Corps as incentives for primary care and other providers to practice in underserved communities.
- Provides a \$250 rebate to help fill the Medicare prescription drug “donut hole” for Medicare Part D participants in 2010 and eliminates the donut hole by 2020.
- Extends protection of federal civil rights laws to the health reform bill, thereby protecting individuals from discrimination on the basis of certain characteristics (including race, language, gender, age and disability).

- Reauthorizes the Office of Minority Health through 2016.

The legislation does not include provisions to equitably cover immigrants in Medicaid and the Health Exchange, or to assist women in obtaining comprehensive reproductive health services that include abortion. Moreover, to secure the required number of votes to pass the legislation, the President signed Executive Order 13535 on March 24. The executive order establishes enforcement mechanisms to ensure that federal funds are not used for abortion (except in limited instances) in the state health insurance exchanges and community health center programs.

## **BILLS OF INTEREST**

### *Continuing Extension Act of 2010*

On March 17, the House passed the Continuing Extension Act of 2010 (H.R. 4851) by voice vote, seeking a short-term fix for an expiring subsidy and forestalling significant cuts in Medicare physician fees. The legislation would delay a 21 percent cut in Medicare reimbursement rates for physicians from April 1 to April 30. H.R. 4851 also extends eligibility for a 65 percent subsidy for health coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), and uses the 2009 federal poverty guidelines through April 30 to prevent the poverty line from decreasing due to deflation in 2009. The Continuing Extension Act was sent to the Senate for consideration, which adjourned for recess before voting on it. Thus, the subsidy has expired, and the cuts have gone into effect.

### *American Workers, State and Business Relief Act of 2010*

On March 10, the Senate passed the American Workers, State and Business Relief Act of 2010 (H.R. 4213) by a vote of 62-36. Similar to H.R. 4851, the bill includes an extension of the COBRA subsidy, but instead through December 31. It also includes \$21 billion to continue the enhanced federal medical assistance percentages (FMAP) funds for states that were originally provided in the American Recovery and Reinvestment Act of 2009. The enhanced Medicaid match is scheduled to expire on December 31, 2010. This legislation extends the period of time that enhanced FMAP funds would be available to the states by six months -- until June 30, 2011. It has been sent to the House for consideration, which adjourned before voting on it.

## **EXECUTIVE AGENCY ACTIONS**

### *Revised Clawback Provisions*

On March 5, CMS issued a “Dear State Medicaid Director” (DSMD) letter that informed states that the increased Federal medical assistance percentage (FMAP) under the American Recovery and Reinvestment Act (ARRA) will be taken into consideration when calculating the states’ contribution (“clawback”) for prescription drug costs for dual-eligible individuals enrolled in Medicare Part D. This will ultimately reduce states’ monthly contributions at a time when so many states are struggling with their budgets. For a copy of the DSMD letter, click [here](#).

#### *Applicability of Federal Matching Rates in CHIP/Medicaid*

On March 2, CMS released a “Dear State Health Official” letter (SHO) providing additional guidance on implementing the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Topics in the SHO letter include regular FMAP rates for states with eligibility for children who have family income above 300 percent FPL and match rate options for CHIP expenditures. For a copy of the SHO letter, click [here](#).

#### *HHS Appointment*

On March 3, Lillian Sparks was unanimously confirmed by the Senate as the Commissioner of the Administration for Native Americans, part of the HHS Administration for Children and Families. Sparks is a Lakota woman of the Rosebud and Oglala Sioux Tribes. Previously, she served as executive director of the National Indian Education Association.

#### *Expected CMS Nomination*

It is anticipated that President Obama will nominate Donald Berwick, M.D., as the new director for CMS while Congress is on April recess. Currently, Berwick is a clinical professor of pediatrics and health care policy at Harvard Medical School and School of Public Health, as well as president and chief executive officer of the Institute for Healthcare Improvement in Massachusetts.

### **JUDICIAL NOMINATION**

President Obama has nominated Goodwin Liu to the U.S. Court of Appeals for the 9th Circuit. Liu is currently an associate dean and professor of law at University of California Berkeley School of Law (Boalt Hall). He is a nationally recognized expert on constitutional and education law. In addition to being a graduate of Stanford, Oxford, and Yale Law School, he was a Rhodes Scholar and a former Supreme Court clerk. Liu is the second Asian American to be nominated to a circuit court judgeship.

### **RESOURCES**

Information on states' efforts to cut costs for the AIDS Drug Assistance Programs (ADAPs), as well as national and state data on waiting lists, formulary constraints, and client cost-sharing, on the Kaiser Family Foundation State Health Facts site (March 2010). For further information, click [here](#) .

### *Health Reform Resources*

Detailed summary of the health reform law (including the Reconciliation bill) can be found on the Kaiser Family Foundation's website. Click [here](#) .

Analysis of the health reform law by congressional district, available on the House Committee on Energy & Commerce website. Click [here](#) .

### **FACTOID**

The U.S. spends more on health care and maternal health than any other type of hospital care in any country, but women in this country have a higher risk of dying of preventable pregnancy-related complications than their counterparts in 40 other countries. For example, disparity rates have not improved in more than 20 years for African American women, who are nearly four times more likely to die from pregnancy-related complications than white women. *Deadly Delivery: The Maternal Health Care Crisis in the USA*, Amnesty International, click [here](#) .