

## **NHeLP's Capital Communique**

### **APRIL 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>.

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##### **NEW LAW**

###### *Continuing Extension Act of 2010*

On April 15, the Senate passed the Continuing Extension Act of 2010 (H.R. 4851) by a vote of 59-38. The legislation contained an amendment from Senate Finance Committee Chairman Max Baucus (D-Mont.) to extend emergency unemployment benefits and a Consolidated Omnibus Reconciliation Act (COBRA) health care subsidy of 65 percent of the premium through May 31, 2010, while Congress continues to draft a more permanent legislative solution. The same day, the House voted to approve the legislation by a vote of 289-112. President Obama signed the bill into law on April 15, 2010.

Among other provisions, the new law also:

- extends the 2009 poverty guidelines through May 31 (to prevent the poverty line from being lowered in 2010);
- clarifies health information technology (HIT) incentives by indicating that certain physicians in outpatient settings who accept Medicaid or Medicare payments (e.g., emergency room providers) are eligible for HIT payments under ARRA; and
- extends current Medicare payment rates for physicians through May 31, which prevents a 21 percent payment reduction.

Although the Senate voted to approve the American Workers, State, and Business Relief Act of 2010 (H.R. 4213) on March 10, the House has not yet acted on the legislation. H.R. 4213 would provide an extension of COBRA benefits until December 31, 2010, and enhanced federal medical assistance percentages (FMAP) funds to states until June 30, 2011. See [March 2010 issue of the Capital Communique.](#)

## EXECUTIVE ACTIONS

### *Medical Loss Ratio Comments -- Due May 14*

On April 14, HHS issued a request for comments on the new health reform law's upcoming limits on health insurers' medical loss ratios. Specifically, health insurance companies will be required to use a minimum amount of their collected premiums on actual medical costs (80 percent for small-group and individuals plans, and 85 percent for large group plans). Insurance companies will have to report the percentages of premiums that they spend on reimbursement for clinical activities that improve health quality to the federal government, as well as pay rebates to consumers if these expenditures exceed designated maximum spending on administrative costs. Comments must be submitted to HHS by May 14, 2010, [click here](#) for the *Federal Register* notice.

### *National Healthcare Quality & Disparities Reports*

On April 13, HHS Secretary Kathleen Sebelius announced the release of two annual reports: the *2009 National Healthcare Disparities Report* and the *National Healthcare Quality Report*. The reports reveal areas of progress in addressing health disparities and others where disparities continue. For example, factors that measure provider-patient communications for children indicate that disparities decreased for Hispanics and low-income communities between 2001 and 2006. In contrast, the *2009 Healthcare Disparities Report* found that lack of preventive screenings and treatment continues to be a problem for many communities of color, particularly colon cancer screenings for adults over age 50. HHS provides recommendations and other resources to respond to these issues, as indicated by the

reports' discussion of how provisions in the Patient Protection and Affordable Care Act (PPACA) will expand access to preventive care services, which may assist in addressing health disparities. For both reports,

[click here](#)

### *Presidential Memorandum on Hospital Visitation Rules*

On April 15, President Obama directed HHS to issue regulations to hospitals that participate in Medicaid or Medicare to protect the visitation rights of same-sex partners or visitors who are designated by patients. The President's memoranda requires HHS to ensure that identified visitors include those designated in valid advanced directives, and to include a prohibition against restricting visitation privileges based on an individual's race, color, national origin, religion, sex, sexual orientation, gender identity or disability. The HHS directive also instructs HHS to issue recommendations within 180 days on how the agency should address medical decision-making, hospital visitation, and other related issues that impact the health care of lesbian, gay, bisexual, and transgender patients and families. [Click here](#) for a full copy of President Obama's Memorandum.

The Joint Commission, in new standards for hospital accreditation, adopted a similar requirement late last year. These new standards, to be implemented no earlier than January 2011, require hospitals to allow a family member, friend, or other individual to be present with the patient for emotional support during the course of stay, and prohibits discrimination based on age, race, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex, sexual orientation, and gender identity or expression. For more information, [click here](#)

A guide offering additional information and resources on implementing this and the other new standards (focusing on cultural competency, effective communication and patient-centered care) should be available in the next few months (disclosure -- NHeLP was a subcontractor to the Joint Commission to assist with the development of the guide).

## **HHS/CMS UPDATES**

### *State Option for Early Medicaid Expansion*

On April 9, CMS issued a letter to state health officials and Medicaid directors that implements the provision of the health reform law addressing Medicaid coverage for populations with the lowest incomes. The guidance explains that the law expands Medicaid eligibility of individuals with low incomes (up to 133 percent FPL) who have traditionally not been eligible for Medicaid. States have an option to phase-in coverage for this population beginning April 1, 2010. In January 2014, states participating in Medicaid must cover the expanded eligibility population.

To be eligible, an individual must have income of less than 133 percent of the federal poverty level *and* not be: included in a state plan or waiver before December 1, 2009; an adult under

the age of 65; not pregnant; not eligible for Medicare Part A or B; or not already eligible under the Medicaid statute. The letter also provides further details on increased federal matching rates for the newly eligible group of individuals in calendar year 2014, as well as benefit packages, and income and asset rules. For more information, [click here](#).

#### *State Flexibility for Medicaid Benefit Packages -- Final Rule*

On April 30, CMS published a final rule, revising an earlier rule, on how states can design Medicaid "benchmark" benefit packages. These benchmark and benchmark-equivalent benefit packages, authorized in the Deficit Reduction Act for certain eligibility groups, offer more limited benefits than generally available to Medicaid enrollees. The final rule includes guidance on populations that are exempt from the benchmark option, voluntary and mandatory enrollment in the benchmark plans, as well as other information. The final rule becomes effective as of July 1, 2010. [Click here](#) for the *Federal Register* notice.

#### *New CMS Administrator and Chief of Staff*

On April 19, the President officially nominated Donald Berwick, M.D., to be the new CMS Administrator. He is currently the President and Chief Executive Officer of the Institute for Healthcare Improvement, and a professor at Harvard Medical School and the School of Public Health. CMS also announced that Caya Lewis, M.P.H., will be Berwick's Chief of Staff. She is currently Director of Outreach and Public Health Policy for the HHS Office of Health Reform.

#### *CMS Transparency*

On April 7, HHS announced its Open Government Plan in response to the President's Open Government Directive for executive departments and agencies. The goal of the directive is to implement principles of transparency, participation and collaboration. CMS has developed "CMS Dashboard (BETA)," an electronic tool to determine trends in the cost of certain services under fee-for-service Medicare (by using inpatient hospital payment and volume information).

[Click here](#) for more details on CMS Dashboard (BETA).

CMS has also announced that Medicaid State Plan documents will be available to the public without charge. Each state's Medicaid state plan documents will be accessible online, as they were during earlier administrations. State Plans reflect details of each state's Medicaid program including coverage of optional eligibility groups and services. For a link to Medicaid State Plans, [click here](#).

#### *Health Care Grants to Enroll Eligible American Indian/Alaska Native Children*

On April 16, HHS and CMS announced the availability of \$10 million in grant funding to 41

health programs operated by the Indian Health Service, tribes and tribal organizations, and urban Indian groups to improve outreach to American Indian and Alaska Native (AI/AN) communities to increase the enrollment of eligible, yet uninsured children in Medicaid or CHIP. The grants are specifically for increasing the enrollment and retention of AI/AN children in these health programs from funding in the Children's Health Insurance Program Reauthorization Act of 2009. For more details and a list of grantees, [click here](#).

### *New HHS Office of Consumer Information and Insurance Oversight*

On April 19, HHS created the Office of Consumer Information and Insurance Oversight, whose mission is to provide guidance on implementing private health insurance provisions of the new health reform law. Divisions with the Office include an Office of Oversight, which will be responsible for rate reviews and implementing and monitoring compliance with new rules governing the insurance market and medical loss ratios; and an Office of Consumer Support, which will provide assistance to consumers to aid them in benefiting from the new health insurance system. For additional information, [click here](#) for the *Federal Register* notice.

## RESOURCES

NHeLP, *Medicaid and SCHIP Reimbursement Models for Language Services (2009 Update)*. This issue brief describes which states pay for interpreters in Medicaid and CHIP and how they do it. Available [here](#).

NHeLP, NCIHC and ATA, *What's in a Word: A Guide to Understanding Interpreting and Translation in Health Care*. This issue brief describes the differences between oral interpreting and written translation, including the skills needed to competently undertake each. Find the full Guide [here](#), and the two-page overview [here](#).

## FACTOID

The effect of poverty (including less access to nutritious food, insufficient heat, and crowded living conditions) collectively lower the chances that infants and toddlers will have normal growth, health, and development. A Boston Medical Center study included more than 7,000 children aged 4 months to 3 years who received care in urban primary care clinics or hospital emergency departments. Dr. Deborah Frank, Pediatrician and Director, Grow Clinic, Boston Medical Center, published online April 12, *Pediatrics*, or click [here](#) (link available until July 11, 2010) and [here](#) for the analysis.