

NHeLP's Capital Communique

JULY/AUGUST 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. For updates and information on NHeLP publications, go to <http://www.healthlaw.org>.

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CONGRESS

Extending Enhanced Medicaid FMAP for States

On August 2, the Senate approved a cloture vote on an amendment to extend FMAP and provide additional funds for education. The amendment offered substitute language to the Federal Aviation Administration Air Transportation Modernization and Safety Improvement Act (H.R. 1586) and was passed by a vote of 61-38. Today, the Senate voted 61-39 to pass the legislation. Speaker of the House Nancy Pelosi indicated that she will call the House of

Representatives back from recess to vote on the bill next week.

One concern is that the Senate proposes to pay for the FMAP and education increases in part by reducing benefit amounts in the Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps) which had been increased as part of the economic stimulus legislation last year. Because many low-income families rely on both Medicaid and SNAP, it seems counter-productive for Congress to reduce SNAP funding to pay for Medicaid. An earlier proposal to take funds from the Department of Defense faced some objections in the Senate.

Possible Action: Those wishing to do so could contact their elected officials in Congress to urge them to extend FMAP funding without cutting SNAP.

EXECUTIVE ACTION

National HIV/AIDS Strategy

On July 13, President Obama announced the first national HIV/AIDS strategy, coordinated through the Office of National AIDS Policy (ONAP). Its goals include reducing the number of individuals who become infected with HIV, improving health outcomes and increasing access to care for people living with HIV, and decreasing HIV-related disparities. ONAP plans to work cooperatively with federal, state and local efforts to use several approaches to accomplish these goals. For more details on the strategy, [click here](#).

HHS UPDATES

Interim Final Rules: Health Issuers on Claims, Appeals and Review -- Comments Due on September 21

On July 23, the Department of the Treasury, the Department of Labor (DOL), and HHS released interim final rules for group health plans and health insurance issuers regarding internal claims and appeals and external review processes under PPACA (the Patient Protection and Affordable Care Act). The interim final rules require that health insurance issuers that provide coverage through a group health plan will now be subject to the same DOL claims procedures as group health plans. Plans and issuers must also provide continued coverage for the claimant pending the outcome of an internal appeal.

Comments on the interim final rules are due on or before September 21. For the *Federal Register* notice, [click here](#).

Legislative Changes to Children's Health Under CHIP/Medicaid -- Due by August 30

On July 30, CMS provided notice of HHS recommendations to comply with the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) requirement for the HHS Secretary to report to Congress on factors that impact the quality of care provided to children under CHIP and Medicaid. CMS is requesting public comment on the Secretary's proposed legislative changes, including requirements for the process and content of quality reporting to the states.

Comments are due on or before August 30. [Click here](#) for the complete *Federal Register* notice.

New CMS Administrator

On July 12, Donald Berwick, M.D., was sworn in as the new Administrator for the Centers for Medicare & Medicaid Services (CMS). President Obama bypassed the Senate confirmation process and appointed Dr. Berwick during a congressional recess. Thus, the appointment is temporary, and Dr. Berwick may serve in his new capacity until the end of 2011.

CMS Guidance on the Medicaid Family Planning State Option and New Benefit Rules for Benchmark Plans

CMS released a Dear State Health Official (DSHO) letter on July 2 as guidance on the implementation of the state eligibility option for Medicaid family planning services, as well as new benefit rules for benchmark plans. PPACA created a new optional Medicaid family planning eligibility group of non-pregnant individuals. States will set the income levels for this eligibility group, but it cannot be more than the highest income level for pregnant women under the states' Medicaid or CHIP state plans. This eligibility group includes women and men. States can amend their state Medicaid plans to make this group of individuals eligible for Medicaid family planning services and supplies, instead of applying for Section 1115 waivers. Individuals in the new eligibility group must receive the same family planning services and supplies as other Medicaid-eligible populations. Family planning services and supplies will be reimbursable at the 90 percent FMAP rate for the newly eligible group.

In reference to changes in Medicaid benchmark benefits, the DSHO letter indicated that for those states providing coverage through benchmark or benchmark-equivalent plans, PPACA added mental health services and prescription drug coverage to the list of required services that must be included in these plans. Also, states that decide to provide care through benchmark or benchmark-equivalent plans must comply with the requirements in CMS' April 30, 2010, State Flexibility for Medicaid Benefit Packages final rule and the guidance in the DSHO letter. For the complete DSHO letter, [click here](#).

CMS Guidances: Medicaid and CHIP -- Increased FMAP for Language Services/Coverage of "Lawfully Residing" Children and Pregnant Women

On July 1, CMS provided additional guidances through Dear State Medicaid Director (DSMD)/DSHO letters regarding increased FMAP for language services and coverage of lawfully residing children and pregnant women, respectively. The language services letter implements a CHIPRA provision that provides supplemental funding for translation or interpretation services provided through CHIP and Medicaid for children with limited English proficiency. Specifically, the guidance details that CHIPRA provides for an increased FMAP for administrative expenditures for language services relating to the "enrollment of, retention of, and use of services" under CHIP and Medicaid. For Medicaid, the increased FMAP is 75 percent of allowable expenditures, while the FMAP for CHIP is 75 percent of the state's enhanced FMAP and five percent (whichever is greater). For the DSMD letter on the increased FMAP for language services, [click here](#).

The DSHO letter refers to another CHIPRA provision that gives states the option to provide Medicaid and CHIP coverage to pregnant women (including women covered during the 60-day postpartum period) and/or to children up to age 19 for CHIP or up to age 21 for Medicaid, who are "'lawfully residing' in the U.S. . . .and who are otherwise eligible for such assistance." States can choose to cover these groups under Medicaid only or under both Medicaid and CHIP. The guidance letter also interprets "lawfully present" as being the same as the existing Medicaid residency requirement, and further explains that eligibility also means meeting state residency requirements. Further, the DSHO letter details that those states that choose to cover this newly eligible population groups can do so by submitting a state plan amendment to CMS. In addition, because these newly eligible children under age 19 are considered as targeted low-income children under CHIPRA, services for this population are eligible at the enhanced CHIP match rate, even if the child is covered by Medicaid or another CHIP program. For the DSHO letter, [click here](#).

Meaningful Use Standards, Certification of Electronic Health Records

On July 13, HHS announced final rules for "meaningful use" standards for electronic health records (EHRs) and certification of EHRs. Eligible health providers and hospitals can qualify for Medicaid and Medicare incentive payments when they use certified EHR technology and satisfy meaningful use criteria. Initially, meaningful use criteria includes using electronic health information to engage patients and families, track clinical conditions, and satisfy other core and selected measures. Although the collection of patients' demographic data (by race, ethnicity, primary language and gender) is required for a threshold number of patients, providers are not required to stratify patients by health condition and demographic variables or submit health disparity reports to local health departments, CMS, or states. However, the meaningful use rule does provide states with the flexibility of modifying how demographic data can be used.

The final rule for certification of EHRs clarifies that standards criteria must be compatible with the meaningful use rule. For additional details on the EHR incentive program, standards for certification of EHRs, and meaningful use, [click here](#).

Federal Poverty Levels for Remainder of 2010

On August 3, HHS provided notice of the federal poverty levels (FPLs) for the remainder of 2010. Legislation had prohibited publication of 2010 FPLs before May 31, 2010, and required that the 2009 FPLs remain in effect. There was concern that the way the levels are calculated would lower the poverty levels and leave many ineligible for federal programs that use the poverty levels as a basis of income eligibility. After the prohibition lapsed on May 31, HHS modified the procedure for updating the 2010 FPLs to reflect the Consumer Price Index for the period for which their publication was delayed. As a result, the poverty levels for the remainder of 2010 showed no change from the 2009 poverty levels. For the announcement of the 2009 FPLs, [click here](#) . [Click here](#) for the August 3 Federal Register notice.

FEDERAL UPDATE

FCC Expands Use of Health Broadband Technology in Underserved Communities

On July 15, the Federal Communications Commission (FCC) introduced a new \$400 million annual initiative to increase the availability of broadband technology in medically underserved communities in the nation. Currently, a significant number of health facilities in rural areas lack the capacity to perform routine but important tasks that impact health care, such as, electronically transmitting X-rays, managing medical records or consulting with providers in other locations. The FCC noted that only eight percent of Indian Health Service providers have access to broadband technology to provide advanced health services to their patients. It is anticipated that the broadband initiative will bring connectivity to more than 2,000 rural hospitals and clinics and reduce health costs. [Click here](#) for more information.

RESOURCES

The Commonwealth Fund, *State Case Studies of Infant and Early Childhood Mental Health Systems: Strategies for Change* . The study analyzes efforts in Colorado, Indiana, Massachusetts, and Rhode Island to conduct early identification and intervention strategies for children with developmental and mental health problems. The report highlights different approaches to accomplishing this goal, such as using frequent mental health screening tools in Medicaid's Early Periodic Screening, Diagnosis and Treatment program to improve the health of low-income children. [Click here](#) for the complete study.

National Latina Institute for Reproductive Health, *Removing Stigma: Towards A Complete Understanding of Young Latinas' Sexual Health*.

This report reviews recent research on adolescent sexuality and reproductive health, sets forth a reproductive justice framework for advancing the sexual health of Latina adolescents, and establishes policy approaches to ensure communities make healthy decisions about sexuality and reproduction that are supported and available to adolescents. For the report,

[click here](#)

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