

NHeLP's Capital Communique NOVEMBER 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.

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MIDTERM ELECTION RESULTS

The 2010 Midterm election resulted in a change in leadership in the House, but not in the Senate.

House

Republicans obtained more than the 218 seats necessary to regain control of the House by picking up an additional 60 seats, for a total of 239. Now the minority in the House, Democrats control 188 seats. As a result, it is anticipated that Rep. John Boehner (R-Ohio) will be the next Speaker of the House, with Rep. Nancy Pelosi (D-Calif.) running for the Minority Leader position. While it is uncertain at this time what this change in leadership will mean for implementing the Patient Protection and Affordable Care Act (PPACA), on November 3, Rep. Boehner stated that "repealing healthcare remains a top GOP priority."

Senate

Democrats retained control of the 51 seats necessary for control of the Senate (they have a

total of 53, including two Independents who caucus with the Democrats), even though the Republicans picked up an additional five seats for a total of 46.

HHS UPDATES

Final Notice -- Medicaid: Implementation of CHIPRA for Adjustments to FMAP

On October 15, HHS published a final notice of the methodology to determine the need for (and the amount of) any required recalculation of the federal medical assistance percentage (FMAP) under Section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). CHIPRA requires that the Medicaid FMAP be adjusted for any states that had "significantly disproportionate employer pension and insurance fund contributions." The recalculation disregards these contributions in determining the state's per capita income but does not exclude these contributions when determining the U.S. per capita income. FMAP is based on the ratio of the state's per capita income to the per capita income of the United States. Under this formula, states with higher per capita income levels have lower FMAP rates than states with lower per capita income levels. Significantly disproportionate employer pension or insurance fund contributions increase a state's personal income, and, by operation of the statutory formula, could result in lower FMAP if those contributions were not disregarded. CHIPRA also provides that a state shall not have its FMAP reduced because of the application of this disregard.

For details on the methodology on the adjusted FMAP, the analysis and responses to public comments, [click here](#).

CMS Guidance Letter on Medicaid Prescription Drugs

On September 28, the Centers for Medicare & Medicaid Services (CMS) issued a "Dear State Medicaid Director" (DSMD) letter to provide guidance on the PPACA provision regarding prescription drugs for Medicaid. The provision addresses the federal offset of Medicaid prescription drug rebates and the process for estimating it, prescription rebates for Medicaid managed care organizations (MCOs), MCO formularies, and changes to the excluded drug provisions in Medicaid. PPACA increased the amount of rebates that drug manufacturers are required to pay for certain drugs. The federal government receives these increased rebates. Among other provisions, the DSMD letter:

- reiterated that effective January 1, 2014, states must include over-the-counter and prescription smoking cessation drugs in Medicaid coverage;
- identified new CMS calculations of the federal offset of Medicaid prescription drug rebates for certain FDA-approved brand name drugs for pediatric use;
- confirmed that utilization data on covered outpatient drugs dispensed by MCOs to Medicaid enrollees should be reported to the state, so that states can include this data along with fee-for-service utilized data (for covered outpatient drugs) to inform drug manufacturers when rebates are paid for these drugs; and

- determined that MCOs can continue to have some flexibility in maintaining drug formularies, whether or not the drug manufacturers participate in the drug rebate program.

[Click here](#) for the DSMD letter.

CMS Guidance Letter on Hospice Care for Children in Medicaid and CHIP

On September 9, CMS issued a "Dear State Health Official/State Medicaid Director" (SHO) letter to provide further guidance on implementing the PPACA provision impacting curative and palliative services for children. Although hospice services are an optional benefit under Medicaid and CHIP, the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program requires Medicaid and Medicaid-expansion CHIP programs to provide all medically necessary services, including hospice care, to individuals under age 21.

Specifically, the SHO letter explained that curative treatment for a terminal illness no longer ends when the hospice benefit becomes effective for eligible children. States will now be required to provide hospice services along with other curative services that the child may require for treatment of the terminal health condition. This may include services for pain, symptom management, and family counseling. States with stand-alone CHIP programs that offer the optional hospice benefit must now also concurrently provide medically necessary curative services.

For the complete SHO letter, [click here](#).

Investment in Community Health Centers

On October 8, HHS Secretary Kathleen Sebelius announced the award of more than \$727 million in grants to community health centers nationwide. The HHS Health Resources and Services Administration (HRSA) Capital Development program grants will be used for major construction and renovation of 143 community health centers, which serve almost 19 million people. Approximately 40 percent of these individuals do not have health insurance. HRSA Administrator Mary Wakefield explained that the grants will assist community health centers to deliver care in updated settings to an increasing patient population. It is anticipated that the grants will help community health centers provide care to almost double the number of patients needing health care.

[Click here](#) for more details on the grant program.

Improving Care for Children with Pre-Existing Conditions

On October 13, Secretary Sebelius sent a letter to the National Association of Insurance Commissioners that described joint efforts by HHS and the states to ensure that insurance

companies eliminate pre-existing condition exclusions for children in health policies. PPACA prohibits excluding children with pre-existing conditions from health insurance coverage as of plan years beginning after September 23, 2010 (and for all individuals as of 2014). Insurance companies rescinded an earlier commitment to broadly offer child-only policies and were going to limit enrollment to yearly open-enrollment periods.

The Secretary's letter described options available to states and insurers to offer child-only policies; rejected insurers' efforts to deny coverage to sick children outside of open-enrollment periods; included steps that can be taken to preserve coverage options for children (regardless of their health status); and encouraged states to seek appropriate legislative action to preserve coverage options for children (e.g., requiring individual market insurers that offer family-only policies to also offer child-only policies, and prohibiting discrimination against children and others with pre-existing health conditions).

[Click here](#) for the Secretary's letter.

Consumer Grant Program

On October 19, Secretary Sebelius announced new Consumer Assistance Grant program awards of almost \$30 million to assist states, territories, and the District of Columbia in protecting consumers from harmful insurance industry practices and informing the public about the benefits of PPACA's Patient's Bill of Rights. The grants will help consumers enroll in health coverage, provide assistance in filing complaints and appeals against health plans, educate consumers about their rights and empower them to act, and track consumer complaints and strengthen enforcement.

For a fact sheet of how states and territories will use the grants, [click here](#).

RESOURCES

Health Consumer Alliance, *Investing in People to Save Counties Money: Best Practices for Moving People with Disabilities from General Assistance to SSI*. The Health Consumer Alliance (HCA) is a partnership of consumer assistance programs operated by community-based legal services organizations in California. HCA's local Health Consumer Centers operate in 13 counties that, together, include more than three-fifths of low-income Californians. NHeLP serves as lead agency and, along with Western Center on Law and Poverty, provides support for legal and policy advocacy. The best practices report provides information supporting the conclusion that investing in Supplemental Security Income (SSI) advocacy programs with modest rent subsidies can create significant savings for county governments, while stabilizing housing for low-income residents with disabilities and improving their quality of life.

[Click here](#) for the report.

NHeLP, Health Reform Advocacy Webinar Series. This series of webinars provides important information on how PPACA impacts low-income and underserved communities, and offers proposed solutions to some of the challenges presented in the health reform law. For more details on the webinar series and for registration information, [click here](#) . On November 19, the webinar will focus on addressing health disparities.

Centers for Diseases Control and Prevention -- National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, *Establishing a Holistic Framework to Reduce Inequities in HIV, Viral Hepatitis, STDs, and Tuberculosis in the United States: A NCHHSTP White Paper on Social Determinants of Health, 2010.*

The white paper describes the CDC's vision for reducing health disparities and promoting health equity, by using a holistic approach to designing public health programs to improve the health of communities and increase their opportunities for healthier living.

[Click here](#)

for the complete analysis.

[Click](#)