

NHeLP's Capital Communique DECEMBER 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.

SUBJECTS COVERED:

Bill of Interest

- Physician Payment and Therapy Relief Act of 2010

HHS Updates

- Final Rule -- Medicare and Medicaid: Hospital Conditions of Participation to Ensure Visitation Rights for All Patients
- Initial Guidance to States on Exchanges
- New Center for Medicare and Medicaid Innovation
- Support for Primary Care Workforce in Medically Underserved Communities
- Interim Final Rule -- Medical Loss Ratio Requirements: Comments due by January 31, 2011

Litigation Update Resources

BILL OF INTEREST

Physician Payment and Therapy Relief Act of 2010

On November 18, the Senate approved the Physician Payment and Therapy Relief Act of 2010 (H.R. 5712) by unanimous consent. The legislation reinstates the 2.2 percent increase of Medicare reimbursement for physicians that expired on November 30, through December 31, 2010. This prevents a scheduled 23 percent pay cut in physician reimbursement.

It is anticipated that the House will now consider the bill. The Senate may also consider a longer payment fix through 2011.

HHS UPDATES

Final Rule -- Medicare and Medicaid Programs: Changes to the Hospital and Critical Access Hospital Conditions of Participation to Ensure Visitation Rights for All Patients

On November 19, the Centers for Medicare & Medicaid Services (CMS) issued the final rule on establishing a visitation rights requirement within the "conditions of participation" (CoP) for hospitals participating in Medicare and Medicaid. Among other provisions, the final rule requires that hospitals:

- must have written policies and procedures on patient visitation rights, including any clinically necessary or reasonable restriction or limitation on visitation;
- inform patients (or their representatives) of the right to receive visitors whom the patient designates, regardless of whether the visitor is a spouse, domestic partner (including a same-sex partner), family member, or friend, as well as the right to withdraw consent at any time; and
- do not restrict, limit, or deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

Because CoPs for critical access hospitals (CAHs) did not contain patient rights provisions, the final rule creates a new standard on patient visitation rights for these facilities and applies the same visitation requirements for hospitals to CAHs.

The final rule will become effective on January 18, 2011. For the complete regulation, [click here](#).

Initial Guidance to States on Exchanges

On November 18, HHS Secretary Kathleen Sebelius released the first in a series of documents to provide preliminary information to states and territories about creating health insurance exchanges as required by the Patient Protection and Affordable Care Act (ACA). One goal is to assist states with their legislative and overall planning for 2011. The initial guidance includes several principals and priorities that describe federal funding and technical support for state establishment of exchanges; statutory requirements for exchanges (such as minimum functions that exchanges must undertake) and oversight responsibilities for monitoring Qualified Health Plans; and a description of timelines and milestones for obtaining federal support for creating state exchanges.

[Click here](#) for the initial guidance.

New Center for Medicare and Medicaid Innovation

On November 16, CMS Administrator Donald Berwick announced the formal establishment of the Center for Medicare and Medicaid Innovation (also known as the Office of Duals), which was created under the ACA. The mission of the Innovation Center is to determine new ways for delivering health care and paying health providers that will improve the quality of care in cost-efficient ways for Medicare and Medicaid.

The Innovation Center will seek out direct input from various health stakeholders across the

country to build partnerships, obtain input on its operations, and test models of best practices in health care innovation. Current initiatives include testing "health home" and "medical home" concepts in demonstration projects in eight states, evaluating the effectiveness of primary care teams in demonstration projects at federally qualified health centers, and developing a new state option that gives patients enrolled in Medicaid with at least two chronic conditions the opportunity to designate a provider as a "health home."

The Center will also offer funding to states to support new models to improve care quality, coordination, and cost-effectiveness of individuals who are dually eligible for both Medicaid and Medicare.

On November 30, Dr. Berwick announced that Julie Boughn would serve as acting deputy director for the Innovation Center. Since 2006, Boughn served as chief information officer and director of the Office of Information Services at CMS, as well as in other positions within the agency.

[Click here](#) for more information about the Innovation Center and its initiatives.

Support for Primary Care Workforce in Medically Underserved Communities

On November 22, Secretary Sebelius announced a new application cycle for the National Health Service Corps (NHSC) Loan Repayment Program. The program offers certain health care providers up to \$60,000 to repay student loans. These providers must then perform two years of service in medically underserved areas, which are often in geographically isolated and economically distressed communities. The ACA provided \$290 million for the NHSC Loan Repayment Program to increase access to health services by addressing shortages in the primary care workforce.

Eligible providers include physicians, dentists (general or pediatric), psychiatrists, primary care nurse practitioners, certified nurse-midwives, physician assistants, dental hygienists, psychologists, licensed clinical social workers, psychiatric nurse specialists, marriage and family therapists, and licensed professional counselors. The NHSC is expected to support more than 16,000 new primary care providers by 2015.

[Click here](#) for the news release on the NHSC Loan Repayment Program.

Interim Final Rule Medical Loss Ratio Requirements. Comments Due by January 31, 2011

On December 1, the HHS Office of Consumer Information and Insurance Oversight (OCIO) issued an interim final rule with request for comments on implementing medical loss ratio requirements for health insurers. The rule would require insurers to spend 80 to 85 percent of consumers' premiums on direct patient care and improvements to health quality, instead of on administrative costs and profits (such as executive salaries, overhead, and marketing) starting in 2011. Under the ACA, if health insurers do not comply with these requirements, they must

provide a rebate to their insureds in 2012. It is expected that the medical loss ratio regulations will protect up to 74.8 million insured individuals and up to 9 million individuals could be eligible for a total of \$1.4 million in rebates in 2012.

The ACA required the National Association of Insurance Commissioners to develop uniform definitions and methodologies for determining insurance companies' medical loss ratios. OCIO then promulgated the interim final rule based on these definitions and methodologies. Among other provisions, the interim final rule describes disclosure and reporting requirements, and how insurance companies will determine their medical loss ratios and provide rebates.

Comments on the interim final rule can be submitted to HHS by January 31, 2011.

[Click here](#) for the interim final rule.

LITIGATION UPDATE

NHeLP submitted a request to file a "friend of the court" or "amicus" brief in *Florida ex rel. McCollum v. Department of Health and Human Services*.

The U.S. District Court, Northern District of Florida (Pensacola Division) recently accepted NHeLP's request. The amicus, which supports the health reform law, was submitted on behalf of 22 noteworthy health provider and consumer organizations working nationally and in the state of Florida. The case is one of the most prominent constitutional challenges of the recently enacted Affordable Care Act. For the amicus brief,

[click here](#)

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RESOURCES

NHeLP, *Issue Brief -- Consumer Assistance Programs in the Patient Protection and Affordable Care Act*. The issue brief provides information about the consumer assistance grant programs in the ACA that assist consumers in 40 states, territories, and the District of Columbia.

It also highlights exemplary activities underway through the California-based Health Consumer Alliance, which NHeLP has led since 1998. [Click here](#) for the issue brief.

Kaiser Family Foundation, *Abortion Coverage and Health Reform Issue Brief*. The issue brief reviews current federal and state abortion coverage policies, and provides new data on the potential impact of the ACA on women's access to abortion coverage.

[Click here](#)

for the issue brief.