

## **NHeLP's Capital Communique**

### **FEBRUARY 2011**

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).

### **SUBJECTS COVERED:**

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- No Taxpayer Funding for Abortion Act

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### **BILLS OF INTEREST**

#### *Repealing the Job-Killing Health Care Law Act*

On January 19, the newly Republican-controlled House voted to repeal the Patient Protection and Affordable Care Act (ACA) by approving the "Repealing the Job-Killing Health Care Law Act," (H.R. 2) by a vote of 245-189. Three Democrats joined the majority in approving the legislation, while no Republicans voted against it.

On January 26, Senator Jim DeMint (R-S.C.) introduced similar legislation (S. 192) in the Senate. Senate Minority Leader Mitch McConnell (R-Ky.) has promised to use procedural steps to ensure a vote on the measure, while Senate Majority Leader Harry Reid (D-Nev.) has indicated that the bill will not be brought up for a vote.

To repeal the ACA, the Democratic-controlled Senate and then President Obama would have to approve the legislation.

*Possible Action:* Those wishing to do so could contact their elected officials to urge them to support the ACA to retain meaningful health reform that expands Medicaid eligibility and provides other measures to improve the health status of low-income and underserved

communities.

### *No Taxpayer Funding for Abortion Act*

On January 20, Representative Chris Smith (R-N.J.) introduced the "No Taxpayer Funding for Abortion Act," (H.R. 3) in the House. Among various provisions, the bill would:

- prohibit federal funds from being used for any abortion, which would further restrict abortion services for Medicaid enrollees, federal employees, women obtaining health care through the Indian Health Service, women serving in the military, residents of the District of Columbia, and women incarcerated in federal prisons;
- further limit federal funding for abortion services for women who become pregnant as a result of rape to only instances of "forcible rape," which excludes other circumstances of rape (e.g., statutory rape); and
- increase taxes on self-employed individuals who buy health insurance plans that include abortion coverage and small businesses that offer their employees comprehensive health insurance plans that include abortion coverage.

Currently, three House Committees -- Judiciary, Energy and Commerce, and Ways and Means -- are considering the legislation.

*Possible Action:* Those wishing to do so could contact their representatives in the House, as well as their elected officials in the Senate, to urge them to ensure that health insurance provides comprehensive coverage of all services women may need without higher costs.

## **HHS UPDATES**

*Notice of Proposed Rulemaking with Comment: Emergency Medical Treatment and Labor Act -- Comments Due by February 22*

On December 23, 2010, HHS' Centers for Medicare & Medicaid Services (CMS) published an advanced notice of proposed rulemaking on the Emergency Medical Treatment and Labor Act (EMTALA). The question is whether EMTALA would apply when a hospital's emergency department determines that an individual with an emergency medical condition (EMC) is admitted to the hospital as an inpatient before his condition is stabilized, and then must be transferred to a specialty hospital for stabilizing treatment (e.g., burn unit, shock-trauma unit, regional referral center, or neonatal intensive care unit).

EMTALA (also known as the patient anti-dumping statute) ensures that individuals with EMCs are not prevented from obtaining lifesaving health treatment and transferred to another facility without stabilizing treatment, regardless of whether they have health insurance coverage. The law also imposes penalties on non-compliant hospitals that include losing Medicare and Medicaid reimbursement and imposing civil monetary penalties on hospitals and physicians for

negligent violations.

The notice refers to a September 9, 2003, EMTALA final rule, as well as an August 19, 2008, Hospital Inpatient Prospective Payment System (IPPS) final rule that determined, among other findings that:

- EMTALA does not apply to any inpatient, even those admitted through the emergency department, for whom the hospital had initially triggered an EMTALA obligation to stabilize, and who remained in an unstable condition after being admitted as an inpatient.
- Specialty hospitals do not have an EMTALA obligation to accept an appropriate transfer of an individual who had been admitted in good faith as an inpatient at the initial hospital.

CMS now seeks public comment on:

- whether these rules should be re-evaluated:
- whether there are real life circumstances that would support revisiting the final rules, such as when individuals present themselves with unstable EMCs (initiating EMTALA obligations) and are admitted, but then transferred to another facility (even though the first hospital had the capability to treat the EMC); and
- whether there are circumstances when an individual with an unstable EMC was admitted as an inpatient, continued to have an unstable EMC that required specialty hospital treatment, and whose transfer was not accepted by the specialty hospital because their current policy does not obligate them to do so.

Comments should be submitted by February 22. [Click here](#) for the *Federal Register* notice.

### *Medicaid Adult Quality Measures -- Comments Due by March 1*

On December 30, 2010, HHS published an initial set of core health quality measures for Medicaid-eligible adults, as required by the ACA. These are available for voluntary use in state Medicaid programs and by health insurance issuers, managed care companies with contractual obligations with Medicaid, and providers of services in these programs. Specific categories of measures include those for prevention and health promotion, management of acute and chronic conditions, and family experiences of care.

HHS is requesting public comment on:

- whether any particular measures should be added or removed from the initial core set;
- which measures may need additional development;
- the types of technical assistance and resources that states may need to implement the measures; and
- how many measures are feasible for states to collect and use in monitoring quality of care.

Comments should be submitted by March 1. [Click here](#) for further details.

### *2011 Poverty Guidelines*

On January 20, HHS released the 2011 Poverty Guidelines as well as an explanation of the methodology used to determine the designated amounts. The updated Poverty Guidelines were adjusted due to increases in the Consumer Price Index (inflation) between calendar years 2009 and 2010. The Poverty Guidelines are important as they are used as a factor in determining eligibility for a number of federal programs, such as the Children's Health Insurance Program (CHIP), Medicaid, family planning services, AIDS Drug Assistance Program, and Migrant Health Centers.

Click here for the [2011 Poverty Guidelines](#) and the [Federal Register notice](#).

### *ONC Issues Final Rule on Permanent HIT Certification Program*

On January 3, the Office of the National Coordinator for Health Information Technology (ONC) issued a final rule to establish the permanent certification program for health information technology. Among various provisions, the permanent certification program requires organizations to be accredited to test and/or certify health information technology, and provides new processes to increase the transparency and reliability for certifying electronic health record (EHR) technology. Meaningful use of "Certified EHR Technology" is a requirement for health care providers who qualify for incentive payments under the Medicare and Medicaid Electronic Health Record Incentive Programs, as authorized by the Health Information Technology for Economic and Clinical Health (HITECH) Act.

[Click here](#) for additional details on the Permanent HIT Certification Program.

## **RESOURCES**

NHeLP, Short Papers on the ACA. NHeLP has released a series of short papers that describe how the ACA impacts a variety of health issues and populations. These topics include the ACA and: Essential Benefits for Children in the Exchanges, Nursing Mothers, Language Access, Application of § 1557 and Title VI of the Civil Rights Act of 1964 to the Health Exchanges, and Substance Use Disorders. [Click here](#) for the short paper series.

Renee Hsia, M.D. and Yu-Chu Shen, Ph.D., University of California-San Francisco. Researchers recently conducted two studies that examined barriers to trauma care. One study determined that the near-poor (individuals with incomes of \$19,350-\$38,700 for a family of four), people of color (particularly African Americans), the foreign born, and rural dwellers are less likely to have access to a trauma center. The second study found that elderly individuals age 65 and over in California who have experienced injuries are less likely to receive trauma care than younger people with the same degree of injuries. [Click here](#) for more details on the

studies.