

by Claudia Schlosberg, NHeLP

1/31/97 – A Task Force of the National Governors Association has called upon Congress and the Clinton Administration to provide "relief from the real and pressing problems" of the Medicaid program. A major priority of the Governors is to control Medicaid spending without shifting costs to the states and to reduce federal statutory and regulatory micro-management. While calling for no new cuts in Medicaid, the recommendations also propose major programmatic changes that could dramatically reduce health access and benefits for the poor including allowing states to limit EPSDT services, eliminating administrative hearings for Medicaid beneficiaries enrolled in managed care, and giving states greater flexibility to design and implement waivers for managed care.

Although the NGA and the Administration agree on the need for increased state flexibility, the Governors registered strong opposition to President Clinton's proposed per capital cap on federal Medicaid spending "in any form." Noting that the "Governors have already contributed to significant budgetary savings by controlling Medicaid growth rates," the Governors recommend "reexamining the authorizing legislation that has brought the program to the condition it is in today."

The Governors identified as a major area of concern efforts to ensure quality in Medicaid managed care that could result "in rigid guidelines that dictate state contractual relationships or fail to keep up with technological innovations." "Given the expertise states have developed with Medicaid managed care," the Governors seek greater involvement with Congress and the administration as quality issues are debated.

Regarding the problem of under-enrollment of eligible children, the Governors also registered concern. While agreeing that health care is essential to the well-being of children, the Governors caution that no Medicaid outreach strategy should create an opportunity for shifting private insurance costs to the public sector. The Governors also oppose tying receipt of Medicaid funds to increased enrollment targets for eligible children.

Specifically, the NGA Task Force recommendations call for:

1. No unilateral caps for federal spending on Medicaid entitlements.
2. Maintenance of Disproportionate Share Hospital (DSH) program.
3. Allowing states greater flexibility to establish managed care networks including:
 - a. Repeal of the 75/25 percent rule that requires Medicaid HMOs to maintain non-Medicaid enrollment of 25%.
 - b. Allowing states to lock-in enrollment in a Medicaid HMO for up to 12 months.
 - c. Allowing states to establish managed care networks through the regular state plan amendment process.
 - d. Allowing states to import any waiver already in place in another state without securing additional federal approval.
4. Eliminating fair hearings as a mechanism for resolving disputes about benefits and services between a client and an HMO or provider under contract and requiring exhaustion of alternative dispute resolution mechanisms before allowing clients access to state courts.
5. Eliminating any private right of action for providers or health plans regarding payment rates.
6. Allowing states to import any waiver already in place in another state without securing additional federal approval.

7. Repealing Boren and Boren-like provisions in federal law that give rise to provider suits on reimbursement rates.
8. Allowing states to limit the range or cost of services required under the EPSDT program.
9. Delaying enforcement of federal statutory changes until HCFA publishes final regulations.
10. Repealing mandatory "reasonable cost" reimbursement strategies.
11. Repealing states' obligation to fund, through Medicaid, the Medicare cost-sharing obligations of low-income beneficiaries (the Qualified Medicare Beneficiary Program) or, alternatively, requiring that co-payments be reimbursed at Medicaid, not Medicare rates.
- 12.. Making unspecified changes to the Nursing Home Reform Mandates enacted in 1987 to give states greater flexibility and eliminate federal micro-management.
13. Repealing the Pre-admission Screening and Annual Resident Review (PASARR) program.
- 14.. Prohibiting federal practices that impose heavy penalties for federal regulatory violations that result in no beneficiary harm.
15. Holding states harmless against penalties and disallowances for reasonable interpretations of law based on departmental guidance prior to issuance of regulations.
16. Allowing states to establish home- and community-based care programs through state plan amendment processes and at the same time, to retain authority to limit the number of

beneficiaries receiving Medicaid home- and community-based services.

17. Restructuring the Medicaid program to eliminate the incentive to place beneficiaries in institutional care.

Although there are significant differences between President Clinton's proposals and the Governors, both are calling for major restructuring of Medicaid to achieve cost savings and provide greater state flexibility. With a more conservative Congress, there is good reason to be concerned about the future of the Medicaid program.

The debate on Medicaid will take place primarily in two Committees of the Congress: the Senate Finance Committee and the House Commerce Subcommittee on Health and Environment. The membership of these two committees is listed below, along with telephone numbers. Health Advocate subscribers are urged to get involved. Please let your representative in Washington know how important the Medicaid program is in your communities.

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Addresses:

The Honorable _____

[U.S. Senate](#)

Washington, D.C. 20510

The Honorable _____

[U.S. House of Representatives](#)

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