

Health Law PA News

Newsletters of the Pennsylvania Health Law Project

Harrisburg Philadelphia Pittsburgh

Statewide Help Line: 1-800-274-3258 / TTY: 1-866-236-6310

On the Internet: www.phlp.org

Volume 14, Number 1

January 2011

New Administration Takes Over in Harrisburg; Faces Huge Budget Deficit

Readers are already aware that our state is now under new leadership. Tom Corbett was sworn in as Pennsylvania's new Governor on January 18, 2011. Since then, Governor Corbett has nominated several new people to his cabinet who will impact health policies and practice. These individuals are referred to as "Acting" until their nominations are confirmed by the state Senate:

- **Gary Alexander** has been chosen to be Secretary of the Department of Public Welfare (DPW). He comes to Pennsylvania from Rhode Island where he was the Director of the Department of Human Services. In that role, he spearheaded obtaining federal approval for the nation's first "Global Medicaid Waiver" in which Rhode Island agreed to limit federal aid for its Medicaid program in exchange for loosened federal oversight and more state flexibility in administering the program. That waiver has been controversial and advocates have voiced concern over the pursuit of a similar waiver here.
- **Brian Duke** has been chosen to be Secretary of the Department of Aging. Mr. Duke has been the Director of the Bucks County Area Agency on Aging.
- **Michael F. Consedine**, a private attorney, has been chosen to be the State's Insurance Commissioner.
- **Dr. Eli N. Avila**, a practicing physician and attorney has been chosen for Secretary of Health. Dr. Avila previously served as Chief Deputy Commissioner of Health for Suffolk County, New York.

2011-2012 Budget

Because the Governor is forming a new administration, he is given until March to propose a state budget for FY 2011-2012 (normally the budget would be proposed in February). The Governor's budget address is scheduled for March 8th. The state's projected budget deficit for the next fiscal year is estimated to be \$4 billion. Medicaid accounts for approximately 20% of the state budget. To address the deficit and reduce spending, it is almost certain that the Governor will propose cuts and other changes to the state's Medicaid program. Once the proposed budget is presented, PHLP will analyze the impact on Medicaid consumers and those who benefit from other health care programs funded by the state and share that with our readers as quickly as possible.

INSIDE THIS EDITION

AdultBasic Ends February 28th	2
Assisted Living Regulations In Effect	3
The Affordable Care Act Decision in Florida	4
Greene Co Consumers on the Move!	5
HCR Advisory Committee Report	6
CHIP Now Covers Orthodontia But Limits on Other Dental Care	7
Request for Information from Waiver Applicants	8

AdultBasic Program to End February 28th

Over 40,000 individuals currently enrolled in the adultBasic program will lose their health insurance at the end of February. The funding for this program (through Tobacco Settlement dollars and contributions from the four Blue Cross Blue Shield plans in PA) has been exhausted and, despite intense advocacy efforts, neither the new administration nor the General Assembly have secured additional funding to allow this important program to continue. Termination notices were recently sent out to affected members letting them know that the coverage was ending and informing people about their options.

Although adultBasic has its limitations (it doesn't cover prescription drugs or mental health services), it provides basic health care coverage at a very low cost (\$36/mo) to working Pennsylvanians who have no health insurance available through their jobs, can't qualify for Medicaid and can't afford, or couldn't get, other health care coverage through the private market. In addition to the over 40,000 individuals enrolled in subsidized adultBasic, 3,600 people on the waiting list pay full price (\$629/mo) for adultBasic. There are also 460,000 on the waiting list who can't afford to buy the coverage at full cost. Individuals on the waiting list did not receive written notice about the program's termination. AdultBasic recipients, and those on the waiting list, now face the bleak prospect of finding affordable health care coverage through other programs.

The administration was able to get agreement from the Blue Cross Blue Shield plans to allow adultBasic members to enroll in Special Care (another plan for individuals with limited income

offered by the Blues plans) without imposing its pre-existing condition exclusion requirement for individuals who enroll by May 2, 2011*; however, Special Care can cost up to six times as much as adultBasic (premiums range from approximately \$132/mo to \$192/mo) and offers a more limited benefit package. Special Care only covers 4 doctor's visits per calendar year, limits inpatient hospital care to 21 days per benefit period, and has a \$1,000 maximum per calendar year on coverage of outpatient diagnostic services (x-rays, radiology, laboratory and pathology tests). **Please note, the waiver of the Special Care pre-existing condition exclusion only applies to individuals in subsidized adultBasic. Individuals on the wait list who are buying into the adultBasic coverage at the full cost WILL be subject to pre-existing condition exclusions should they join Special Care.*

Governor Corbett also asked the federal government to waive the six month "go bare" period for PA Fair Care to give adultBasic members the option to enroll in that program; however, it is unlikely that this request will be granted. PA Fair Care (PA's high risk pool coverage) is available to people with certain pre-existing conditions who have not had health insurance in the last six months. Qualified individuals pay a premium of \$283/mo, a \$1,000 annual deductible and co-pays for services received. Enrollment in PA Fair Care is limited to 3,500 slots, but PA currently has about 1,000 slots still available. More information can be found at www.pafaircare.com.

Individuals affected by the termination of the adultBasic program are encouraged to call PHLP's Helpline at 1-800-274-3258 for advice about other health care coverage options. Information about the adultBasic termination can also be found on the Insurance Department's website at www.ins.state.pa.us.

Special Care Premiums

Blue Cross of Northeastern Pennsylvania-\$131.78 per month

Capital BlueCross-\$192.44 per month

Highmark Blue Cross Blue Shield- \$162.00 per month

Highmark Blue Shield- \$162.00 per month

Independence Blue Cross - \$148.70 per month

Assisted Living Regulations Take Effect

Regulations governing the licensure of assisted living facilities went into effect January 18, 2011. A licensed assisted living facility (ALF) provides food, shelter, certain health care services and assistance or supervision with activities of daily living (e.g., dressing, bathing, diet) to a group of four or more unrelated adults. ALFs combine housing and supportive services to allow people to age in place, maintain their independence, and exercise decision-making and personal choice.

Before the ALF regulations went into effect, residences calling themselves assisted living facilities were licensed as personal care homes (PCHs). The main distinction between personal care homes and ALFs is the level of care provided. An ALF may provide medical services including occupational and physical therapy, hospice services, and skilled nursing services. PCH residents whose care needs increase to require these services must either move to a nursing home or receive long-term care services through a Home and Community Based Services Waiver Program.

Now that the regulations are in effect, any facility that has “assisted living” in its name, must either be licensed as an ALF or change its name. This requirement extends to how the facility presents itself to the community (such as on the Internet or in marketing materials) as well as using the term “assisted living” on internal forms, signs or contracts.

The Office of Long Term Living (OLTL) has received a number of ALF applications and is currently reviewing them. Once the state’s review is complete, OLTL will inspect facilities for licensure. To date, no residence has received an assisted living licensure. Therefore, consumers and their family members are advised that facilities currently using the term “assisted living” are not yet licensed as an ALF. The best way to find out whether a facility is licensed as a personal care home or an assisted living facility is to ask the provider. If the facility is not a licensed ALF, consumers should ask whether the facility intends to apply for licensure. When a facility is found to be out of compliance with these rules (e.g., marketing itself as an ALF without a license), the state will issue a correction and timeframes for compliance. PHLP is concerned about these marketing practices and invites calls to our Helpline (800-274-3258). For more information, call the Department of Public Welfare’s Assisted Living Licensing Office at 717-772-2570.

Please support PHLP by making a donation through the United Way of Southeastern PA. Go to www.uwsepa.org and select donor Choice number 10277.

Pennsylvania Not Bound By Florida Court Decision on Federal Health Reform

On January 31st, a federal court judge in Florida ruled that the federal health reform law's individual mandate to purchase health insurance (which isn't scheduled to be in place until 2014) is unconstitutional. The lawsuit was brought by 26 states including Pennsylvania. The judge also voided the entire law because he concluded that the mandate is "inextricably bound" to other provisions in the law.

This result was not a surprise and doesn't really alter the progress of the Affordable Care Act. Notably, state governments are not bound by this decision. Two other previous federal court decisions upheld the constitutionality of federal health reform in general and the individual mandate in particular.

It unlikely the Florida decision will soon be reviewed by the U.S. Supreme Court. Instead the federal government will challenge the decision in an intermediate federal court called the U.S. Court of Appeals. After a decision by that court, the losing side will likely file an appeal in the U.S. Supreme Court where it will likely be heard with other challenges.

Given the uncertainty of a decision by the U.S. Supreme Court on the final outcome (and most constitutional scholars have argued federal health reform will ultimately be found constitutional), it would be reckless for Pennsylvania to stop implementation. States have a limited window of time to implement reform, and failure to carefully implement reform may have consequences such as loss of federal funding or federal control of state health insurance exchanges.

It is one thing for Pennsylvania to be a plaintiff in the Florida decision, but an entirely different matter to halt work for a federal court decision at least twelve months away. PHLP urges Governor Corbett and the General Assembly to adopt the findings and recommendations of the January report of the Health Reform Advisory Committee referenced in this newsletter.

Note: In related news, members of the Pennsylvania House submitted House Bill 42 which prohibits Pennsylvania from imposing an individual health insurance mandate and from enforcing the federal mandate. Advocacy groups, like the Pennsylvania Health Access Network (PHAN), have challenged HB 42 as out of step with the health care community, undermines Pennsylvanians' obligation to take personal responsibility for their health care, deprives hundreds of thousands of uninsured Pennsylvanians health insurance coverage, and does not move the Commonwealth forward. PHLP will provide updates on the federal court decisions and this proposed legislation in future newsletters. Readers can view HB 42 on <http://www.legis.state.pa.us/> and can read PHAN's HB 42 opposition letter at <http://pahealthaccess.org/>.

Greene County Consumers on the Move!

Thanks to a generous grant from the Staunton Farm Foundation, consumers of mental health services are “moving and shaking” in Greene County. The Greene County Consumer Empowerment Project is increasing consumers’ involvement in their own mental health recovery and in the county’s mental health system. Janice Meinert in PHLP’s Pittsburgh office spearheads the Project which is already in year two and is making great strides.

The goals of the Empowerment Project are to:

1. *Increase consumers’ knowledge of their right to determine their path of recovery.*
2. *Increase consumers’ knowledge of the Greene County mental health system.*
3. *Decrease consumer apprehension, and subsequently increase consumer confidence, to share their views.*
4. *Support consumers’ individual and collective abilities to shape their own recovery and to shape the county mental health system to be responsive to their needs.*

Through outreach, education and encouragement, consumers have become more engaged in Community Support Program (CSP) meetings, subcommittees, Recovery Conferences and speaking engagements. An early example of increased consumer engagement is response to a county-wide recovery tagline contest for slogans describing what recovery means to consumers. The consumers’ submissions were impressive in numbers and substance. The winning tagline, “Recovery: The Journey to Self-Discovery” was also enriched by a consumer created logo. The county’s newly adopted tagline and logo were officially unveiled at the county’s Annual Recovery Conference in May 2010. (Additionally, every submitted tagline was largely written and colorfully displayed around the room at the conference.) The tagline and logo were also on display at the Greene County Recovery Panel’s workshop at the Staunton Farm’s Rural Behavioral Health Conference in October.

Several consumers have shared their personal stories of mental illness and recovery for Pitts-

burgh’s National Public Radio Station, WDUQ. Erika Beras, DUQ’s behavioral health reporter created a month-long series titled, “Living With.” The series featured the narratives of individuals across Southwestern PA living with mental illness. Several Greene County consumers shared their experiences. Their powerful stories and the journeys of all who participated can be heard at <http://www.wduq.org/component/content/article/78-local-news/232-living-with.html>.

The Recovery and Education Subcommittee of the Greene County CSP has blossomed as a result of the Consumer Empowerment Project. This Subcommittee meets monthly and reports back to the full CSP Committee. The agenda items for the Subcommittee are driven by the consumers. After several months of brainstorming, this group identified improved access to transportation as a substantial and ongoing goal. Greene County, a sprawling rural county, has no public transportation services and no taxi or jitney services. Lack of access to transportation in this sprawling rural county has significant impact on overall quality of life for the majority of consumers.

The Subcommittee developed and distributed a simple five-question transportation survey which fifty consumers completed. Survey questions addressed day-to-day living and socialization needs that are basic to an individual’s recovery. Seventy-two percent of respondents said they can’t get to where they want to go and identified stores, churches, restaurants, movies, meetings, bingo and homes of family and friends as the places of most interest to them. The survey responses glaringly highlighted the significant transportation barriers consumers face in living a meaningful life. The Subcommittee is moving forward to develop a pilot project targeting three contiguous townships in the County. The pilot named G-TRIP (Greene-Transportation Resource Improvement Project) will work to connect people in need of rides with others in the community able and willing to provide rides. PHLP looks forward to providing updates on “Greene County Consumers on the Move” in future newsletters!

HCR Advisory Committee Report Shows Broad Agreement on How to Implement National Law in PA

Last month, a non-partisan advisory committee released guidance for Pennsylvania's implementation of the Patient Protection and Affordable Care Act (ACA). Because the law's implementation schedule is ambitious, a Health Care Reform Implementation Advisory Committee was established to advise the state on policies and program changes that meet Pennsylvania's unique needs. The 47-member committee included consumers, small businesses, labor groups, advocacy organizations, health care providers, insurance companies, hospitals, experts (including PHLP), and members of the General Assembly and the Executive Branch.

The report contains 90 findings and recommendations that are intended to serve as a blueprint for implementation of the ACA. The recommendations center on the creation of a health insurance exchange – which is a marketplace for buying health insurance that provides one-stop shopping for individuals and small businesses to compare rates, benefits and quality among plans under the new law; increasing access and enrollment; and, implementing other health care reforms to improve health care quality and contain costs. All but two of the recommendations represent the unanimous opinion of the entire Advisory Committee.

Guidance about the Exchange

- Pennsylvania should establish a state-based Health Insurance Exchange by mid-2013 rather than have the federal government implement this component of the ACA in Pennsylvania.
- Pennsylvania's exchange should have a consumer-oriented mission.
- The exchange should be established as an independent public agency or authority that governed by a diverse board with clear prohibitions on conflicts of interest and with a strong management team (*not unanimous*).
- Consumers should be able to access insurance inside and outside the exchange.
- The exchange should have authority to negotiate as an active purchaser to drive the best value for employers and individuals (*not unanimous*).

Guidance about Access and Enrollment

- Pennsylvania should have a robust, state-of-the art web portal for individuals and businesses to provide clear and understandable information about coverage available through the exchange and a full-service customer service call center to assist consumers.
- Pennsylvanians should have a single application for all insurance programs with integrated eligibility processes.
- Ensure low-income individuals can access coverage and providers.
- Maximize opportunities supporting reform of long-term care.

Guidance for Other Critical Reforms

- Pay providers based on the efficient use of resources while providing high quality care – instead of simply for the number of procedures they perform or patients they treat.
- Continue the Chronic Care Initiative, which is proven to save money and improve care and which currently includes 900 primary care practitioners which serve more than 1.4 million patients, so that it is the norm for practice in the Commonwealth.
- The report recommends measures for taking the state's efforts to reduce medical errors to the next level, to improve end-of-life care and to ensure the workforce can meet emerging health needs.

The link to the 72-page report and its appendices is www.ohcr.state.pa.us.

CHIP Now Covers Orthodontia But Imposes Limits on Other Dental Care

As of January 1, 2011, the Children's Health Insurance Program (CHIP) covers medically necessary orthodontia (braces). Coverage for orthodontia has a lifetime limit of \$5,200. To obtain coverage for orthodontia, a member's dental provider will need to obtain prior authorization from the CHIP plan. The dental provider must show that the member has a "serious handicapping malocclusion" – that is, teeth that are so severely out of line that it is hard to eat, hard to speak or hard to breathe. Among other factors, a Saltzmann Evaluation Index score of 25 or higher will meet this standard. Members denied prior authorization have a right to appeal that decision and are encouraged to contact PHLP for advice and assistance.

Also starting January 1st, CHIP has imposed a \$1,500 annual cap on the coverage of other dental services (excluding orthodontia). Previously there had been no cap on these services. Additionally, certain dental services are eliminated and others are limited by frequency. CHIP no longer covers nitrous oxide (laughing gas) or conscious sedation, and no longer covers "white fillings" for baby teeth. Bite wing X-rays are now limited to once per 12 month period.

Pennsylvania made these program changes through a CHIP State Plan Amendment recently submitted to the Centers for Medicare and Medicaid Services. Members or providers with questions can contact PHLP's Helpline at 1-800-274-3258 or the state CHIP Hotline at 1-800-986-KIDS. PHLP is concerned about these changes to routine dental care services and is working with other advocates to communicate these concerns to state and federal agencies. While the inclusion of medically necessary orthodontia is an important and welcome benefit that meets the requirements of the CHIP Reauthorization Act (known as CHIPRA), the accompanying limits on routine care run counter to standard pediatric dental practice.

Do you currently get the Health Law PA News through the mail? Would you like to get these newsletters by e-mail?

If so, contact staff@phlp.org to change the way you get your PHLP newsletters!

ATTENTION: WAIVER APPLICANTS

Maximus, the new statewide Independent Enrollment Broker for Home and Community-Based Service programs for individuals age 18-59 with physical disabilities, started operating on December 1st, 2010. As of this date, Maximus is responsible for assisting applicants applying for and enrolling in the Commcare, OBRA, Independence, Attendant Care, and AIDS Waivers as well as the Act 150 Attendant Care Program.

In recent weeks, PHLP has learned about significant delays experienced by applicants for these programs; the problems identified to us have been prior to Maximus' start date as well as after. PHLP has raised concerns to the Office of Long-Term Living and continues to monitor the situation as well as the Office of Long-Term Living's response to the problems identified. **We encourage individuals who have tried to apply or enroll in any of the programs listed above and who have experienced any problems with the application and enrollment process to contact our Helpline at 1-800-274-3258, so that we can continue to advocate for improvements on behalf of our clients.**

Pennsylvania Health Law Project

The Corn Exchange

123 Chestnut St., Suite 400

Philadelphia, PA 19106