Health Law PA News

Newsletter of the Pennsylvania Health Law Project

Harrisburg Philadelphia Pittsburgh

Statewide Help Line: 1-800-274-3258 On the Internet: www.phlp.org

Volume 7, Number 3 July 2004

State Budget Passes with No Surprises, Some Relief for adultBasic Feds May Hold Key to Next Year

On July 3, the Pennsylvania General Assembly passed the state's budget for the 2004-2005 fiscal year. There were few changes from what Governor Rendell proposed in February. Of primary importance to low-income health advocates was funding for the adultBasic program. There is an additional $16-$18 million available to the program, beyond the $99.6 million in the Governor's budget. This was additional funding that the Governor had sought. That means that the state can hold the line on enrollment at 40,590 rather than the 35,000 that had been proposed. However, the year began with over 44,000 adults being served and over 95,000 persons remain on the waiting list without health insurance. The Governor has committed to working on a

(State Budget, Continued on page 2)

Announcing The Centers for Medicare & Medicaid Services (CMS) Forums

In the next month CMS will be holding forums to discuss **Pennsylvania's Consolidated Waiver Program**. Families, advocates, providers and county staff are invited and encouraged to attend these forums to share their invaluable input (i.e. your experience, success stories, suggestions for improvement, and

(CMS Forums, Continued on page 4)

In This Edition

Recent Guidance Clarifies How Participation in the Medicare Discount Drug Card Program and $600 Credit Affects Eligibility for Medical Assistance

The Medicare Discount Drug Card Program began June 1, 2004 and will continue until the permanent Medicare prescription drug benefit takes effect in January 2006. This voluntary program allows Medicare consumers who do not have prescription drug coverage through Medical Assistance (MA) to buy a Medicare-approved drug discount card and receive discounts on certain drugs. Enrollment fees for the cards can be as high as $30.

Consumers with annual incomes below $12,569 for an individual or $16,862 for a married couple will qualify for a $600 credit as long as they do not have outpatient prescription drug coverage through certain other sources. Consumers who receive this credit pay a 5 to 10% co-pay based on their income

(Medicare Discount Cards and MA, Continued on page 6)

(State Budget, Continued from page 1)

plan to cover Pennsylvania's uninsured, and the Office of Health Care Reform has sought a federal grant to help with the planning.

The budget also contained funds to double the fees for ambulance providers in the Medicaid program. This was seen as a response to litigation that was brought by the providers. The fees will be increased in both the managed care and fee-for-service programs.

County MHMR programs got a 2% increase cost of living adjustment. This is intended for workers who are not county employees.

As in recent years, the Medicaid budget this year depends on assessments against certain Medicaid providers as the source of the state's contribution to draw down matching federal funds. The federal government has not yet approved last year's assessment against nursing homes, and if the federal government does not ultimately agree to provide funding, a large deficit will result.

This year's budget also relies on an assessment against managed care companies, which formed the basis for increased payments to HealthChoices participating HMOs. State officials report that although they do not need federal approval for that assessment, the federal government is questioning the increased payments. Several of these HMOs had made renewal of their contracts conditional on the increased payments.

The federal government is also claiming that the state owes $20 million in disputed Intragovernmental transfer funds.

In its first two years, the Rendell Administration has been able to balance the budget without cuts to fees or services under the Medical Assistance Program. DPW officials are now warning that without significant cost savings or an influx of money, there may be cuts in eligibility, services or reimbursement next year.

OMHSAS Releases HealthChoices Behavioral Health Baseline Performance Report

The Office of Mental Health and Substance Abuse Services (OMHSAS) recently released the HealthChoices Behavioral Health Program Baseline Performance Report. The information captured in the report is for 2001 and 2002 and is considered "baseline" data. OMHSAS will use these baseline years as a measure of comparison for ongoing annual reports. The information in the report can be used by consumers, family members and interested stakeholders to assess how well the mental health and drug and alcohol service system is working. The data is specific to the 25 Medical Assistance HealthChoices counties in the Southwest, Southeast and Lehigh/Capital regions.

The data is captured by "performance indicators". These indicators were developed by OMHSAS with input from consumers, persons in recovery, family members, providers, behavioral health MCOs and county mental health and drug & alcohol programs. Examples of performance indicators are the number of: *Adults receiving mental health services, Youth receiving substance abuse services, Older adults with psychiatric inpatient readmission with in 30 days of discharge, Youth with residential treatment placement greater than 120 days.* The information is presented in charts and

(Baseline Report, Continued on page 5)

Medicare Launches Demonstration Program to Help Certain Medicare Beneficiaries with Prescription Drug Costs

As part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), approximately 50,000 Medicare beneficiaries diagnosed with nine types of cancer or eight other serious diagnoses will be chosen through a lottery system to save money on certain drugs they take for their conditions. The eight other serious diagnoses included in the project are: Pulmonary Hypertension, CMV Retinitis, Hepatitis C, Multiple Sclerosis, Rheumatoid Arthritis, Paget's Disease, Secondary Hyperparthydroidism, and Osteporosis (patient must be homebound). Under this project, which is called the Medicare Replacement Drug Demonstration, Medicare will help to pay for certain drugs that can be taken by the patient at home. The drugs taken at home "replace" the same drug that a beneficiary currently receives in the doctor's office.

The amount a beneficiary will pay for these drugs will depend on their income. Primarily, the cost sharing for the drugs will be similar to the "standard" package under the Medicare Part D prescription drug benefit (without the monthly premium payment). Under this payment structure, a Medicare beneficiary whose income is above $1164 per month for an individual and $1561per month for a married couple will have a $250 deductible, pay 25% of their drug costs until a certain payment level is reached, then have no coverage until a certain point when catastrophic coverage kicks in. Beneficiaries with lowers income will have significantly lower cost sharing requirements.

The Centers for Medicare and Medicaid Services (CMS) is estimating that beneficiaries will save 55 to 90% off the cost of these prescription drugs over the course of a year with lower income beneficiaries experiencing the greatest savings.

(Continued on next column)

These are the eligibility criteria for the Medicare Replacement Drug Demonstration:

- Beneficiary must be enrolled in Medicare Part A and Part B
- Medicare must be the primary payer
- Beneficiary may not have comprehensive drug coverage through certain other sources (such as TRICARE military insurance, MA, or an employer sponsored plan)
- Beneficiary must have a signed certification from a doctor stating that he/she requires one of the drugs covered under the demonstration program.
- Beneficiary must live in one of the 50 states or District of Columbia

For more information or to get an application, you can call Trailblazer, the Medicare Contractor for the demonstration, at 1-800-563-5386.

Applications are being accepted now through September 30, 2004 with coverage to start as early as September 1st for those who apply before August 16, 2004. The demonstration will end on December 31, 2005 when the Medicare Part D benefit begins.

DPW Announces Presumption of Disability for MAWD

DPW announced to the Consumer Subcommittee of the Medical Assistance Advisory Committee on July 21, that it was finalizing "field instructions" to County Assistance Offices (CAOs) to give three months of presumptive disability to individuals applying for MAWD. The decision was in response to complaints from Consumer Subcommittee members that DPW is rejecting too many claims because of "failure to prove disability." What some people need, according to subcommittee members, is help tracking down records to prove disability. To address this barrier, DPW is instructing the CAOs to refer the cases to the MRT coordinator under the Disabilities Advocacy Program (DAP). DPW hopes to have the instructions out to the field in August.

(CMS Forums, Continued from page 1)
questions).

CMS, the federal agency responsible for the Medicaid Program, is conducting a review of **Pennsylvania's Consolidated Waiver program** that serves individuals with mental retardation. The review is conducted in connection with the renewal of the waiver, which is currently approved through June 2005. The purpose of the review is to determine whether the State is in compliance with the assurances and other requirements of the waiver program.

As part of the review, CMS has asked the Pennsylvania Department of Public Welfare, Office of Mental Retardation, to arrange a number of public forums throughout Pennsylvania. Separate meetings will be held for waiver participants and their families and advocates; for providers of services; and for county staff that administer the waiver at the local level.

The purpose of the forums is for the federal reviewers to better understand the operation of the waiver. At these forums, federal staff will present a brief overview of the waiver in the context of the Medicaid Program. Sessions were held in Pittsburgh in July. The Philadelphia and Harrisburg sessions will be held in August. Each session is scheduled for a specific audience.

Below is a schedule of meetings. Please register for the meetings by e-mailing Rebecca Roberts at: EITA_RegistrationsRR@tiu11.org or calling (814) 542-2501 ext. 154.

Harrisburg Area
Aug. 17-10:00am-11:30am at the Business Center, Carlisle, PA
Audience: Self-Advocates, families and advocates

Aug. 18-10am-11:30am at the Dauphin County Case Management Unit
Target Audience: Provider Staff

Aug. 18-1:00pm-2:30pm at the Dauphin County Case Management Unit
Audience: Dauphin County Case Management Unit-County Staff

Philadelphia
Aug 19-11:30am-1:00pm at Temple University, Kiva Auditorium, Ritter Hall
Target audience: University-County Staff
Aug 19- 1:30pm-3:00pm at Temple University, Kiva Auditorium, Ritter Hall
Target audience: Temple University-Provider Staff

Philadelphia Suburbs:
Aug 20-1:30pm-3:00pm at the Delaware County Intermediate Unit
Target audience: Delaware County Intermediate Unit Self-advocates, families, and advocates

Aug 20- 1:30pm-3pm at the Delaware County Intermediate Unit
Target audience: Delaware County Intermediate Unit Provider Staff

(Baseline Report, Continued from page 2)
graphs by county and by region for comparison. Each performance indicator has an identified "Gold Standard" as defined by OMHSAS. Consumers and others can use the information, as a tool to determine how well their county is doing in relationship to the desired standard and in relationship to other counties.

The data indicates some areas of real concern. In varying degrees, all HealthChoices regions are performing poorly regarding access to substance abuse treatment for youth. The percentage of African American youth accessing substance abuse services is even lower than for all youth in general. There are also performance indicators that measure the quality of services, which also demonstrate areas of concern. The percentage of youth who received follow-up services within 7 days after discharge from a residential treatment facility was nowhere near the gold standard and was actually lower in 2002 than in 2001. At the same time, there was an increase in the number of youth admitted to residential treatment and the percentage of stays beyond 120 days increased as well.

This report, and the technical background document, can be viewed on-line at http://www.dpw.state.pa.us/general/guides.asp#omh or can be obtained from Barbara Aschenbrenner at OMHSAS by calling 717-346-1260.

New "Primary Wage Earner" Policy

DPW has just announced a new policy that will make it much easier for two parent families to qualify for TANF and Medicaid, both separately and in combination. As a result of OPS memo 040709, DPW will no longer require that two parent families produce documentation that lays out who is the "primary wage earner" and meet extremely technical rules about unemployment in order to qualify for Medicaid or TANF. Instead, if a family has a child living with them and they meet the financial eligibility rules, they will qualify without any further inquiry. This should help a significant number of parents qualify for coverage and will actually save the state money by bringing in federal dollars!

OMHSAS Advisory Committee Still Looking for Members

As we reported in the May Issue of Health Law PA News, the Office of Mental Health and Substance Abuse Services (OMHSAS) has created a new advisory structure. The newly formed committee structure consists of a Children's Committee, an Adult Committee and an Older Adult Committee. The first meeting of these Committees occurred on July 8, 2004. Each Committee will consist of 30 appointed members who must submit an application for membership to OMHSAS. Several members have already been appointed to each of the Committees but there are still openings.

OMHSAS is striving for diversity and balanced representation in the make-up of each group. Persons in recovery from substance abuse and their family members, D&A advocacy organizations and D&A provider organizations are encouraged to apply. Consumers, family members and other interested stakeholders in rural areas are also encouraged to apply. Since 51% of the membership must be comprised of consumers and family members it is important and necessary for these individuals to consider applying.

The three Committees meet bi-monthly in the Harrisburg area from 10am to 4pm. The Committees meet concurrently in the morning session and come together for one large meeting in the afternoon. The meetings all occur on Thursdays and are scheduled for September 2, 2004, November 4, 2004, January 6, 2005, March 3, 2005 and May 5, 2005.

Lunch is provided and consumers and family members are reimbursed for travel, lodging and meals, if they are not representing an agency. To receive an application contact Shelley Bishop at OMHSAS at 717-787-2422 or at SheBishop@state.pa.us. For additional information/questions about the OMHSAS Advisory Committees please contact Janice Meinert at the PA Health Law Project at 1-800-274-3258.

(Medicare Discount Cards and MA, Continued from page 1)

and use the credit to pay for the remaining cost of the drug. Consumers can use this $600 toward their drug purchases in 2004 and carry over any credit not spent this year. They will get another $600 in 2005. Consumers qualifying for the credit do not have to pay the enrollment fee.

Because eligibility for many Federal benefits programs takes into account individuals' income and allows for certain deductions for medical expenses, advocates pressed for clear guidance about how enrollment in the Medicare discount drug card program and the $600 credit might affect an individuals' eligibility for benefits from other Federal programs. Recent guidance from the Centers for Medicare and Medicaid Services (CMS), the Federal Agency responsible for overseeing Medicare and Medicaid, indicates that enrollment in a Medicare discount drug card and the credit will not negatively impact an individual's eligibility to receive other public benefits or the amount of benefits received through these programs.

MA Spenddown Eligiblity

This recent guidance is good news for consumers who currently do not qualify for Medical Assistance because their income is over the eligibility limit and who might want to enroll in a Medicare-approved drug discount card. Consumers who have incomes too high to qualify for free Medical Assistance can "spenddown" their income and qualify for MA that way. This is done by deducting their out-of-pocket costs or incurred medical expenses from their countable income. According to the guidance issued, consumers can count any portion of the $600 credit used to pay for prescriptions as well as the discount they receive toward their spenddown.

Here is an example of how the discount and credit can be used to meet MA spenddown.

A consumer is enrolled in a Medicare-approved drug discount card and the

(Medicare Discount Cards and MA, Continued on page 7)

Breast and Cervical Cancer Prevention and Treatment Program Updates

The Breast and Cervical Cancer Prevention and Treatment Program provides full Medical Assistance to women with cancer or pre-cancerous conditions of the breast or cervix. To qualify, a woman must be under 65, screened and diagnosed through the Healthy Woman Project, uninsured or without creditable coverage, a resident of Pennsylvania, and a U.S. citizen or qualified alien (see below for more information on citizenship requirements). Below are some updates on the Program.

Healthy Woman Project in Philadelphia Experiencing Funding Problems

As mentioned above, in order to qualify for coverage under the BCCPT Program a woman must be screened through the Healthy Woman Project. In Philadelphia County there are two Healthy Woman Project contractors – the Family Planning Council and the Philadelphia Department of Health. The Family Planning Council has exhausted its funds for the contract year. They will no longer be providing any services to women who are Philadelphia residents. Instead they will refer these women to the Philadelphia Department of Health for screenings and BCCPT Program ap-

(BCCPTP, Continued on page 7)

(Medicare Discount Cards and MA, Continued from page 6)

$600 credit. Without the drug discount card, the price of the prescription is $100. With the Medicare-approved drug discount card, the discounted price of the medication is $80.

To calculate incurred medical expenses for MA spenddown:

$20	(discount received on drug with Medicare-approved card)
$ 8	(amount paid out of pocket by consumer-10% co-pay of $80)
+ $72	(amount of credit used to pay for the drug after co-pay)
$100	(Pre-discount price of the drug and the amount consumer can apply toward MA spenddown)

Consumers submit receipts or bills to show paid or incurred medical expenses for MA spenddown. The pre-discount price of the prescription drug may be available on the receipt when purchasing a drug using a Medicare-approved drug discount card. If not, consumers can use a receipt from before they had the prescription drug discount card to show the amount paid for the drug without the discount card. If a consumer is unable to provide receipts showing the amount paid for a prescription drug without the discount card, the County Assistance Offices have been instructed to use $48.17, the average price per prescription, as a substitute for the actual pre-discounted price.

Have questions about MA spenddown or how to qualify for MA using spenddown and the Medicare-approved drug discount card and credit? Call the Helpline at the Pennsylvania Health Law Project at 1-800-274-3258.

Have more questions about the Medicare Drug Discount Card Program or how to pick the one that is right for you? You can compare discount drug card plan prices on www.medicare.gov or you can call 1-800-MEDICARE. Also, you can call the Apprise program at 1-800-783-7067 or you can call the Helpline at the PA Health Law Project at 1-800-274-3258.

adultBasic Update: The June Numbers

Enrollment:	39,440
Waiting List:	96,179
Enrolled at Full Cost:	3,267

Effective July 1, 2004, the adultBasic at-cost premium increased by about 14%. The exact cost varies by region. In Philadelphia, the at-cost price is now $240.30. It was $210.67.

(BCCPT, Continued from page 6)

plications. The Family Planning Council will continue to serve women who do not qualify to receive services from the Philadelphia Health Department (i.e. are not Philadelphia residents). This arrangement will continue until October 1, 2004 when operations will return to normal. We have been assured that every woman that needs services will receive services. If you are having trouble accessing services in Philadelphia, or other parts of the State, contact the PHLP helpline, 1-800-274-3258.

BCCPTP for Non-Citizens

In a related note, we received confirmation from the Department of Public Welfare this month that a woman who does not meet the citizenship requirements for regular Medical Assistance can qualify for Emergency Medical Assistance under the BCCPT Program. We are still trying to get the Office of Income Maintenance to issue a policy clarification on this issue. To qualify for Emergency Medical Assistance, the applicant must complete the normal application process and provide a letter from her doctor stating that the applicant has an emergency medical condition which requires immediate treatment. The letter must meet other, very specific criteria. For more information about applying for Emergency Medical Assistance under the BCCPT Program, or any other category, please call the PHLP helpline, 1-800-274-3258.

Need Healthcare Coverage for Adults?

The Pennsylvania Health Law Project Help-Line —800-274-3258

The Pennsylvania Health Law Project is available to speak with your staff and consumers about these important, but under-utilized programs that could provide necessary healthcare coverage for adults:

- **Medical Assistance for Workers with Disabilities**
- **Breast & Cervical Cancer Prevention & Treatment Program**
- **Adult Basic Coverage Healthcare Program**
- **Home and Community Based Waiver Programs**

Presentations in Chester, Delaware, Bucks, Montgomery, and Philadelphia counties are currently being scheduled. If you are in one of these 5 counties, call 1-800-274-3258 to schedule your presentation today!

The Pennsylvania Health Law Project Help-Line 1-800-274-3258

Guide for accessing healthcare coverage and services for Adults is available online at www.phlp.org !

Presentations are generously funded by the Pew Charitable Trusts' Vulnerable Adult's Fund

Regulation Still a Barrier for Kids Needing Braces

For years, children have been denied orthodontia by the Medical Assistance program because they failed to score 25 or higher on the Salzmann Evaluation Index, pursuant to 55 Pa. Code 1149(8). The Salzmann Index has long been discredited as a standard for evaluating the need for dental braces. On May 8, 1985, the American Association of Orthodontists resolved "the Handicapping Malocclusion Assessment Records (Salzmann Index) is not suitable as a vehicle for qualifying an individual for orthodontic treatment." A federal court reviewing the use of the Salzmann index in Illinois rejected its use as a bright line for determining the medical necessity of orthodontia. Chappell v. Bradley, 834 F. Sup. 1030 (N.D.Ill 1993). In 1996, DPW issued MA Bulletin 03-96-06 in an attempt to rescind the use of the index. However, some HealthChoices plans continued to refuse braces for children who did not score at least 25 on the Salzmann Index, claiming that a bulletin cannot be used to overturn a state regulation.

In 2001, DPW paid a consultant, ECRI, to develop an alternative to the Salzmann index. In February 2003, DPW shared with its Medical Assistance Advisory Committee a draft regulation that would rescind Salzmann. The draft regulation is bogged down in the bureaucracy.

In the meantime, some HMOs refuse to authorize orthodontia on the basis of Salzmann, and some orthodontists refuse to prescribe orthodontia unless the patient meets the Salzmann minimum.

PHLP is interested in learning of cases where children are denied braces pursuant to Salzmann. DPW has offered to intervene with its HealthChoices HMO in these cases, and PHLP is anxious to assist, as well as to track their progress and outcome.

DPW Approves A New Managed Care Plan

The PA Department of Public Welfare (DPW) recently announced that it has approved a new health plan to operate as a Voluntary Managed Care Plan for MA consumers in specified counties. Ion Health, Inc. (formerly called "Great American Health Plan") is a for-profit HMO that came into existence to provide services to MA consumers. It does not currently have a commercial business.

After passing a "readiness review" by DPW, Ion was initially approved to operate as a voluntary managed care plan in Erie County. Ion began enrollment activities in April, 2004 and started to provide health care to its members in Erie County effective May 1st. Ion has subsequently been approved to begin operations and enroll MA recipients in two other Voluntary Managed Care counties- namely, Blair and Cambria county. It is currently marketing and enrolling new members in both counties.

PHLP continues to advise MA consumers on how voluntary managed care works and to advocate for consumers when problems arise in that program. If you or the consumers you work with have questions or concerns about how Ion or any other voluntary managed care plan conducts their marketing or enrollment activities, or about the quality of the health care delivered to consumers, you can call PHLP's Helpline at 1-800-274-3258.

PHLP Says Goodbye to Fantastic Summer Interns

This month, PHLP will say goodbye to its wonderful summer interns. Karly Grossman and Carol Dembe will be leaving us to return to Temple Law School and Jennifer Peterson will be returning to Rutgers Law School.

Throughout the summer the interns conducted trainings on the new Medicare Discount Drug Cards, researched issues surrounding shift nursing, explored issues affecting the provision of dental services in Pennsylvania and much, much more.

As out interns return to their studies, we'd like to thank them for their hard work and commitment and wish them luck in their careers!

Problems with FFS Prior Authorizations?

A number of legal services attorneys from around the state have reported encountering problems with DPW's fee-for-service prior authorization unit. This is the unit that must authorize medical equipment, shift nursing hours, and some drugs. Among the problems cited have been a refusal to share records and documents in advance of hearings, and a refusal to participate in prehearing conferences. PHLP has raised these issues with DPW. If you have encountered such problems, please call the PHLP helpline 1-800-274-3258, or write PHLP, or email Mike Campbell at www.phlp.org.

Medicare Part D Regulations

Proposed regulations for the Medicare Part D benefit will be published in the Federal Register on August 3, 2004. Look for more information in the next edition of the PA Health Law news!

Pennsylvania Health Law Project
924 Cherry Street, Suite 300
Philadelphia, PA 19107