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 1 February 2004

Governor's Medicaid Budget Averts Cuts in Eligibility, Expands Services

Governor Rendell's proposed Medicaid (MA) budget is more remarkable for what it would not do than for what it would do. It would not take away health coverage from low-income Pennsylvanians, or cut services, despite the loss of $530 million in federal matching funds. Instead, the budget proposes a modest expansion of critical MA services.

The budget takes aim on long-term care services, as Pennsylvania attempts to reverse its status as a state where a person has to move to a nursing home to get care. The state would increase the number of people who can be served at any one time (“slots”) in several of its "waivers." A waiver is the mechanism for diverting funds to community-based services that would otherwise be spent in institutions. The Governor's budget would increase the "Aging" waiver, which is available to persons age 60 and over, by 4,586 slots. The waiver would also increase several other waivers (Attendant Care-including Act 150 services, OBRA, Independence, and COMMCARE), which are available to persons with disabilities, by a total of nearly 1,800 slots. At her budget briefing, Welfare Secretary Estelle Richman also committed to funding the yet to be finalized recommen-

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Welfare Secretary Issues Important Ruling on Spend-Down

Secretary of Public Welfare Estelle Richman recently issued a decision that could affect Medical Assistance consumers who have to deduct medical expenses from their income to be eligible for Medical Assistance. Prior to her decision, many consumers who deducted medical expenses from their income, also

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PHLP Launches Immigrant Health Access Project

The Immigrant Health Access Project (IHAP) is a new initiative at the Pennsylvania Health Law Project, focusing on the needs of Latino and Immigrant populations struggling to access publicly funded health care. IHAP, will work to remedy health care deficiencies in the 5-county Philadelphia area by advocating on

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Please feel free to copy and post or distribute this announcement.

Announcing:

The Pennsylvania Health Law Project

3rd Annual State and Federal Budget Briefing

March 8th—9:30 -11:30 AM
3 Locations

Call The Pennsylvania Health Law Project Help-Line to Sign Up —800-274-3258

Briefing Locations

Philadelphia— Philadelphia Bar Association
1101 Market Street—11th Floor
Philadelphia, PA

Harrisburg— PA Council on Independent Living
101 S. 2nd Street, Suite 4
Harrisburg, PA

Pittsburgh— City County Building, Academy Room, 414 Grant Street
Pittsburgh, PA

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behalf of Latinos and Immigrants with respect to publicly-funded programs such as Medicaid and the Children's Health Insurance Program. IHAP will target those enrollment barriers that prevent Latinos and Immigrants from entering the public health system in proportion to their numbers. IHAP will also focus on those utilization barriers, which cause enrolled Latinos and Immigrants to receive fewer services than the general population. The project will work through a combination of direct client representation, as well as initiatives centered around key issues such as protecting the rights of persons with Limited English Proficiency and getting Emergency Medical Assistance for immigrant persons.

There are many ways in which IHAP can work with your organization:

- IHAP can act as a resource on various topics of importance to Immigrant and Latino health, including publicly-funded health programs such as Medicaid (Medical Assistance), Emergency Medical Assistance for Immigrants, Medicare, adultBasic, CHIP, and insurance companies contracting with the state Departments of Public Welfare or Insurance (For example, Keystone Mercy, AmeriChoice, or HealthPartners);

- IHAP can train staff members of community organizations or health care providers about eligibility for publicly-funded health care programs and access for Immigrants and Latinos;

- IHAP can do presentations and/or screenings for the members of community organizations about publicly-funded health care programs available to Immigrants and Latinos;

- IHAP can handle direct representation for some Immigrants and Latinos who are being denied enrollment into a publicly-funded health care program, who have been denied a medical service or prescription, or who have pending appeals or other issues with publicly-funded health programs;

- IHAP can work with health centers and health care providers to improve Immigrant and Latino access to services and intake procedures; and

- IHAP can work with community organizations and health care providers to ensure legal requirements for language assistance are being fulfilled (LEP compliance).

For more information about IHAP, please contact PHLP at 800-274-3258.

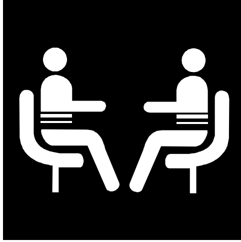
adultBasic Program Dwindles As Need Rises: Budget Offers No Solution

The state continues to ratchet down the adultBasic program, even as demand for the subsidized health insurance program has reached record numbers. As of February 2004, enrollment was at 42,000, and there were 72,000 Pennsylvanians on the waiting list. An estimated 300,000 to 350,000 persons are thought to qualify for the program, but many people either do not know of it, or choose not to apply because of the long waiting list, according to state officials.

The proposed 2004-05 budget, which Governor Rendell presented to the General Assem-

(adultBasic, Continued on page 7)

DPW Eliminates Face-to-Face Interview for General Assistance



Good news! In late December of 2003, the Department of Public Welfare eliminated the face-to-face interview for General Assistance (GA) related Medicaid.

The effort is aimed at reducing barriers that prevent individuals from obtaining or continuing to receive their Medicaid benefits. All individuals receiving GA-related categories of Medicaid are no longer required to have a face-to-face interview as part of the Medicaid application process. Face-to-face interviews have not been required for applicants in most categories of Medicaid. And, with the elimination of the face-to-face interview requirement for GA-related categories, the only MA category left for which a face-to-face interview is required is for Medicaid applications or reapplications for Long Term Care and Waiver categories.

Executive directors of CAOs throughout the State have informed their staff that the face-to-face interview requirement has been eliminated for Medicaid applications or reapplications except for LTC and Waiver categories. If you are receiving GA-related Medicaid and your CAO is requiring a face-to-face interview or you would like to receive more information, call PHLP at 1-800-274-3258 for assistance.

(Budget, Continued from page 1)

dation of the "autism workgroup."

The state would make the waivers more user-friendly, according to Secretary Richman. Persons served through the Aging waiver would have the choice of staying in HealthChoices or moving to fee-for-service. The Aging waiver would also have an aggregate cap, rather that an individual cap. This means that costs would be spread out across the waiver, and an individual's need for a more expensive service would not cause disqualification from the waiver. Transition services would be added to waivers, so that persons can get help preparing for discharge from an institution.

The budget would provide service to more than 500 individuals currently waiting for community mental retardation services (the so-called "MR waiting list). It would also provide additional mental health funds, to support nearly 200 persons in the community.

During his budget address, Gov. Rendell announced that the state would reduce pharmacy costs (the other major cost for DPW, besides long-term care) with or without the cooperation of drug companies. At this point, there are no specifics on these initiatives.

Funding for the budget, particularly the reduction in the MR waitlist, may depend on federal approval of $270 million in revenue maximization measures. The proposed budget contains a number of such measures, aimed at drawing down federal dollars. The Bush administration has accused states of exploiting loopholes to shift a larger portion of Medicaid costs to the federal government, and intends to subject all such requests to federal approval, according to a recent New York Times article. (U.S. Nears Clash with Governors on Medicaid Cost, by Robert Pear, Feb. 16, 2004). Howeverd, some members of Congress are reportedly considering emergency supplemental Medicaid funding this year, like last year, based on the premise that states need help until the national economy has turned around.

For more details on PA's health care budget, attend PHLP's Annual Budget Briefing on March 8, 2004. See details in this issue of PA Health Law News.

Accessing RTF Services in Medical Assistance

RTF services are paid for under Medical Assistance in the Fee-For-Service system and HealthChoices, when medically necessary.

<u>What is a Residential Treatment Facility (RTF)?</u>

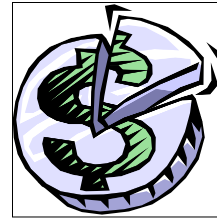
A Residential Treatment Facility (RTF) is a program where children under 21 with severe mental, emotional or behavioral disorders stay for whatever length of time is medically needed. This intensive, inpatient level of treatment should only be prescribed when other less intensive levels of treatment are not adequate to meet the child's safety and behavioral health needs. An RTF has trained staff providing services and supervision 24 hours a day/ 7 days a week. The services include: individual therapy, group therapy, family therapy, group education, medication evaluation and medication monitoring. The services are designed to decrease behaviors that are causing problems for the child and to increase helpful, positive behaviors and coping skills. Children also receive ongoing education while in an RTF either on site at the facility by certified teachers, or at a school in the community. The goal of residential treatment is for the child to return home with the necessary skills and support to remain with family.

<u>How are RTF Services Obtained?</u>

In order for a child to be approved for RTF services there are a series of steps that must occur. First, the child must have a complete psychiatric or psychological evaluation by a psychiatrist or psychologist who recommends the child for RTF services. (The evaluation must be done by a <u>psychiatrist</u> for the child to get services from an <u>accredited</u> RTF.) Second, an Interagency Service Planning Team (ISPT) meeting must occur to review the recommenda-

(RTF, Continued on page 6)

Fiscal Year 2003-04 Final Budget Restores Many Cuts



The state budget passed in late December. Many of the cuts proposed in March 2003 were avoided as the personal income tax was raised from 2.8% to 3.07%. HealthChoices physical health plan funding was increased by $25 million, which is half of what the health plans were seeking. If that money were spread evenly among the plans, it would represent between a 3% and 4% increase, on top of the 1% that the plans already received. What each plan gets is subject to ongoing negotiations with DPW. While not saying that their financial problems are over, the plans appear much less likely to move ahead with termination of their contracts with DPW, as some had threatened

$86 million of hospital outpatient disproportionate share money was restored. DPW officials announced at the January meeting of the Consumer Subcommittee of MAAC that they were considering placing conditions on the receipt of this money. Consumers have recommended several measures aimed at increasing patient access to services.

Much of the drug and alcohol services funding that had been cut earlier this year was restored. Behavioral Health Services had funding restored at $43 million (90%), and Human Services Development funds were restored at $33 million out of $36 million.

The switch of GA recipients from managed care to fee-for-service is averted for the time being, although DPW continues to look at whether this population is better served in fee-for-service.

Social Security income no longer disqualifies some children with disabilities from Medical Assistance

Children with disabilities who meet the Social Security disability criteria are usually eligible for Medical Assistance regardless of their parent's income. This is known as the "disable child" provision or "loophole". However, only parental income is excluded under the loophole. Income in the child's name is counted (except for court-ordered child support) and if it exceeds $796 a month, the child is ineligible for Medical Assistance. The most common type of income in the child's name is Social Security (not to be confused with SSI which includes Medical Assistance automatically). We are talking about the kind of Social Security for which a child is eligible because one of his/her parents has died (Survivors), retired or has become disabled themselves. If the amount of the Social Security check in the child's name exceeds $796 a month, that child is not eligible for Medical Assistance. That has resulted in the situation where a child with two parents earning $200,000 can qualify for Medical Assistance but if one parent dies, the child might lose his MA eligibility once he starts to receive Social Security on his deceased parent's account.

After advocating for years for DPW to change this discriminatory policy, DPW has agreed to a partial change to the policy. From now on, if a child (under 21) already on MA starts to receive Social Security on a deceased, retired or disabled parent's account, their Social Security will NOT be counted in determining the child's continuing eligibility for Medical Assistance.

This new policy was issued on January 28, 2004 in Operations Memorandum OPS 040107. It should be noted that this new policy does NOT apply to children who were not already on Medical Assistance at the time they start receiving Social Security- apparently because the Administration felt covering children who were not already on Medical Assistance would be too costly.

(RTF, Continued from page 5)

tion for RTF services for the child. The Team meeting should include:

- the child (if appropriate)
- parents or guardians
- a County MH/MR representative
- a representative from the child's Behavioral Health MCO (if the child is in HealthChoices)
- someone from the child's school
- those professionals currently involved in any treatment the child is receiving, and
    - any other personal or professional supports in the child's or family's life.

***Note: it is especially important for the child's school to be represented at the ISPT meeting because they are responsible for payment of the educational component of the child's placement in the RTF.*

Once the Team supports the doctor's recommendation for RTF placement for the child, the third step is to identify a facility that can meet the child's needs and that also has an open bed available. The person or persons who are to research the possible RTFs must be clearly identified at the team meeting. Families can and should have a say in the RTF and can visit the possible facilities. The Team meeting should also clarify what behavioral health services will remain in place, or will be put in place, until the child is admitted to the RTF. (A child who is in need of this intensive level of care should NEVER be without behavioral health services while waiting to be admitted to the RTF.) The Team meeting should not end until all present are clear about their tasks in working toward the child's placement in an RTF, and when those tasks should be completed. It is a good idea to schedule the next team meeting, to occur within a week or two, for all parties to re-convene and discuss progress and problems with the RTF placement.

Fourth, once an RTF bed is identified

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bly on February 3rd, would reduce enrollment to 35,500 persons during 2004-05. The budget projects a decrease in future enrollment (down to 25,500 persons in 05-06, then decreasing by 3,000 per year in 06-07 and future years). State officials believe that these reductions can be obtained through attrition, and no one will be cut from the program. Rising costs, a reduction in tobacco settlement revenues (the funding mechanism for the program), and the failure of the state to commit other funds to maintain or expand the program have caused the crisis.

A review of the waitlist shows that in every county, significant numbers of Pennsylvanians are without health insurance. The state's two largest counties, Philadelphia and Allegheny, have waiting lists of 10,664 and 7,487 respectively. In Erie, Lackawanna, Lancaster, Westmoreland and York counties, the list exceeds 2,000. More than 1,500 await health care coverage in Berks, Bucks, Cambria, Dauphin, Delaware, Lehigh, and Luzerne counties. The list exceeds 1,000 in Beaver, Butler, Chester, Fayette, Mercer, Monroe, Northampton, and Washington counties. Only four counties, Cameron (77), Forest (65), Montour (60), and Sullivan (47) counties have fewer than 100 on the waiting list. There is some interest among advocates and legislators in a tax on smokeless tobacco to raise funds to reduce the waiting list.

The adultBasic program provides basic health insurance coverage for $30 per month to qualifying adults with income below 200% of the poverty level, who are not eligible for Medical Assistance.

Ask PHLP

Dear PHLP:

I've heard that DPW has increased the limits for assets (money in the bank etc.) a person can have and still qualify for the home & community based service waivers (MR waivers, aging waiver, CSPPPD waiver, attendant care waiver, COMMCARE waiver, Michael Dallas waiver) from $2000 to $8000. I am on one of the waivers and also getting SSI. Can I now have more than $2000 in assets and still keep my SSI?

A: No. The increase in the assets limits for the waivers does NOT apply to SSI. The asset limit for SSI is still $2000 ($3000 for a married couple). SSI is a separate program administered by Social Security while the waivers are administered by the State Department of Public Welfare. However, should a person on one of the waivers and on SSI lose their SSI because their assets are above $2000 (but below $8000), they will still qualify for both the waiver and regular Medical Assistance.

As always, please call the toll-free PHLP helpline if you have questions about this!

1-800-274-3258

Interested in learning about the new Medicare Rx Law and how it will impact Pennsylvanians?

The Pennsylvania Health Law Project has been recognized as one of the few resources for details on the Medicare Rx law and how it will impact lower-income Pennsylvanians. We have been inundated with requests for presentations on this and have chosen to schedule some large community presentations that are open to the public. Please feel free to copy and share the flyer on the next page. Also, please note that more presentations will be scheduled. If you would like to host a presentation in your community, please call us at (800)274-3258.

Please feel free to copy and post or distribute this announcement.

Announcing:

The Pennsylvania Health Law Project **Information Sessions** on the New Medicare Rx Law and How it Will Impact Pennsylvanians

Call The Pennsylvania Health Law Project Help-Line to Sign Up —800-274-3258

Training Dates	Training Locations
3/16/04 10:00—11:30 AM	Allegheny County Bar Association City County Building—Academy Rm 414 Grant Street—Pittsburgh, PA
3/25/04 2:00—3:30 PM	Vintage Senior Center 401 North Highland Avenue Pittsburgh, PA
3/29/04 9:30—11:30 AM	Philadelphia Bar Association 1100 Market Street, 11th Floor Philadelphia, PA
4/2/04 9:30—11:30 AM	Philadelphia Bar Association 1100 Market Street, 11th Floor Philadelphia, PA

Call The Pennsylvania Health Law Project Help-Line to Sign Up —800-274-3258

Visit us online at www.phlp.org !!

Why I Need adultBasic

Are you one of the 42,000 Pennsylvanians who is enrolled in adultBasic? Are you one of the 72,000 who is on the waiting list? If so, your story could help save adultBasic from the drastic cuts that have been proposed in the new budget (see our article on page 1 of this newsletter).

Your experiences matter! Please take a few moments to let lawmakers know how important adultBasic is to you and your family. After completing this short form, please remove it from the newsletter, and use the reverse side to mail it back to us.

Are you presently enrolled in adult Basic? _________ If so, since when? ___________

Are you presently on the waiting list? ____________ If so, since when? ___________

If so, have you had to buy in? __________

How has adultBasic helped you and your family?

(If you are on the waiting list, how would adultBasic help if/when you eventually enroll?)

Your contact information is for our records only and will not be shared unless you authorize us in the sections below :

Your name (please print):

____

Your Address (Please print): ____

Your City: _______________, PA Zip: ____________

Would you be willing to share your story with others? Yes_____ No ________

If yes, please sign here: ____

If you would be willing to share your story with others, please provide a phone number with area code where we can contact you. ____

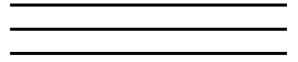
If you have questions about the proposed cuts to adultBasic, call PHLP at 1-800-274-3258

When complete, tear this page out, fold along the dotted lines, staple, stamp and send to PHLP.

See other side for address!

THANKS FOR YOUR COOPERATION!

Fold here first



Place 37-
cent stamp
here

Re: Why I Need adultBasic
The Pennsylvania Health Law Project
924 Cherry Street, Suite 300
Philadelphia, PA 19107

(RTF, Continued from page 6)

and the family is in agreement with the facility and its location, the request for approval of placement to this RTF must be submitted for authorization. The request is submitted to the Behavioral Health MCO for kids on MA in HealthChoices, or to the Department of Public Welfare, Office of Medical Assistance Programs for kids on MA in Fee-For-Service. This request must include the doctor's psychiatric or psychological evaluation that recommended the RTF placement as medically necessary, a treatment plan, an ISPT sign-in sheet and a Plan of Care summary. Once this packet of materials is submitted to the BH-MCO or DPW they have up to 21 days to authorize the services. Once services for RTF placement are authorized the child can be admitted to the facility. The child's stay in the RTF can be a few months to a year or longer, depending on the child's needs. If the BH-MCO or DPW denies the request for the RTF placement, the family can appeal that decision by requesting a grievance or a Fair Hearing.

Where Are the Rules That Govern This Process?

The process for obtaining mental health services in an RTF is detailed in the Medical Assistance Bulletin 01-93-04, 11-93-04, 13-93-02 and 41-93-02.

Where Can Families Get Help?

Placing a child in a Residential Treatment Facility is often overwhelming for families. Families need education about how the process works, what to expect and their role in the process as well as support along the way.

Call the **Pennsylvania Health Law Project's Helpline at 1-800-274-3258** if your child, or a child you are working with, is having difficulty accessing RTF services.

(Spend-down, Continued from page 1)

known as spending down, had to wait each month until the expenses were spent and the County Assistance Office re-opened their case before they were eligible for Medical Assistance. Consumers who had fixed monthly medical expenses which equaled their spend down amount, like health insurance premiums, were able to receive Medical Assistance continuously, without proving the amount they spent or waiting for the County Assistance Office to open their case. Consumers who used prescription drug expenses as their spend down expenses were often not able to receive continuous Medical Assistance, even though they bought those prescription drugs every month.

In the case before Secretary Richman, the client had had the same amount in prescription drug costs for a long time and was expected to spend that amount in the future. The Secretary decided that because his expenses were consistent and were expected to be consistent, he could receive Medical Assistance continuously, without having to produce his receipts each month and without waiting for his case to be re-opened each month.

This is an exciting precedent for Medical Assistance consumers who spend down and have consistent medical expenses. This decision will allow consumers and advocates to argue that expenses like prescription drugs costs can also be considered consistent.

Bill McLaughlin from North Penn Legal Services represented this client at a fair hearing and then brought the case to the Secretary for reconsideration. Bill will be receiving a 2004 Pennsylvania Legal Services Excellence Award this year for his advocacy. PHLP congratulates Bill on his excellent work on behalf of this and his many other clients and on his award!

New! 2004 Federal Poverty Guidelines		
Size of Family Unit	Poverty Guideline (100% FPL, *annual* income)	Poverty Guideline (100% FPL, *monthly* income)
1	$9,310	$776
2	12,490	$1,041
3	15,670	$1,306
4	18,850	$1,571
5	22,030	$1,836
6	25,210	$2,101
7	28,390	$2,366
8	31,570	$2,631

For family units with more than 8 members, add $3,180 (annual) for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

For a more detailed chart, please visit our website: www.phlp.org

Pennsylvania Health Law Project
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