



SENIOR HEALTH NEWS



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PHLP NAMES LAVAL MILLER-WILSON EXECUTIVE DIRECTOR

Laval Miller-Wilson, previously a Senior Attorney at Juvenile Law Center (JLC) in Philadelphia, has joined the Pennsylvania Health Law Project (PHLP) as Executive Director. He replaces Michael Campbell, who recently accepted a teaching position at Villanova University Law School and who co-founded PHLP with Ann Torregrossa. Ms. Torregrossa served as the program's first Executive Director.

PHLP, a statewide public interest law firm founded in 1988, advocates to increase and improve health care for working and unemployed low-income people, the elderly, and persons with disabilities. In addition to policy work, PHLP provides free legal services and advocacy to Pennsylvanians having trouble gaining access to publicly funded health care coverage or services. PHLP has offices in Philadelphia, Pittsburgh and Harrisburg. It is a strong voice for those in greatest need of quality health care in Pennsylvania.

"The Board and staff are excited to begin this new chapter in PHLP's story," said Dana Breslin, PHLP's Board President. "This is a perfect fit and we are quite pleased to have Laval join our fight for health justice. He is an outstanding advocate, an innovative leader, and a greatly respected member of the public interest community. At JLC he led the same advocacy strategies as PHLP: statewide direct services, education and information, litigation, and policy improvement. His work in obtaining needed health services for his clients has instilled a deep understanding and commitment to overcoming the many barriers to health care."

Miller-Wilson, who assumed his role at the beginning of February, said "I look forward to leading this extraordinary health advocacy group at a time of great opportunity on the horizon to finally solve the larger health care crisis that has caused so many to suffer due to a lack of income and health insurance as well as cutbacks in public insurance programs." Mr. Miller-Wilson can be reached by email at lmillerwilson@phlp.org.

Miller-Wilson joined Juvenile Law Center as a Skadden Foundation Fellow and focused on the delivery of education services for at-risk youth. His earliest cases were representing youth with developmental disabilities, such as autism and mental retardation, who were accused of crimes for disability related behavior. He successfully argued for the use of public health services available through Medicaid's Early and Periodic Screening Diagnosis and Treatment (EPSDT) program as an alternative to limited resources of the juvenile justice system. He has litigated cases

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against the Pennsylvania Department of Education and several local school districts to enforce special and basic education rights for school-aged inmates in Pennsylvania's county prisons and jails. He has led numerous efforts to improve the child welfare and juvenile justice systems.

In 2003, Miller-Wilson conducted an assessment of indigent juvenile defense throughout Pennsylvania that led the PA Supreme Court to order major rules changes resulting in increased funding and support for attorneys representing juveniles in the Commonwealth's 67 counties. Miller-Wilson was lead counsel in a petition to the PA Supreme Court to ensure the right to counsel for accused youth. The petition was brought after he discovered counties in Pennsylvania where juveniles were being adjudicated with no counsel present. He is the author of two forthcoming publications about navigating the juvenile and criminal justice system for youth with developmental disabilities.

Miller-Wilson graduated from Harvard College and University of Pennsylvania Law School. He has been a lecturer at Temple University and University of Pennsylvania schools of law.

PHLP gives special thanks to Leonardo Cuello, Senior Staff Attorney, who has served as Interim Director for the last six months. He continues to be of great help in this period of transition.

Budget Update

Governor Rendell unveiled his proposed 2009-10 Pennsylvania budget last month on February 4th. Advocates and providers were expecting the worst since the state faces a \$2.3 billion budget shortfall due to declining revenues and the end of certain funding sources on which the state has been reliant. This shortfall is coupled with the fact that more people are eligible for help from public programs because of the economic recession. However, the proposed budget changes related to Medical Assistance were not as drastic as many had initially feared.

Since the proposed budget was announced, the American Recovery and Reinvestment Act of 2009 (Federal Stimulus) was passed. It will provide PA with approximately \$4 billion in Federal Medicaid matching funds over a 27 month period (retroactive to October 2008 and ending December 2010). This helps to narrow the budget gap, but the state still faces a deficit. Highlights of the proposed budget impacting Medical Assistance recipients are:

- No cuts in eligibility;
- No major cuts in services;
- Increases for HCBS services for older adults & persons with disabilities (see page 5).

Medical Assistance (“MA”) funding

The Governor's proposed budget anticipated and counted on the receipt of Federal Fiscal Stimulus monies. In addition, the proposed budget includes many cost-containment measures so that, along with the funds from the Federal Stimulus, the state can avoid major cuts to Medical Assistance services. Nonetheless, there are still some cuts and changes being proposed including:

- Enhanced “anti-fraud” provisions that will result in almost \$16 million saved;
- Reductions in hospital “supplemental” payments resulting in a savings of \$20 million;
- Enhanced “pharmacy management” under Access Plus saving approximately \$4.4 million;
- A 2% reduction in county mental health and drug & alcohol base funding. In addition, there are changes and limits to surplus and reinvestment funds that Behavioral Health Managed Care plans rely on resulting in \$35 million savings. There is

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concern that these changes could result in reduced Mental Health services for MA recipients. Remember, dual eligibles are in the MA Fee-for-Service (FFS) system for their physical health, but many remain in managed care for their behavioral health services.

- Changes to state rules to comply with the federal law regarding eligibility for MA nursing home coverage under a spenddown. This change would limit the amount of unpaid medical bills the person could use to meet the spenddown to bills incurred within the 6 months prior to the MA application. This is a change from the current rule that allows individuals to claim unpaid medical expenses up to a lifetime limit of \$10,000 regardless of when those expenses were incurred. The state projects a savings of \$10 in FY 2009-2010 with this change.
- Changes to the Estate Recovery Program (for individuals 55 and older who get MA to cover the cost of their nursing home care or who qualify for Home and Community Based Services Waiver programs) to allow recovery from non-probate assets and to allow DPW to enforce recovery through administrative means (through the Bureau of Hearings and Appeal) rather than through probate court or orphans court.

The Governor's proposed budget also includes two major components to increase MA revenues.

MCO Assessment: This proposal would levy an assessment (tax) on all Managed Care Organizations (MCOs) operating in the state. Currently, the state assesses only the MCOs that provide coverage to Medical Assistance recipients at 5.5% of their revenues. This allows the state to draw down additional federal matching funds. The state then pays the MCOs an enhanced MA reimbursement. This practice will no longer qualify for federal Medicaid matching payments as of the end of October 2009.

In order for the state to continue to receive federal match on MCO assessments, the state must impose the assessment on all MCOs, including those commercial MCOs that do not participate in the MA program. The Governor is proposing to do this which, at 2%, is projected to replace the \$200 million lost from the current MA-MCO assessments during the coming fiscal year and bring in \$400 million in subsequent years, helping to fill in lost federal money when the Federal Fiscal Stimulus ends. The 2% represents the current tax on health insurance premiums that some commercial insurers (but not the MA MCOs) are currently required to pay. However, it will be difficult if not impossible to find a means to return the assessment to non-MA MCOs (since the current assessments are returned to MA-participating MCOs through enhanced MA rates which cannot be paid to non-MA MCOs). Imposing this assessment on all MCOs will probably require legislation which will be politically challenging as it would require non-MA MCOs to pay towards the cost of Medical Assistance.

Pharmacy Carve-Out: Once again, DPW is proposing to carve out pharmacy benefits from the Medical Assistance Physical Health MCOs in order to obtain the rebates from the pharmaceutical manufacturers. This year, the carve-out is being called "**Smart Pharmacy**". DPW projects \$54 million in additional revenues for the coming fiscal year and \$146 million annually in additional revenues for subsequent years. This is up from the \$9 million in savings DPW projected in last year's proposed budget. Although DPW has been unsuccessful in getting the pharmacy carve-out in previous years, it may meet with more success this time given the economic climate and the huge savings projected by adopting this measure. In the alternative, there is a reasonable chance that Congress will amend the pharmaceutical rebate provisions to

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require pharmaceutical manufacturers to also pay enhanced rebates to MA MCOs which would provide significant savings to MA without fighting the MCOs over pharmacy carve out.

The budget proposal does not include any new restrictions in MA eligibility as the Federal Fiscal Stimulus package prohibits states who want to receive stimulus funds from imposing new restrictions on MA eligibility. However, the Federal Fiscal Stimulus will only last until the end of 2010, so the political debate in the General Assembly will likely focus on whether to start finding other revenues to replace the eventual loss of Federal Fiscal Stimulus (which the Governor proposed) or to cut MA spending now in anticipation of the eventual loss of the federal funds.

Currently, the state House and Senate are holding hearings about the budget proposals. A final package must be passed by July 1, the start of the fiscal year, or the state loses its ability to spend money. Please attend one of our budget briefings for more information about healthcare provisions in Governor Rendell's proposed budget as well as in the federal budget proposed by President Obama (see flyer on page 6). For more information about the proposed budget and the impact on the Medical Assistance program as well as other health care programs, please see our website (www.phlp.org) as well as our March 2009 edition of Health Law PA News.

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OLTL Continues Work on Assisted Living Residence Regulations

The Department of Public Welfare (DPW), Office of Long Term Living (OLTL) anticipates releasing a second **draft** of proposed regulations for assisted living facilities. This second draft is expected to be released in March. DPW is currently surveying all licensed personal care homes to gather information, specifically focusing on physical plant characteristics. The surveys, due back to the Department by March 6, 2009, will be considered as DPW finalizes the drafting of the ALR regulations. The development of the survey is in response to comments received from the Independent Regulatory Review Commission (IRRC).

Once the second draft of the regulations is complete, DPW intends to share this with the Assisted Living Regulation Workgroup (made up of various stakeholder groups including those representing consumers and providers). The Workgroup will have 30 days to review and comment. The Department will then review these comments and take them into consideration when making any amendments for the final regulatory package. Previous information given by the Department indicated that the expected date for publication of the final regulations was November 2009; the Department still hopes to make that target date.

Members of the Pennsylvania Assisted Living Consumer Alliance (PALCA), which is being led by the Pennsylvania Health Law Project, have been meeting with legislators to discuss the regulations and to encourage Senate hearings and a second House hearing once the second draft of the regulations are released. PALCA continues to welcome new members to join the alliance and continues to collect stories from consumers and family members about experiences with Personal Care Homes and Assisted Living Facilities. Stay tuned to PALCA's website for further updates and information-
www.paassistedlivingconsumeralliance.org.

Impact of the Governor's Proposed Budget on Aging and Long-Term Living Services

Seniors and people with disabilities account for the largest share of Medical Assistance (MA) spending. Even though seniors and persons with disabilities comprise 36% of Medical Assistance enrollment, their care accounts for 69% of program expenditures. The Governor's budget does not propose any cuts to MA services for seniors and people with disabilities; in fact, there are proposed increases in certain areas. The proposed budget does not include any cuts (nor any increases) in nursing facility or Home and Community Based Services (HCBS) rates for providers, but it does include approximately \$3 million to cover increased nursing home utilization (representing approximately 200 more people). Highlights of the Governor's Aging and Long-Term Living Budget are as follows:

- **HCBS Waiver Services for Seniors and Persons with disabilities**-The proposed budget includes the following increases:
 - a \$9.6 million to provide PDA waiver services to an additional 2000 older adults.
 - \$9.3 million to add 800 individuals to the CSPPPD waivers (OBRA, Independence & CommCare)
 - \$7.2 million to add 800 individuals to either the Attendant Care waiver or the Act 150 program.

These increases will be subject to much debate in the General Assembly where many legislators are opposed to any spending increases. The increases for home & community based services will also be questioned when the Governor is proposing cuts in funding for community based mental health services (as discussed on pages 3 and 4).

- **Adults with Medicare and MA (dual eligibles)**-\$1.9 million to develop the proposed Integrated Care Initiative which would combine Medicare & MA funded services in special managed care plans (see our December 2008 SHN for more information about this

proposed initiative). Implementation would be pushed back to July 2010 (previously, the state was discussing a January 1, 2010 start date).

- **PACE/PACENET**- Although the Governor's proposed budget shows a decrease of \$100 million in lottery funds for PACE, the Acting Secretary of Aging has stated that no reductions in coverage are anticipated and that the savings will be realized through reduced drug costs. The Budget includes sufficient dollars to support the enrollment of approximately 13,000 more individuals into the PACE/PACENET program in the coming year. In addition, the Budget proposes to change the way PACE reimburses pharmacies next year by paying the invoice cost of a drug plus a dispensing fee of \$10 for generics and \$5 for brand name drugs.

In addition to these budget highlights, the Governor will ask a Member of the General Assembly to introduce legislation to merge the Department of Aging with the Office of Long Term Living. Please see the article on page 8 for more details about the proposed merger.

For more information, please attend one of our budget briefings on March 12 (see flyer on the next page), visit our website at www.phlp.org, and/or see our March 2009 Health Law PA Newsletter that will be issued in upcoming weeks. If you're not on the mailing list for this newsletter, please call our HELPLINE at 1-800-274-3258 or e-mail us at staff@phlp.org.

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.

The Pennsylvania Health Law Project Presents:

Challenges & Opportunities: A Briefing on Healthcare Provisions in Governor Rendell's & President Obama's Budget Proposals

March 12, 2009
9am-11am

*Join us as we discuss the state budget proposal and
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Briefing Locations

Harrisburg: 1414 N. Cameron Street—1st
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Philadelphia: Philadelphia Bar Associa-
tion, 1101 Market Street—11th Floor Con-
ference Room

*Note: Arrive early and Bring Photo ID to
get through Security*

Pittsburgh: City County Building,
411 Grant Street, 9th Floor Auditorium

DPW Required To Post PCH Information Online

The Personal Care Home Act (Act 44 of 2008) became effective at the end of last year and requires the Department of Public Welfare (DPW) to post certain information related to the licensure and inspection of personal care homes (PCHs) on its website and update that information at least once a year.

The information that must be posted online includes:

- 1) Number of licensed personal care homes.
- 2) Number of residents in licensed PCHs.
- 3) Number of PCHs which have received an annual inspection.
- 4) Number of PCH inspectors statewide by region.
- 5) Ratio of Department staff responsible for the licensure and inspection of PCHs divided by the total number of licensed PCHs.
- 6) Number of PCHs operating with a provisional license, statewide and by county.
- 7) Number of PCHs operating with a full license, statewide and by county.
- 8) Number of PCHs which the Department has closed or taken legal action to close.
- 9) For each PCH, a licensing inspection summary which lists violations.
- 10) Summary of types of violations which are listed in licensing inspection summaries.
- 11) Information relating to assessed financial penalties against licensed PCHs (upon implementing a financial penalty program).
- 12) A summary of the Department's specific plans to ensure compliance regarding inspection of licensed PCHs and enforcement of regulations.

- 13) Other information the department deems pertinent.

Prior to the passage of this Act, this information was not publicly available online. DPW has already posted much of what the law requires on its website and it can be viewed at:

<http://www.dpw.state.pa.us/ServicesPrograms/PhysicalDisabilities/003678472.htm>.

Triumph for Personal Care Home Residents on SSI

Thanks to the persistence of hundreds of consumers and advocates, the personal needs allowance was increased from \$60 to \$85 effective January 1, 2009. This increase was the result of a long-fought battle. The Department of Public Welfare notified personal care home operators about the increase in a letter sent in early January 2009.

Personal Care Home residents on SSI have not seen an increase in their personal needs allowance since 1993. Over the last 16 years the costs of personal items, transportation, medication co-pays and clothing have significantly increased. This long-awaited \$25 raise will assist residents in meeting their basic needs.

The increase in the personal needs allowance coincided with the \$37 increase in the Federal Supplemental Security Income (SSI) benefit for 2009. As we reported in our December 2008 Senior Health News, SSI recipients and advocates were asking DPW to "split the SSI raise" for 2009 between SSI recipients and the Personal Care Home owners. Personal Care Home Operators, per DPW, can choose to increase rent for residents by the \$12 remaining after providing consumers with the \$25 raise in their personal needs allowance.

If consumers on SSI in Personal Care Homes have questions or are not receiving their \$25 increase in their personal needs allowance they can contact the PA Health Law Project Helpline at 1-800-274-3258.

Governor Proposes Merging the Office of Long Term Living and the Department of Aging to Create New Department

When Governor Rendell introduced his proposed budget in early February, he announced plans to merge the Office of Long Term Living (OLTL) with the PA Department of Aging. The new department will be called the Department of Aging and Long Term Living.

The OLTL was created by Executive Order and established in early 2007. It currently sits under both the Departments of Public Welfare and Aging. OLTL is responsible for reforming long-term care in Pennsylvania and rebalancing the system so that there is a more equitable split between Medical Assistance funding for nursing home care and Home and Community Based Services (HCBS) Programs (both waivers as well as other programs). Currently, 80% of MA long term care dollars are spent on paying for nursing home care with only 20% spent on Home and Community Based Services. The goal is to reach a 50-50 split in funding for these programs.

OLTL currently manages 8 HCBS waiver programs including Aging, Attendant Care, OBRA, Independence, COMMCARE, Michael Dallas, AIDS and Elwyn. OLTL also administers the OPTIONS program, the ACT 150 program, the Family Caregiver Support Program and the LIFE Programs. Finally, OLTL administers the MA nursing facility program. The Department of Aging is also involved in the administration of some of these programs and is responsible for administering the PACE and PACENET programs that provide prescription drug coverage to lower-income individuals age 65 and older.

Because creating a new Department would require legislation, the Governor will ask a member of the General Assembly to introduce legislation to merge the OLTL and the PA Department of Aging to create a single state agency. Legislation proposing the merger is expected to be introduced soon. A draft of the proposed legislation has been circulated to various stakeholders.

The Administration hopes to have the merger approved and completed by July 1, 2009. Since OLTL was created by Executive Order, it is not a permanent entity. The Administration cites the need to create a permanent agency to build on the successes OLTL has achieved thus far including increased waiver enrollment, transitioning individuals out of institutions and back into the community, and integrating the administration of various programs described above.

The Administration is meeting with stakeholder groups in the aging and disability communities and reports that it has received generally positive feedback about the proposed merger. However, these stakeholder groups have expressed concerns over certain details that have yet to be worked out. One is the role of existing stakeholder groups that currently advise DPW, OLTL or the Department of Aging once the merger is finalized. Another issue is how the new department will interact with the Department of Public Welfare around HCBS waivers and the MA nursing facility program. DPW remains the single Medicaid state agency and is ultimately responsible for these programs. It is not yet clear how DPW will maintain control and authority over the MA waiver programs and nursing facility programs when the OLTL is no longer a part of DPW.

Stay tuned to future newsletters and our website (www.phlp.org) for more information about the proposed merger and creation of the new Department of Aging and Long-Term Living.

CMS Takes Action Against Two Medicare Plans

The Centers for Medicare and Medicaid Services (CMS) has suspended marketing and enrollment into WellPoint and WellCare Medicare Prescription Drug Plans and Medicare Advantage Plans. These companies are two of the largest providers of private Medicare plans in the country.

Wellpoint Suspension

The suspension for WellPoint was effective January 12, 2009. CMS took suspension action due to ongoing problems with the plan meeting their contract requirements. These problems included: lack of compliance with enrollments and disenrollments; benefits administration; grievances and appeals; marketing; claims processing; coordination of benefits; billing; and meeting call center and customer service requirements. As a result of CMS' actions, WellPoint is not able to market its Medicare Advantage or Prescription Drug Plans and cannot enroll new beneficiaries.

In PA, WellPoint Medicare Plans include:

- **Unicare Medicare Rx Rewards Standard Prescription Drug Plan**
- **Unicare Medicare Rx Rewards Value Prescription Drug Plan**
- Several Medicare Advantage Private Fee-For-Service Plans including **Unicare SecurityChoice Classic, SecurityChoice Essential, SecurityChoice Essential Plus, and SecurityChoice Plus.**

WellPoint has also functioned as CMS' safety net for Part D prescription drug coverage for dual eligibles and others with the Low-Income Subsidy (LIS). WellPoint will continue to serve in the safety net coverage role but will not be allowed to enroll new beneficiaries into their plan for ongoing coverage through this process.

WellCare Suspension

CMS also sanctioned WellCare with a suspension in marketing and enrollment effective March 7, 2009. CMS took action against WellCare in response to over 2,500 complaints filed in January alone by Medicare beneficiaries enrolled in WellCare's plans. The complaints and CMS audits revealed WellCare's failure to provide adequate service to its enrollees in the following areas: enrollment and disenrollment, appeals and grievances and handling of beneficiaries' complaints and requests for assistance. WellCare also engaged in illegal door-to-door solicitation and provided Medicare beneficiaries with inaccurate information.

In PA, WellCare Medicare Plans include:

- **WellCare Classic Prescription Drug Plan**
- **WellCare Signature Prescription Drug Plan**
- Several Medicare Advantage Private Fee-For-Service Plans including: **WellCare Concert, Meolody, Prelude, Quartet, Serenade, and Sonata.**



Suspensions on enrollment and marketing on WellPoint and WellCare will not be lifted until each plan is in compliance with their CMS contracts. CMS will continue to work with and monitor these plans for compliance.

Those enrolled in these plans with questions can call the plans directly or contact Medicare (1-800-MEDICARE). Dual eligible individuals and other Medicare beneficiaries who qualify for the low-income subsidy can also call PHLP's HELPLINE for further information or assistance-1-800-274-3258.

Final NFCE Clarification Issued

Last month, the Office of Long Term Living (OLTL) issued the final Nursing Facility Clinically Eligible (NFCE) Clarification. Individuals must be considered NFCE to qualify for MA coverage of nursing home care or to qualify for certain Home and Community Based Services Waiver programs (including the Aging Waiver, Attendant Care Waiver, the Independence Waiver, the COMMCARE Waiver, the Elwyn Waiver, and the LIFE program). The final clarification can be viewed at: <http://www.aging.state.pa.us/aging/lib/aging/NFCEClarification.pdf>.

For more information about the NFCE standard, please see prior editions of the Senior Health News and visit our website at www.phlp.org.

Are you an advocate or provider working with dual eligible clients over 60 years old in South-eastern PA who wants to stay up to date on Part D developments? Join the PHLP e-mail list serve! To join, e-mail staff@phlp.org with subject "join Part D list serve".

PHLP staff are also available in SE PA to conduct trainings on Part D related issues to help social service agencies and their dual eligible clients navigate their healthcare coverage. Trainings focus on eligibility for Medicare Savings Programs and the Low-Income Subsidy, healthcare access for dual eligibles, rights of dual eligibles under Part D, and the appeals and grievance processes. Contact the PHLP Helpline to schedule a training at 1-800-274-3258 or 1-866-236-6310/TTY.



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