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## PHLP Wins Major Victory in PA Supreme Court On Insurance Coverage of Autism Intervention

On October 5, 2017, the Pennsylvania Supreme Court ruled that insurance policies subject to the state’s Autism Insurance law (Act 62) must cover Applied Behavioral Analysis (“ABA”) provided in school- even if the policy specifically excludes coverage of any services provided in school. This capped a seven year legal battle by the Burke family against Independence Blue Cross.

The case was heard in Common Pleas Court, Superior Court, the PA Supreme Court, back down to Superior Court and finally back to the PA Supreme Court for the [ultimate decision](#). The Burkes were represented by PHLP at all stages of the litigation.

ABA is a group of interventions for individuals on the autism spectrum. These interventions collectively have the greatest body of evidence of their effectiveness in addressing challenging behaviors and deficits in language and social skills for individuals on the autism spectrum. Research published in the October edition of Health Affairs found that “state mandates [like PA’s Act 62] are an effective tool for broadening access to autism treatment under commercial insurance.”

Not all insurance policies are subject to Act 62. To find out which policies are subject to Act 62, click [here](#) or visit PHLP’s website.

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# Medicare Open Enrollment Period Underway

Medicare's Annual Open Enrollment Period started October 15<sup>th</sup> and ends December 7<sup>th</sup>. During this period, all Medicare beneficiaries can change their health or their drug plan coverage. Changes made during the period start on January 1, 2018.

Beneficiaries already enrolled in a Medicare Prescription Drug Plan or Medicare Advantage Plan should have received information from their current plan about what the benefits and costs will be in 2018. Everyone is encouraged to review this information to decide whether to stay with their current plan or join a new plan for next year.

Information about 2018 Medicare Prescription Drug Plans and Medicare Advantage Plans is available on [www.medicare.gov](http://www.medicare.gov). Pennsylvanians continue to have many options for health and drug coverage in 2018. APPRISE staff and volunteers can help people across Pennsylvania review their 2018 Medicare coverage options. People wanting their help can call 1-800-783-7067.

**Stand-Alone Prescription Drug Plans:** There are 26 stand-alone drug plans available across Pennsylvania for enrollment in 2018. Premiums for these plans range from \$12.60 to \$157.80 per month. There are still nine plans to choose from that are "zero-premium" for individuals who qualify for the Full Extra Help (click [here](#) for the 2018 list). However, there are two notable changes to this list between this year and next -- the AARP MedicareRx Saver Plus plan will no longer be zero-premium in 2018 and Basic Blue Rx is a new plan added to this list for next year.

Individuals wanting to change their stand-alone prescription drug plan should consider the plan's costs, list of covered drugs, and pharmacy network. We detailed the 2018 Part D costs in our [previous newsletter](#), including how much people with the Extra Help will pay for Part D in 2018.

**Medicare Advantage Plans:** Residents in every county in Pennsylvania continue to have many Medicare Advantage Plans to choose from. Lancaster County has the most (48) Medicare Advantage Plans and Pike County has the fewest Plans (9). These numbers do not include Medicare Special Needs Plans that limit their enrollment to certain groups of Medicare beneficiaries: dual eligibles, people in nursing homes, and people with certain chronic conditions.

Most, but not all, of the Medicare Advantage Plans available include drug coverage. Individuals considering a Medicare Advantage plan for 2018 should check the plan's costs, benefits, provider network and pharmacy network, list of covered drugs, and any extra benefits offered such as dental or vision care.

**Special Needs Plans for Dual Eligibles (D-SNPs):** These plans only enroll Medicare beneficiaries who also have Medicaid (dual eligibles). In 2018, all counties in Pennsylvania will have at least one D-SNP available except for Pike and Franklin counties who have no D-SNP plans. All current D-SNPs

will continue to operate in 2018 and some plans such as AmeriHealth Caritas VIP Care and UPMC for Life Dual are expanding into parts of PA where they had not been previously offered. A new D-SNP, Allwell Dual Medicare from PA Health & Wellness, will be available in a number of counties across Pennsylvania. Click [here](#) for the listing of D-SNPs by county for 2018.

Individuals interested in joining or changing their D-SNP in 2018 should consider the plan's provider and pharmacy network, their list of covered drugs, and extra benefits offered. They should also consider the plan's costs; however, since most dual eligibles joining D-SNPs have full Medicaid as their secondary insurance, their out of pocket costs for health care should be limited to the small Medicaid co-pay that applies to the service received (never more than \$4).

### ***Medicare and Community HealthChoices***

As a reminder, dual eligibles moving to Community HealthChoices (CHC) will continue to have Medicare as their primary coverage. Their move to CHC is only changing their secondary Medicaid coverage. Dual eligibles continue to have all the Medicare plan choices noted above. If a dual eligible is happy with her current Medicare coverage, she can stay put with the coverage she has; but, she will still need to enroll in a CHC plan for her **Medicaid** coverage (see pages 8 and 9). The state has created a new fact sheet, *Will CHC Affect My Medicare?* available to view at [www.healthchoices.pa.gov](http://www.healthchoices.pa.gov).

Even when dual eligibles are enrolled in a Medicare D-SNP, Medicaid is still their second, separate insurance coverage. For those in Southwestern PA moving to Community HealthChoices on January 1, 2018, each insurance company offering a CHC plan will also offer a Medicare D-SNP. **However, consumers are not required to enroll in the Medicare D-SNP that is offered by the same insurance company as their CHC plan.**

Individuals in Southwest PA who need more help understanding how CHC will work with their Medicare coverage next year are encouraged to contact PHLP's Helpline at 1-800-274-3258.

## **PHLP Offers Medicare 2018 Webinar**

PHLP is offering a free webinar to educate advocates, providers, and professionals who work with dual eligibles and other low-income Medicare beneficiaries about Medicare in 2018. Dual eligibles are people that get coverage through both Medicare **and** Medicaid.

The webinar will be held **December 6th from 10am-noon**. It will cover the following topics:

- Medicare Part D plans and costs in 2018
- Programs that help Medicare beneficiaries with their costs

- Community HealthChoices-impact on dual eligibles
- What's ahead for Medicare

To register for the webinar, please click [here](#). Space is limited, so register today! We ask individuals who are registering from the same organization to gather around one computer when possible. This will help to ensure that space is available for all those who are interested in participating.

Please share this announcement with others who may be interested in the webinar!

## **Gov. Wolf Vetoes Bill Imposing Medicaid Work Requirements and Allowing Benefit Cuts**

On October 9th, Governor Wolf vetoed a bill passed by the General Assembly that sought to impose work requirements for many of the state's Medicaid recipients. Among other things, House Bill 59 would have amended the Human Services Code to require the Department of Human Services (DHS) to seek a federal waiver allowing the state to impose employment and job search requirements as a condition of Medicaid eligibility for non-elderly, non-disabled adults. The bill would have also required DHS to seek federal permission to cut "nonessential" benefits (such as dental care, clinic-based mental health services, and non-emergency medical transportation) and seek additional benefit cuts prior to making any supplemental funding requests. These controversial additions to House Bill 59 had been included without public hearings or debate.

In vetoing House Bill 59, Governor Wolf released the following message:

This legislation does not promote health coverage, access and treatment for our seniors, individuals with disabilities and individuals suffering from a substance use disorder. Instead, this legislation increases costs, creates unnecessary delays and confusion, penalizes individuals who need healthcare, and terminates health coverage for those who need it most.

PHLP applauds Governor Wolf for vetoing this bill. It would have increased red tape, cut needed benefits, and created unnecessary barriers to getting and keeping Medicaid coverage. Consumer advocates assert that withholding health insurance to motivate individuals to work is both misguided policy and contrary to federal law. Most non-elderly, non-disabled Medicaid recipients are [already working](#); many in low-wage occupations that do not offer health insurance. Those who aren't working are typically in school or caring for a child or older family member. Moreover, the federal government has never allowed states to impose Medicaid work requirements because they do not further the objectives of the Medicaid program, as is required under federal law. Work requirements would only serve to lower enrollment and reduce access to preventive care and thus would have a negative impact on the ability of Pennsylvania's low-income residents to become and stay healthy.

# CHIP Program in Jeopardy

Since Congress has not yet passed legislation authorizing continued federal funding of the Children's Health Insurance Program (CHIP) program, Pennsylvania's program may end on January 31, 2018 when the state's federal funding runs out. CHIP provides coverage for over 176,000 children in the commonwealth. To prepare for this possibility, the Office of Children's Health Insurance Program within DHS is making contingency plans to close the program. Timelines, notices, and other communications are being developed.

This is an unprecedented circumstance and there is no clear federal guidance on how the state should proceed. The CHIP Office needs to move quickly to create an orderly transition process for families to get other insurance, including through the federal Marketplace, while still hoping Congress will re-authorize the program. A public notice in the Pennsylvania Bulletin is likely to be the first step taken. Notices to families with children on CHIP with information on how to obtain other coverage would then follow.

Federal legislation to reauthorize the CHIP program is currently stalled in Congress. The House and Senate have each passed bills that are similar regarding the program's continuation and overall structure, but the bills differ substantially on how to pay for it.

At the state level, the Pennsylvania House and Senate both passed bills to continue to the CHIP program; however, the Senate made changes to the House bill that exclude CHIP coverage of sex reassignment surgery but continues coverage for other related services such as physician services, medications, and counseling. House Bill 1388 is now back in the House Rules Committee for action.

Readers who are interested in expressing their opinion about the continuation of the CHIP program are encouraged to contact both their federal and state representatives and senators. For more information, contact Ann Bacharach [abacharach@phlp.org](mailto:abacharach@phlp.org) 215-625-3596. We'll update readers about any developments in our next newsletter.

## Update on State Budget for 2018

Pennsylvania finally has a completed state budget for the current 2017-2018 fiscal year. Readers may recall that on June 30, 2017, the General Assembly passed a \$32 billion spending bill for this fiscal year that became law without the Governor's signature. They did not, however, pass legislation on how to generate revenue to pay for the spending bill. A package of revenue bills ultimately was passed by the legislature in October and Governor Wolf signed all the bills into law.

This brings an end to the four-month stalemate over passing a revenue package to support the spending bill. The package authorizes \$1.5 billion in borrowing from the Tobacco Settlement Fund to support the General Fund. The Tobacco Settlement Fund is funded by payments Pennsylvania

receives under a 1998 settlement agreement between the major tobacco companies and most states to recover medical costs associated with treating smoking-related illnesses. States are not restricted on how this money is spent. Pennsylvania has used The Tobacco Settlement money to fund: health insurance for the uninsured, home and community-based services for older Pennsylvanians, tobacco use prevention and cessation programs, broad-based health research, Medical Assistance for Workers with Disabilities (MAWD), uncompensated hospital care, and the PACE prescription drug program for older Pennsylvanians.

The decision to borrow from the Tobacco Settlement Fund could compromise the state's future commitment to these important health programs. PHLP plans to monitor this development and will keep readers updated in future newsletters.

## Federal Update

The 2018 fiscal year began October 1st and runs through September 30, 2018. The United States government is now operating under a continuing resolution, or "CR"; a temporary funding measure that Congress can use to fund the government for a limited amount of time. Continuing resolutions are often used to avoid a government shutdown and to give lawmakers more time to come up with a longer-term solution. In fact, lawmakers often enact multiple CRs in a single fiscal year before deciding on full-year funding levels.

In September, Congress passed a bill that was negotiated with President Trump which included a CR to fund the government at last year's spending levels and also raise the debt limit through December 8, 2017. The new deadline for both the budget and the debt limit is fast approaching, and Congress has several items to enact. We'll keep readers updated on any changes or impacts to funding health programs like Medicaid and Medicare as well as programs that support people covered by these programs such as APPRISE .

Washington lawmakers are also consumed with tax reform, and the Senate's latest version of its tax bill adds a provision repealing the Affordable Care Act's individual mandate— the requirement that most people must get health insurance coverage or pay a penalty. The savings from individual mandate repeal would pay for a significant percentage of the proposed tax cut included in the bill. [Independent estimates](#) show that eliminating the individual mandate would increase the number of Americans without health insurance, increase individual market premiums, and create further instability for the individual market, especially in the near term.

# Many Leadership Changes Announced by Wolf Administration

In October, Governor Tom Wolf nominated four Acting Secretaries to serve permanently in leading various state agencies.

- [Teresa Miller, Department of Human Services](#), assumed duties as acting secretary of the Pennsylvania Department of Human Services in August. Previously, Miller served as Pennsylvania's Insurance Commissioner.
- [Jessica Altman, PA Insurance Department](#), was appointed Acting Insurance Commissioner in August. Prior to this, she served as Chief of Staff for the Pennsylvania Insurance Department alongside former Insurance Commissioner Teresa Miller.
- [Jennifer Smith, Department of Drug and Alcohol Programs](#), was appointed Acting Secretary of Drug and Alcohol Programs in January 2017. Prior to this, she served as Deputy Secretary for the Department of Drug and Alcohol Programs (DDAP).
- [Dr. Rachel Levine, Department of Health](#), has been serving as Acting Secretary of Health since June and is also the state's physician general. She is also a professor of Pediatrics and Psychiatry at the Penn State College of Medicine.

All nominees must be confirmed by the Senate. After the submission of formal paperwork, including ethics and financial disclosures, the Republican-led chamber has 25 legislative days to consider and act to approve or disapprove.

In a related development, Acting Secretary of Human Services Teresa Miller announced the following staffing changes within the Department of Human Services (DHS):

- **Executive Deputy Secretary:** Leesa Allen, currently DHS' Deputy Secretary for Medical Assistance Programs, will be moving into the Executive Deputy Secretary position. She has over 20 years of experience in Pennsylvania state government and has held a variety of positions.
- **Chief of Staff.** Johanna Fabian-Marks will serve as DHS Chief of Staff. Ms. Fabian-Marks is coming from the Pennsylvania Insurance Department where she serves as the Special Deputy and Director of Life, Accident, and Health Insurance Product Regulation.
- **Deputy Secretary, Office of Mental Health and Substance Abuse Services (OMHSAS).** Lynn Kovich will become the new OMHSAS Deputy Secretary on November 13. Ms. Kovich has over 25-26 years of experience in direct services and administration in both the nonprofit and government sectors.

# CHC Starts January 1<sup>st</sup> in Southwest But Start Delayed for Rest of State

On November 6th, the Secretaries of the Department of Human Services and the Department of Aging announced a delay to the start of Community HealthChoices (CHC) in areas **outside** of Southwestern PA. CHC was scheduled to start July 1, 2018 in five counties in Southeastern PA (Phase 2) but will now start in that region on January 1, 2019. The final phase for CHC expansion to the remaining areas of PA will now start January 1, 2020 instead of January 1, 2019. Note that this delay does not affect the 14 counties in in Southwestern PA (Phase 1) that are still scheduled to start CHC on January 1, 2018.

## CHC Enrollment in Process for Southwest PA

Approximately 80,000 people in Southwestern PA are being moved to CHC on January 1, 2018. This includes: people with Medicare and Medicaid (dual eligibles); people in the Aging, Attendant Care, COMMCARE, Independence Waivers along with most people in the OBRA Waiver (see the next page for more information); and people in nursing homes being paid for by Medicaid.

Remember, CHC only impacts a consumer's Medicaid coverage and coverage of their long term care services. **It does not affect participants' Medicare coverage or choices!**

All of those being moved to CHC should have received information about enrolling in a CHC plan. If these individuals did not make a plan choice by November 13th, the state will pick a plan for them. **Please note that individuals can still make a plan choice after the November 13th deadline.** If they enroll in a plan before the end of the year, their plan choice will start on January 1st and will override any plan assignment made by the state.

Notices are currently being sent to those individuals moving to CHC either confirming their plan choice or telling them about the plan they were assigned to by the state. According to the Department, more than 29, 500 people have already enrolled into a CHC plan.

As a reminder, the three CHC plans are: AmeriHealth Caritas, PA Health and Wellness, and UPMC Community HealthChoices. The enrollment packet sent to those moving to CHC included additional information about these three plans. Anyone who did not receive an enrollment packet or who would like the information sent again can contact the CHC Enrollment Broker at 1-844-824-3655. Copies of each notice and information contained in the enrollment packet can also be found [here](#).

Consumers must enroll into a CHC plan through the Enrollment Broker. Enrollments can be done any of the following ways:

- Returning the paper enrollment form included in the packet
- Enrolling online at [www.enrollchc.com](http://www.enrollchc.com)
- Calling 1-844-824-3655

These are things CHC participants should consider when choosing a plan:

- ✓ Check if their PCP and other medical providers are in any of the plan networks. This consideration is less important for those with Medicare as the CHC plan cannot require providers to be in-network to pay them secondary to Medicare. **But this is VERY important for those with Medicaid only since the CHC plan will be their only health coverage and** the CHC plan will only pay providers that are in their network.
- ✓ If the person is receiving Waiver services, check also to see if their Service Coordinator and other Waiver providers are in-network. Consumers receiving waiver services do have a continuity of care protection which requires the CHC plan to pay all existing providers for current services until June 30, 2018.
- ✓ If the person is in a nursing home, see what plan(s) the nursing home has enrolled in. However, any CHC plan the individual enrolls in must allow them to continue to stay in that nursing home whether or not it is in-network as long as the person wants to stay there and continues to need nursing home care. This continuity of care protection is ongoing.

## SW PA OBRA Waiver Participants Move to CHC

Adults (age 21 and older) living in Southwestern PA who are in the OBRA waiver were recently mailed a letter advising them about the outcome of their level of care reassessment that was done within the last few months. Those who were found to be “Nursing Facility Clinically Eligible” (NFCE) were notified that they will be moved to CHC on January 1, 2018. The notice advises these individuals that they can appeal the decision if they do not agree that they meet the level of care for a nursing home and provides instructions on how to appeal. Appeals must be filed within 30 days of the mail date of the letter.

Individuals can contact PHLP’s Helpline at 1-800-274-3258 if they have questions or need further help related to Community HealthChoices.

# Commonwealth Court Rules Against United in CHC Appeal

In early October, a three-judge panel of the Commonwealth Court upheld the denial of United Healthcare's bid to be a Community HealthChoices plan. The Department of Human Services initially reviewed United's bid protest and denied it in November 2016. United appealed the denial to Commonwealth Court and arguments were heard on September 11, 2017. United argued that the Department had violated its due process rights and rights under the procurement code; that the Director of the Department's Bureau of Administrative Services who issued the final determination on United's bid protest used an incorrect standard of review; and that the Director erred in rejecting the protest grounds dealing with certain performance measures because the protest was not filed timely.

In United Healthcare Insurance v. Department of Human Services, the Court decided that none of the arguments made by United to support its appeal had merit. This ruling is consistent with other cases decided under the Commonwealth Procurement Code. A United spokeswoman said in an email: "We disagree with the Commonwealth Court's decision on our appeal of Community Health Choices (LTSS) decision, and we will continue to pursue all available options." Readers interested in the Commonwealth Court's decision can find it [here](#).

## Update on Physical HealthChoices Contracts

Pennsylvania's effort to rebid its Physical HealthChoices agreements remains on hold as the Department of Human Services (DHS) and the insurance companies who were not chosen to be HealthChoices plans await a decision from Commonwealth Court. In October 2017, a seven judge panel held a lengthy hearing on the legal challenges brought by three managed care organizations—Aetna Better Health, United Healthcare, and Vista (also known as AmeriHealth Caritas). DHS has requested an expedited process, and a decision from the Court could be issued before the end of November.

Readers may recall the HealthChoices Request for Proposals (RFP) has now been issued twice; each time yielding different contract awards as well as formal protests from a number of the insurance companies not chosen. The Department remains in what is called a "stay" - meaning that until the Commonwealth Court issues a decision, DHS is unable to move forward to contract with selected insurers. At this time, current HealthChoices plans continue providing coverage across the state.

**This stay of the HealthChoices physical health plan procurement does not impact the implementation of Community HealthChoices.** Community HealthChoices will go live in the Southwest zone in January 2018. Similarly, the HealthChoices Behavioral Health plan contracts are not impacted.

# Affordable Plans still Available on HealthCare.gov

Individuals wanting to purchase health insurance through the Marketplace ([HealthCare.gov](https://www.healthcare.gov)) for 2018 must do so **by December 15th**. This is the last day of the 2018 Marketplace Open Enrollment Period, which has been shortened to six weeks this year.

**Marketplace enrollees who get premium tax credits will not face higher premiums**, despite the fact that insurers are increasing their rates in response to the Trump Administration's [decision](#) to end payments for cost sharing reductions (CSR). This is because the rate increases will be offset by a corresponding increase in premium tax credits. Individuals with income less than four times the poverty level (\$80,000 annually for a household of three) are protected from rate increases since the tax credits limit their premium obligation to a percentage of their income. More than [4 out of 5](#) Pennsylvanians who bought Marketplace coverage in 2017 received help paying their premiums.

Example: A family of 3 has a 2017 Marketplace plan that costs \$600/month. The family gets a premium tax credit. They pay \$200 and the tax credit pays \$400 toward their monthly premium.

In 2018, they are not expecting any change in their income. Their plan's premium increases to \$750/month. The family will continue to get a premium tax credit. They will continue to pay \$200 and the tax credit will increase to \$550 to cover the increased premium cost each month.

In a [press release](#), the Pennsylvania Insurance Department explains that it is trying to shield consumers from rate increases resulting from President Trump's decision to end CSR payments by limiting rate increases to silver level plans. The CSR subsidy only applied to silver-level plans. The Pennsylvania Insurance Department encourages higher-income consumers who do not qualify for premium tax credits to consider purchasing coverage directly from an insurance company instead of using the Marketplace.

Individuals can use this Kaiser Family Foundation [calculator](#) to get an estimate of their premium tax credits and potential Marketplace plan costs or visit Consumers Checkbook to use its [plan comparison tool](#). Even though federal funding for organizations who help people enroll in Marketplace coverage or apply for premium tax credits has been drastically reduced, **help is still available**. People can find local help at <https://localhelp.healthcare.gov/#/>.

# Major Changes to the PFDS & Consolidated Waivers

The Pennsylvania Office of Developmental Programs recently made changes to the state's Person/Family Directed Supports (PFDS) and Consolidated Waivers. Other changes are scheduled to be made in the near future. These Waiver programs primarily serve people with Intellectual Disabilities (ID). Some highlights of the changes include:

- **Addition of autism without ID as qualifying disability:** Autism spectrum disorder without an intellectual disability is now a qualifying disability for the PFDS and Consolidated Waivers. Individuals with autism spectrum disorder must meet the other eligibility criteria (level of care & financial eligibility).
- **Additional slots for transitioning youth:** 820 new (primarily PFDS) Waiver slots will become available in 2018 for individuals on the ID waiting list who will be aging out of special education and transitioning from the expanded Medical Assistance Children's Benefit package (includes home health care) to the more limited Adult Benefit package.
- **New Waiver with 1000 new slots:** The **new Community Living Waiver** will serve people with Intellectual Disabilities or Autism. It will have an annual cap on services of \$70,000 and is projected to start January 2018. It will cover the same services as the PFDS Waiver. In addition, it will cover the new Supported Living service and Life Sharing for individuals with lower support needs.

Other changes affect people in day programs (community participation supports), people receiving residential services, people with paid relatives providing some services, and people who receive shift nursing limit. Also, there are some changes that limit how many services people can get as well as the addition of new services.

Please see our [website](#) for more complete information about the various changes to these Waiver programs.

## Our Mission

Founded in the mid-1980s and incorporated in 1993, PHLP protects and advances the health rights of low-income and underserved individuals. Our talented staff is passionate about eliminating barriers to health care that stand in the way of those most in need.

We seek policies and practices that maximize health coverage and access to care, hold insurers and providers accountable to consumers, and achieve better outcomes and reduce health disparities.

PHLP advances its mission through individual representation, systemic litigation, education, training, and collaboration.

## You can help

[DONATE TO PHLP](#)

## Support Our Work

Please support PHLP by making a donation on our website at [phlp.org](http://phlp.org). You can also donate through the United Way.

For Southeast PA, go to [uwsepa.org](http://uwsepa.org) and select donor choice number 10277.

For the Capital Region, go to [uwcr.org](http://uwcr.org) and pledge a donation to PHLP.

For the Pittsburgh Region, go to [unitedwaypittsburgh.org](http://unitedwaypittsburgh.org) and select agency code number 11089521.

PHLP: Helping People in Need Get the Health Care They Deserve