

Health Law PA News

A Publication of the Pennsylvania Health Law Project



Volume 16, Number 2
March 2013

Statewide Helpline: 800-274-3258
Website: www.phlp.org

Governor's Proposed Budget Overview

A Publication of the Pennsylvania Health Law Project

Volume 16, Number 2
3258
March 2013
www.phlp.org

Statewide Helpline: 800-274-
Website:

Governor Corbett presented his proposed FY 2013-2014 budget to the General Assembly on February 5th. Since then, House and Senate Appropriations Committees have held hearings during which the head of every state agency appeared before the Committees and answered questions. Over upcoming months, both the House and Senate will develop their own appropriation bills that detail their spending plans. Then, the Governor and legislative leaders will negotiate on one bill that must pass both chambers by July 1st.

Medical Assistance Proposed Budget

The Governor's proposed budget for fiscal year 2013-14 includes a slight funding increase for DPW programs and avoids the major Medical Assistance cuts that were a part of the past two budgets. As a reminder, Pennsylvania calls its Medicaid program Medical Assistance (MA). The budget projects a 2.9 percent increase in Medi- (Continued on Page 2)

INSIDE THIS EDITION

DPW Agrees to Continue to Pay Behavior Specialists for Children on the Autism Spectrum	4
Pennsylvania Still Undecided on Medicaid Expansion	5
The Fourth Year of the Affordable Care Act Will Bring Its Most Significant Coverage Changes	6
HealthChoices Now Statewide	7
Training on HealthChoices New West & New East Zones "Part Two"	8
PA Fair Care Has Stopped Taking Applications	9
SEIU Files Lawsuit over Proposed Health Center Closures	9
General Assembly Defendants Appeal Commonwealth Court Order Redirecting Tobacco Settlement Funds	10
New DPW Appointments	11
Save the Date: PHLP in Pittsburgh on May 29 to Celebrate 20 Years of Helping People Get Health Care	12

(Continued from Page 1)

Three proposed initiatives could affect MA consumers:

- **General Assistance-related Medical Assistance (MA):** The budget projects \$70.3 million in savings related to last fall's termination of the General Assistance cash assistance program. Administration officials have explained this as MA savings that result after GA-cash recipients fail to reapply for medical coverage.
- **"Fair Share" Premiums for Families with Disabled Children:** A new "fair share" premium initiative on the families of children with disabilities in the PH-95 category is estimated to save \$8.3 million. Officials state they will work with affected families and CMS in developing this initiative. It would apply only to households with income above \$100,000 per year. (Readers may remember that in 2012, DPW planned to start collecting co-pays from families with children on MA under the PH-95 category but that was put on hold indefinitely in September 2012).
- **Division of Third Party Liability:** This initiative, which projects savings of \$1.2 million, proposes to privatize DPW's Division of Third Party Liability, whose main functions are casualty recovery, estate recovery and the Health Insurance Premium Payment (HIPP) program. Advocates have raised concerns over a private entity handling the discretionary aspects of these programs, such as granting estate recovery hardship waivers and allowing disenrollment from HIPP where provider network conflicts present barriers to accessing care.

OMHSAS Proposed Budget Remains "Status Quo"

At a recent budget presentation, Dennis Marion, the newly appointed Deputy Secretary of DPW's Office of Mental Health and Substance Abuse Services (OMHSAS), said the Governor's proposed 2013-2014 budget for his agency is generally "status quo". The primary program categories of OMHSAS funding include community mental health services, state hospitals, Behavioral Health Services Initiative, Act 152, Medicaid, and the Special Pharmaceutical Benefits Program (for certain mental health medications). Total funding for mental health services is up 4 percent from the current year – however, it is \$28 million **less** than the 2010-11 appropriations. The proposed budget for OMHSAS totals approximately \$3.9 billion, with the majority allocated for Medicaid managed care services (\$2.86 billion). Funding for community mental health services makes up for some lost ground in the 2012-13 budget and is allocated at \$589 million under the proposed budget. State hospitals receive 10 percent of OMHSAS' funding (\$390 million).

The OMHSAS budget proposal includes CHIPPS (Community/ Hospital Integration Projects Program) funding to support the discharge of 90 individuals from state hospitals back into their communities. Deputy Secretary Marion reported that the funding will not necessarily be evenly distributed by state hospitals but instead would encourage each county to look at their residents who, with adequate supports, would be ready for discharge and to allocate the funding accordingly.

(Continued on Page 3)

(Continued from Page 2)

The proposed budget also includes funding for two new OMHSAS Statewide Initiatives:

- **Mental Health Matters**-this campaign will include education on mental health first aid; needs assessments for children, adults and older adults in order to develop a 2-5 year plan; and increased efforts to build “gatekeeper communities” with churches, community centers, librarians and families.
- **Service Members, Veterans, Families Military Project**-this will be a collaboration with cross systems partners such as the Departments of Public Welfare, Military & Veterans Affairs, Drug & Alcohol and Health, along with Army One Source and others. The priorities for this project include suicide prevention, increased training for providers, improvements to the behavioral health system to meet the needs of this population and development of a referral system.

The Governor’s budget proposal also expands the Human Services Block Grant Pilot from the current 20 counties to statewide participation on a voluntary basis. Many advocates and other stakeholders continue to voice concern that the initial “pilot” program has not yet been evaluated to determine its effectiveness and whether there has been any detriment to those needing human services and supports. As readers may recall, the Block Grant Pilot was implemented at the beginning of this fiscal year and combines seven line items of mental health, drug and alcohol, children and youth and homeless services into one block grant and allows the 20 participating counties limited flexibility in determining how the funds are used. The Block Grant remains controversial and its expansion causes concern to those who oppose it.

Highlights of the Office of Developmental Programs Proposed Budget

During the Governor’s budget address, he gave particular attention to the need for increased funding to serve more people with intellectual disabilities, and highlighted the growing waiting list of those needing services. To that end, the budget proposal includes:

- A \$20 million increase to the Intellectual Disability Waiting List Initiative to serve:
 - ◇ An additional 380 individuals on the waiting list (with a special focus on those individuals at risk for institutionalization because their aging parents/caregivers are unable to continue to meet their needs);
 - ◇ 700 students in special education who will age out of school funded services in the coming fiscal year; and
 - ◇ 100 persons currently in State Centers for persons with intellectual disabilities.
- Increased funding for autism services that will allow the state to provide home and community-based services to an additional 118 adults.

(Continued on Page 4)

(Continued from Page 3) **Highlights of the Office of Long-Term Living Proposed Budget**

The Governor's proposed budget includes increased funding for Home and Community-Based Services in order to serve more people and reduce waiting lists. Specifically, the Administration proposes:

- An increase of approximately \$15.8 million in state funds to serve an additional 1,280 people under the Independence, OBRA and Commcare Waivers. This will allow the OBRA and Commcare Waivers to start enrolling people again as there has been a moratorium on enrollment in these two programs in recent years.
- Increased funding of \$4.1 million to serve an additional 400 people under the Attendant Care Waiver. Unfortunately, there is no additional funding for the Act 150 program which means the waiting list of 300 people will continue to grow.
- An additional \$9 million to increase the number of adults served through the LIFE program (this serves people age 55 and older who meet level of care and other eligibility criteria)
- An additional \$50 million in lottery funds** that is earmarked to:
 - ◊ serve an additional 1,550 older adults through the Aging Waiver,
 - ◊ serve 5,400 additional people in the Options program (currently there is a waiting list of over 5,000 individuals for these services statewide),
 - ◊ support individuals with disabilities who are turning 60 and moving into the aging programs, and
 - ◊ support Area Agencies on Aging and modernize Senior Centers.

***It is important to note that in the Governor's budget proposal this \$50 million is dependent on the privatization of the lottery. Since the ruling by the State Attorney General that the Governor lacked legal authority to privatize the lottery without express legislative authority, it is uncertain whether this additional funding will still be available.*

DPW Agrees to Continue to Pay Behavior Specialists for Children and Youth on the Autism Spectrum

As discussed in our January newsletter, DPW previously informed "wraparound" providers that starting May 26, 2013, behavioral specialist consultants (BSCs) will not be paid to consult on treatment services for children and youth with an autism spectrum diagnosis unless they are licensed as a behavior specialist under Act 62 (the Autism Insurance Law). DPW is now going to allow BSCs to be paid even if they have not obtained licensure by May 26th, provided they are "reasonably likely to qualify for a behavior specialist license" under Act 62 by January 1, 2014. A letter was sent to families on March 19th about this change (link to letter [here](#)). This policy change aims to avoid interruptions in service as many persons applying for behavior specialist licensure have experienced delays in obtaining the mandated training and attaining licensure.

Pennsylvania Still Undecided on Medicaid Expansion

Governor Tom Corbett met with U.S. Department of Health and Human Services Secretary Kathleen Sebelius in early April to discuss whether or not Pennsylvania will expand its Medicaid program. Medicaid expansion, a key component of the Affordable Care Act (ACA), was made optional for states by the Supreme Court last June. Governor Corbett has repeatedly stated that he has "not closed the door" on the Medicaid expansion, but also cannot recommend it to the legislature unless the federal government grants Pennsylvania the flexibility it seeks to make innovative program reforms. In discussing the Medicaid expansion, state officials have raised concerns over the state's costs per Medicaid enrollee, the requirement to move certain children currently in the CHIP program into Medicaid, and whether the now-defunct adultBasic program might decrease the enhanced federal funding tied to the expansion (because individuals who were enrolled in that program might not now be considered newly eligible individuals under the expansion rules). Advocates and other stakeholders believe these concerns are not valid reasons to decline the expansion opportunity.

Pressure has mounted on the Governor since early February when he announced he did not recommend Medicaid expansion. Several Republican governors, despite their opposition to the ACA, have announced their support for the expansion. Similarly, a number of Republican state legislators have joined their Democratic colleagues in calling for the Governor to adopt the Medicaid expansion.

The Medicaid expansion would extend coverage to uninsured individuals with incomes under 138 percent of the federal poverty line (FPL) (approximately \$15,800 annually for a single adult and \$32,500 for a family of four) without regard to their assets.

To qualify for Medicaid in Pennsylvania currently, a person has to meet income and asset requirements **and** fit into a covered category, such as being over age 65 or having a disability. For anyone who is over the asset limit or who does not fit into a current eligibility category, permitting the expansion would simplify Medicaid eligibility and require only that household income be under 138 percent FPL. The Urban Institute estimates that 613,000 adults in PA are uninsured and have incomes under 138 percent FPL.

A study released this month by the RAND Corporation estimates that expanding Medicaid eligibility would add \$2.2 to \$2.5 billion in annual federal payments to Pennsylvania, which would in turn generate \$3.2 to \$3.6 billion in annual state economic activity and support 35,000 to 39,000 new jobs. The RAND study also projects that over the first seven years additional revenues generated from the gross receipts tax on the Medicaid managed care plans and personal income taxes would exceed new state Medicaid costs by \$90 million. This report can be viewed [here](#).

In recent months, PHLP has released three analyses on how the Medicaid expansion would impact Pennsylvania specifically- how it would benefit rural Pennsylvania, would be good for families, and would lead to new revenues and budget savings. These publications are available at www.phlp.org.

The Fourth Year of the Affordable Care Act Will Bring Its Most Significant Coverage Changes

March 2013 marked the third anniversary of Congress' passage of the Affordable Care Act (ACA). Readers may recall that in the past year, the ACA withstood a Supreme Court challenge, threats to defund or repeal it, and flat out rejection by some federal and state lawmakers who refused to fully implement the law preventing their constituents from receiving its benefits. But the Affordable Care Act persevered and has won over some former detractors along the way.

The Affordable Care Act was able to surmount these challenges because it is based on a strong core principle—that people should have reliable, affordable health coverage that will be there for them even if they get sick or lose a job. People want a fairer health care system where they won't be discriminated against if they have a pre-existing condition or charged more based on their gender. They do not want to face bankruptcy due to medical bills that are not covered by their insurance plans or because they weren't able to secure affordable coverage. Slowly but surely, people are starting to realize the benefits of the new health law as provisions gradually take effect.

In its fourth year, the ACA enters a new phase and will reach two major milestones:

- In 2014, more uninsured people will gain Medicaid coverage in the states that accept federal funding to expand eligibility for those earning up to 138 percent of the federal poverty level. It is expected that more states (like Pennsylvania) will realize what a good deal the Medicaid option is for their residents and will decide to go ahead with the expansion.
- In October, 2013, the Health Insurance Marketplace will open its doors for people to shop for private insurance coverage that will begin January 2014. The Marketplace will allow individuals and small businesses to compare health plans on a level playing field. Premium tax credits will be available to many low and moderate income families. Individuals may also qualify for reduced cost-sharing to help keep coverage affordable.

Both are landmark actions that will require significant preparation and coordination by state and federal officials to successfully connect consumers to coverage. Stay tuned to PHLP's newsletters and other publications for more details about these and other ACA related developments.

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

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

HealthChoices Now Statewide

As of March 1st, Pennsylvania's statewide expansion of HealthChoices (mandatory managed care for most Medicaid consumers) is complete. ACCESS Plus no longer exists as a Medicaid delivery system. Although most Medicaid consumers throughout Pennsylvania are now enrolled in a managed care plan for their Medicaid coverage, certain groups of consumers will continue to use the ACCESS card because they are exempt from HealthChoices (more later).

The final zone to join HealthChoices, the New East Zone, includes twenty-two counties in North Central and Northeastern PA (Bradford, Carbon, Centre, Clinton, Columbia, Juniata, Lackawanna, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne and Wyoming). Medicaid recipients in these counties had to join one of three managed care plans available in February for coverage to start March 1st. Those that did not make a choice on their own were auto-enrolled into a plan. DPW officials reported that 44 percent of Medicaid consumers in the New East Zone made a choice and enrolled into a plan by the February deadline. Of those, 69 percent chose Geisinger Health Plan, 17 percent chose Amerihealth Northeast and 14 percent chose Coventry Cares. The remaining 56 percent of consumers who did not make a choice were equally shared among the three plans through a random assignment process.

Generally, under HealthChoices, Medicaid consumers must receive all their healthcare and services from healthcare providers who are in their plan's network. However, for those who are pregnant, those receiving prior authorized services, or those already in a course of treatment with a provider, there are continuity of care rules in place. These rules require the managed care plan to continue to provide the services and honor existing treatment relationships for some period of time after the consumer joins the plan.

Anyone wanting to switch from the managed care plan they chose, or were assigned to, can do so at any time by contacting PA Enrollment Services at 1-800-440-3989 or by going to www.enrollnow.net.

Medicaid fee-for-service (i.e., the ACCESS card) still exists in every county across the state. Certain individuals on Medicaid will not go into a Medicaid managed care plan for their Medicaid coverage and will continue to use their ACCESS card when they get health care services including:

- **Full Dual Eligibles-** Medicare beneficiaries who also have full Medicaid coverage
- **Aging (PDA) Waiver participants**
- **LIFE program participants**
- **HIPP participants-** Medicaid consumers who are also enrolled in employer-sponsored health insurance for which Medicaid is paying the premium

Anyone experiencing difficulties accessing healthcare coverage and services in the New East Zone is encouraged to call PHLP's Helpline at 1-800-274-3258 or to email us at staff@phlp.org. PHLP will be conducting in-person trainings at various locations across the state-please see the training announcement page 8 for the training details.

Training on HealthChoices

New West & New East Zones “Part Two”

Attention: Medicaid Consumers, Family Members and Advocates



Across the state, most individuals with Medicaid coverage are now enrolled in a managed care plan. ACCESS PLUS has ended. HealthChoices (mandatory managed care) is statewide.

This is an important change for Medicaid recipients, effecting how they access health care services and providers and what they can do if their plan denies a service or medication.

Now that HealthChoices has been implemented in the new zones, we know there are still questions and concerns about this new delivery system. PHLP is beginning to schedule “Part Two” of our trainings to educate consumers, family members and professionals with additional information they need to know:

- How has coverage changed with HealthChoices (a refresher);
- What if I am unhappy with my current plan;
- What to do if a plan is denying a service or medication;
- How does HealthChoices increase rights with the Medical Assistance Transportation Program (MATP).

Come to a **FREE** in-person training by the Pennsylvania Health Law Project (PHLP) to learn about these changes and more!

Wednesday, May 8, 2013

1 pm – 3pm

Warren State Hospital
Israel Building Auditorium
677 Hospital Drive
Warren, PA 16365

Friday, May 17, 2013

2 pm – 4 pm

American Legion
912 Main Street
Towanda, PA 18848

Tuesday, June 4, 2013

8am – 12pm

Columbia-Montour LINK
Location To Be Announced

Space is Limited. Please RSVP for a training through PHLP’s Helpline (1-800-274-3258) or staff@phlp.org.

PA Fair Care Has Stopped Taking Applications

PA Fair Care, Pennsylvania's health insurance plan for people with pre-existing conditions, stopped taking applications as of March 3rd. The Centers for Medicare and Medicaid Services imposed this enrollment suspension to ensure funding is available throughout 2013 to cover the individuals already enrolled in this program and others like it across the country. As of January 2013, 6,779 people were enrolled in PA Fair Care.

PA Fair Care was created by the Department of Insurance as a temporary insurance program for people with pre-existing conditions who were not able to purchase coverage on their own because of their conditions. The Affordable Care Act (ACA) created the Pre-Existing Condition Insurance Plan (PA Fair Care is a state-based pre-existing condition insurance plan) and offered funding for both the federally-run program and the state-based programs to offer temporary coverage to individuals until 2014. As of January 1, 2014, the Affordable Care Act makes affordable coverage available to adults regardless of their health status or pre-existing conditions through health insurance marketplaces (also called "exchanges").

Starting in October 2013, Pennsylvania residents can begin to use the exchange to enroll in health care coverage that will start January 1, 2014. Governor Corbett has decided that Pennsylvania will not operate its own health insurance exchange and instead will use an exchange operated by the federal government. The exchange will offer individuals and their families a choice of health plans resembling what workers at major companies already receive. Through the exchange, the federal government will also help many households pay their premiums by giving them a federal tax credit. Much work remains to be done and many decisions need to be made by federal **and** Pennsylvania officials. See page 5 and 6 for the latest developments regarding this.

SEIU Files Lawsuit Over Proposed Health Center Closures

The Service Employees Union International (SEIU) Healthcare Pennsylvania filed a lawsuit on April 1, 2013 in Commonwealth Court against Governor Corbett's administration over the state's plan to close 26 public state health centers and eliminate 73 Department of Health positions (including 26 community health nurses). The lawsuit asks the Court to halt the cuts and alleges that the closures will hurt public health and leave the uninsured and underserved with fewer health care options. Furthermore, the lawsuit maintains these actions are illegal because state law requires the state to have a minimum number of health centers and requires legislative approval before any state health centers can be closed. Several lawmakers have joined SEIU (who represents the nurses at these centers) in the lawsuit. We'll keep readers updated about this in future newsletters.

General Assembly Defendants Appeal Commonwealth Court Order Redirecting Tobacco Settlement Funds

On April 1st, the Speaker of the House of Representatives and President Pro Tempore of the Pennsylvania State Senate filed an appeal in the Pennsylvania Supreme Court seeking to overturn a March 4, 2013 Commonwealth Court decision that struck down as unconstitutional two state statutes that redirected funds away from adultBasic and into the state's general fund. As a reminder, the adultBasic program was a low-cost health insurance program that was funded by the proceeds of a 1998 settlement between several tobacco companies and Pennsylvania and ended in February 2011.

Two cases, *Sears v. Corbett* and *Weisblatt v. Corbett*, were filed after adultBasic ceased operations in 2011 following the enactment of Act 46 of 2010 and Act 26 of 2011. The plaintiffs in both cases argued that the new legislation violated both the Tobacco Settlement Act (TSA) and the Pennsylvania Constitution and sought an order directing all future tobacco settlement funds to be deposited in accordance with the TSA and all redirected funds to be repaid to the Tobacco Settlement Fund.

The two cases were combined in Commonwealth Court and on March 4th President Judge Dan Pellegrini ruled, in a memorandum opinion, that beginning with the 2013-14 fiscal year, the defendants — the General Assembly, Governor Tom Corbett, Budget Secretary Charles Zogby, Treasurer Rob McCord and the state Department of the Treasury — must allocate 30 percent of the tobacco settlement proceeds to adultBasic or a similar program.

While declaring Act 46 and Act 26 unconstitutional, the court said it could not allow the plaintiffs to recoup the money that had been withheld from the Tobacco Settlement Fund during the 2010-11 and 2011-12 fiscal years as that would require legislative action. On average, the Tobacco Settlement Fund annually receives \$364.89 million to support various Pennsylvania health programs. The Court directed the state defendants to follow existing law beginning with the 2013-14 fiscal year. "Section 306(b)(1)(vi) of the TSA provides that 30 percent should be used for both 'health investment insurance pursuant to Chapter 13 and for the purchase of Medicaid benefits for workers with disabilities pursuant to Chapter 15,' not one or the other."

Governor Corbett's budget proposal for the 2013-14 fiscal year allocates the entire 30 percent of the TSA funds to the MAWD program. This may run afoul of the court decision and the Corbett administration is "reviewing the legal and budgetary impacts of the court's ruling."

PHLP applauds the court's ruling because it upholds existing state law to provide health insurance to low income working adults and urges the PA Supreme Court to deny defendants' challenges. We also believe Pennsylvania could meet its legal obligations to this same group of adults by expanding Medicaid under the Affordable Care Act. Although the federal government will cover 100 percent of Pennsylvania's costs of expanding Medicaid through the end of 2016, TSA funds might be used to cover any state costs associated with Medicaid expansion.

New DPW Appointments

Acting Secretary

Beverly Mackereth, former Deputy Secretary of the Office of Children Youth and Families, has been named as the Acting Secretary of the Department of Public Welfare. She has been serving in this capacity since Gary Alexander left the Secretary's position in February. Ms. Mackereth has had a long career in public service including working for York County Children and Youth Services, the York County District Attorney's office, and the York County Department of Health and Human Services (where she was Executive Director). She has also served in public office as Mayor of Spring Grove and in the Pennsylvania House of Representatives serving the 196th Legislative District. She was appointed as the Deputy Secretary of the Office of Children Youth and Families by Governor Corbett in 2011.

Deputy Secretary for OMHSAS

DPW recently announced the appointment of Dennis Marion as Deputy Secretary of the Office of Mental Health and Substance Abuse Services (OMHSAS). Deputy Secretary Marion joins OMHSAS after spending 31 years working in various capacities in Cumberland County including serving as administrator of human services, mental health/intellectual and developmental disabilities and as executive director of the Cumberland-Perry Drug and Alcohol Commission. Mr. Marion has served as the Acting Deputy Secretary since January 2013.

Please **support PHLP** by making a donation
through the United Way.

For Southeast PA, go to www.uwsepa.org and select donor choice number 10277.

For the Capital Region, go to www.uwcr.org and pledge a donation to PHLP.

For the Pittsburgh Region, go to www.unitedwaypittsburgh.org and select agency code number 11089521.

Save the Date:

Join PHLP in Pittsburgh on May 29 to Celebrate 20 Years of Helping People Get Health Care

For two decades, PHLP has stood by people in distress: people who did not do anything wrong but whose physical and mental well-being were compromised by illness. Our staff has made a tremendous impact in two decades: advocating, educating, and litigating.

In honor of these last twenty years, and those who supported us, PHLP is hosting an anniversary breakfast in Pittsburgh on Wednesday, May 29 at the Doubletree Hotel (Downtown Pittsburgh). Professor Alan Meisel, founder and director of the University of Pittsburgh's Center for Bioethics and Health Law and the Law School's Health Law Certificate Program, will be the keynote speaker. Please save the date and celebrate all we have achieved together. More information will become available in upcoming weeks.

Pennsylvania Health Law Project

The Corn Exchange
123 Chestnut St., Suite 400
Philadelphia, PA 19106

Philadelphia • Harrisburg • Pittsburgh

Helping People In Need Get the Health Care They Deserve