Health Law PA News

Newsletters of the Pennsylvania Health Law Project

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Volume 14, Number 2 March 2011

Spotlight on: Governor Corbett's Proposed 2011-12 Budget

We have dedicated most of this newsletter to highlighting funding and program changes in Governor Corbett's proposed FY 2011-2012 state budget presented in early March. Each budget article focuses on a particular office within the Department of Public Welfare (*e.g.*, Office of Medical Assistance Programs, the Office of Long Term Living). On March 30, the Senate and House Appropriations Committees held hearings on the Governor's spending proposal for the Department of Public Welfare (DPW) and its programs. In the coming months, the General Assembly must pass a General Appropriations Bill for program spending, which will then go to the Governor for signature to become a state budget.

A lot can change between the Governor proposing a budget and the General Assembly agreeing on an Appropriations Bill. Either legislative chamber is likely to propose additional cuts or substantial revisions to the DPW budget advanced by the Governor. Advocates worry that the General Assembly will further cut funding to DPW to restore some of the unpopular cuts to education funding proposed by the Governor. Readers can decide whether to contest various provisions of the Governor's budget as reported in this newsletter or to urge support for the proposed DPW budget while arguing that no additional cuts to benefits or services be made that would weaken Pennsylvania's safety net of health care programs for low income families, persons with disabilities and the elderly. We will continue to keep our readers informed about state budget issues in upcoming newsletters and on our website.

INSIDE THIS EDITION

Proposed Budget Increases State Funding for Physical Health MA Programs; Limits Coverage of Optional Services for Adults

Governor Corbett's proposed FY 2011-12 budget substantially increases state funding for Medical Assistance. Over the past two fiscal years, Department of Public Welfare (DPW) programs have depended on increased federal matching funds provided by the American Recovery and Reinvestment Act (ARRA). That increased federal funding is ending. However, the Affordable Care Act prohibits DPW from reducing eligibility for most categories of Medical Assistance (MA). As a result, state funding for MA in the proposed budget is increased to replace the loss of federal funds.

MA spending in Pennsylvania is expected to increase to $5.2 billion (up from $3.5 billion currently) over the next fiscal year. The proposed budget builds in funding to cover an expected four to five percent increase in MA enrollment and increased costs resulting from a MA population with more complex medical problems, higher service utilization, and increased drug and technology costs. Currently, 2.2 million Pennsylvanians receive benefits through Medicaid.

Because cuts to MA eligibility are prohibited, the state proposes other measures to control costs and achieve savings. The proposed changes to the delivery of physical health services under MA include:

Benefit Limits: The proposed budget reduces pharmacy and dental benefits for adults, which are "optional services" for adults under federal Medicaid law. In other words, states have discretion whether or not to cover those services. Under the proposed budget, all adult recipients who have prescription coverage through MA would be limited to six prescriptions per month. There will be an exception process available for persons with serious health conditions, but details are not yet available.

Adults who receive coverage for dental services from MA would have their dental coverage limited in the following ways:

- Coverage for oral exams and cleanings would be reduced from every six months to once a year.
- Coverage for periodontal services, crowns, and dentures would be eliminated; however, fillings, root canals, and diagnostics would continue to be covered.

Pharmacy Utilization Management: The budget includes pharmacy utilization management tools that will require prior authorization for certain prescriptions such as antipsychotic medications for children under 18 and medications for adults who are taking more than one drug in the same class. The proposed budget also expands utilization management for certain controlled substances.

Managed Care Funding: HealthChoices Physical Health Managed Care Organizations (PH-MCOs) would receive a 3.5% increase, described as necessary to maintain "actuarially sound" rates as required by federal law. In addition, PH-MCOs can earn additional bonus payments based on their performance.

Hospital Supplemental Payments: The Governor proposes eliminating supplemental payments to hospitals through across-the-board reductions in funding for obstetric and neonatal services, hospital burn centers, Critical Access Hospitals, trauma centers, state-related academic medical centers, physician practice plans, acute care hospital payment, and health care clinics. These payment reductions total $333.3 million ($150 million in state funds and $183 million in matching federal funds).

Highlights of the Office of Long Term Living Proposed Budget

The Office of Long Term Living (OLTL) operates jointly within the Department of Public Welfare and Department of Aging. OLTL is responsible for administering programs for adults with certain disabilities and older adults. Highlights of the proposed OLTL budget include:

- A $20 million increase in state funds for the Independence, OBRA and CommCare Waivers. However, the reduction in federal funds (due to ARRA stimulus money ending) results in a net decrease of $27 million. The Department stated the funding would be sufficient to continue the programs and add new people because it anticipates greater savings from "rebalancing long-term living systems". The budget assumes savings of $38.3 million ($17.2 million in state funds) in these waivers through "a variety of home and community-based service reforms, including improved service coordination, revised reimbursement rates and reporting requirements, expanded consumer-directed care and increased federal funds."

- A $35 million (16%) reduction in both state and federal funds for Attendant Care (includes both the Waiver and state-only funded Act 150 program). As with the OBRA, Independence and CommCare waivers, the ability to continue to serve existing consumers and add new persons appears dependent on realizing cost savings from the rebalancing reforms referenced above. The Department maintains that funding should be sufficient to continue the programs. People wanting to get into Act 150 will continue to be placed on a waiting list until an opening is created by someone leaving the program. OLTL will continue to look for people on Act 150 who qualify for the Attendant Care Waiver and move those individuals into that program.

- A $367 million increase in state funding for nursing homes, the LIFE program and the Aging Waiver. However, due to decreases in federal matching funds, total appropriations would decrease by $119 million. The proposed budget includes two nursing home cost saving initiatives. One, expected to save $23 million, would change the way nursing homes are paid. The other, expected to save $5.4 million, would expand the nursing facility recovery audit program and automatic records review. The budget also projects savings of $40.5 million ($18 million in state funds) from the "rebalancing reforms" mentioned above.

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Office of Mental Health and Substance Abuse Services Proposed Budget Highlights

The Office of Mental Health and Substance Abuse Services (OMHSAS) is responsible for administering behavioral health services (which includes mental health and substance abuse services). Highlights of the OMHSAS proposed budget include:

- Continuing to administer Medical Assistance (MA) behavioral health services through the existing network of counties and behavioral health managed care organizations (BH-MCOs). This is also known as the HealthChoices "carve-out."
- Savings of $19 million by eliminating bonus payments to BH-MCOs that meet certain performance measures ("pay for performance").
- Capping the "reinvestment dollars" that counties can keep. Counties receive a per-person ("capitation") payment from the state under MA for behavioral health services. If the county and its BH-MCO spend less than the state payment, they must reinvest that "profit" in services. Currently, there is no limit on the amount of profit that counties could keep for reinvestment. Under the proposed budget, however, the amount the counties can keep would be capped at 4% of their payments from the state. The Department anticipates a savings of $20 million from capping counties' reinvestment dollars.
- Privatizing the forensic units (for persons with mental illness convicted of a crime) at Norristown & Torrance State psychiatric hospitals. OMHSAS projects $27.7 million in savings from laying off 401 state employees who staff those two units plus a reduction of $4.1 million in other operating costs. However, the budget also projects a cost of $28.9 million for the contracts with the private companies that would run these forensic units leaving total savings at only $3 million.
- Increasing funding for the State Pharmaceutical Benefits Program from $2.3 million to $3.6 million. This program covers certain high cost anti-psychotic medications for individuals with schizophrenia who do not qualify for MA.
- Continuing funding to counties for respite services to families with children receiving behavioral health services. This funding would allow an estimated 1,600 families to receive an average of 35 hours of respite during the upcoming fiscal year.
- Not adding Psychiatric Rehabilitation as a MA covered service. OMHSAS claims they can't show that it is cost effective statewide which means the service will continue to be available in counties where it currently exists and will be paid for using other funding. The state will continue to move forward with regulations on Psychiatric Rehabilitation even though it won't be offered as a MA covered service.
- Maintaining drug and alcohol treatment services under Act 152 (which allows for payment of drug and alcohol services for individuals who do not qualify for MA) at $1.5 million, but moves these services to the behavioral health managed care organizations. Currently, counties manage the funding and services for Act 152.
- Changing Behavioral Health Rehabilitation Services (commonly called "wraparound") to prioritize wraparound for young children with autism spectrum disorders, children in crisis, and children at risk of institutionalization. OMHSAS will encourage the use of more evidence-based therapies like multi-systemic therapy, functional family therapy, family based therapy, and high fidelity wraparound for other children. OMHSAS will also encourage the use of these therapies as alternatives to residential treatment facilities (RTFs) and will look to shorten approved length of stays in RTFs.
- No funding to support the creation of a new Department of Drug & Alcohol Services that was previously authorized by state statute.

Office of Developmental Programs Proposed Budget Highlights

The Office of Developmental Programs (ODP) is responsible for overseeing programs for individuals with intellectual disabilities and autism. Highlights of ODP's proposed budget include:

- Adding Consolidated or Person Family Directed Support (PFDS) Waiver slots only for:
  - 50 people currently in state centers (state run institutions for persons with intellectual disabilities) and
  - 35 people in state psychiatric hospitals who also have intellectual disabilities

  These individuals would get Consolidated Waivers to move out of these facilities as a result of two separate lawsuits brought by the Disability Rights Network. Other individuals will only be able to get a Consolidated or PFDS waiver slot when someone currently on the waiver dies, moves or otherwise loses his/her waiver slot. This means that most of the 3,051 persons currently listed in the "emergency" category waiting for services will continue to go without services.

- Having ODP take greater control over distributing waiver slots and moving some slots, as they become available, between counties. This will probably mean counties will not be able to hold onto unused slots as long as they had been able to previously. ODP would also take a greater role in reviewing Individualized Service Plans and requests for one-on-one staffing in group homes.

- Designating $7.4 million in state funds to cover the costs of "changing needs" of persons already on Consolidated or PFDS Waivers who need more services.

- Continuing funding for the transition of persons in large private facilities (ICF-MRs) into smaller group homes funded under the Consolidated Waiver.

- Reducing reimbursements to group homes under the Consolidated Waiver by limiting the amount paid for room and board to $7,000 per consumer per year above the individual's room and board contribution (72% of SSI). This amounts to an estimated $27 million in savings. ODP would also engage a consultant to review all group home "ineligible" costs (costs paid without federal match) to redefine what DPW would pay for in the future.

- Changing the number of "vacancy days" ODP would pay to group homes (these are days when a group home resident is staying overnight with family, is in a hospital, or is otherwise out of the group home, but the group home gets paid anyway). ODP expects to save $9.7 million.

- Reviewing closely one- and two- person group homes because of their high costs.

- Savings due to "various changes in service definitions" is mentioned in the proposed budget including "placing limits on habilitation services". However, it appears those changes are off the table for now (see ODP Bulletin 00-11-02).

- Increasing state funds for the Bureau of Autism Services, but the loss of federal stimulus money results in a net decrease. No cuts in services are expected. However, there would be no increase in the number of Adult Autism waiver slots (300) or Adult Community Autism Program (ACAP) slots (108), so those slots may be filled before the end of the current fiscal year.

Recent Improvements to the Waiver Application Process for Individuals Aged 18-59

Persons under the age of 60 with physical, developmental and other disabilities have faced delays when applying to Home and Community Based Services Waiver programs in past months. As of Dec. 1, 2010, the Office of Long Term Living (OLTL) started to use a company called Maximus to act as a statewide Independent Enrollment Broker for the CommCare, OBRA, Independence, Attendant Care and AIDS Waiver programs. Maximus is responsible for taking applications, conducting home visits to do functional assessments, and guiding the applicant through the waiver application process. Prior to the state's contracting with Maximus, each waiver program used different local agencies to perform the functions associated with the Waiver application and enrollment process.

Earlier this year, PHLP and the Consumer Subcommittee of the Medical Assistance Advisory Committee (Consumer Subcommittee) learned that applicants for these programs were experiencing significant delays (six to eight weeks and sometimes longer) between the time they initially contacted Maximus and the required in-home assessment. PHLP and the Consumer Subcommittee urged OLTL to address the delays. In response, OLTL authorized Maximus to hire and train more staff. This was accomplished in early March and, as a result, individuals waiting for their in-home visit have been contacted and offered an earlier assessment date. Maximus recently reported that they are now conducting in-home visits within seven days of an applicant's initial phone call and that individuals at risk of institutionalization are being giving priority when scheduling in-home assessments.

PHLP also learned that some waiver applicants were inappropriately told by Maximus that they were not waiver eligible. After raising this issue to OLTL, PHLP and the Consumer Subcommittee submitted revisions to Maximus' call scripts that focused on preventing individuals from being denied too early in the application process and without adequate notice of their right to appeal. The Department accepted the recommendations which should be implemented in the near future.

Individuals interested in applying for one of the waivers listed above should call Maximus at 877-550-4227. PHLP continues to monitor the situation as well as the Office of Long Term Living's response to the problems identified. We encourage individuals who have difficulties applying for <u>any</u> waiver to contact our Helpline at 1-800-274-3258 for assistance.

Please support PHLP by making a donation through the United Way of Southeastern PA. Go to <u>www.uwsepa.org</u> and select donor Choice number 10277.

Reminder To Those Terminated From AdultBasic

On February 28th, the adultBasic health insurance program ended and over 40,000 individuals lost health coverage. Some of those individuals may be eligible for Medical Assistance (especially those with disabilities or chronic health conditions). Anyone who was terminated can contact their local County Assistance Office for an application or can apply online at www.compass.state.pa.us to see if they qualify for Medical Assistance.

Those who don't qualify for Medical Assistance may want to enroll into one of the Special Care insurance programs run by Blue Cross Blue Shield Plans across the state. Special Care insurance is available to those with limited income and the premiums range from $132 to $192 per month, depending on the Plan. Generally, Special Care offers limited coverage: 4 doctor visits per year; 21 days of inpatient hospital care per benefit period; and $1,000 per year maximum coverage of outpatient diagnostic services such as x-rays, radiology, laboratory and pathology tests. For details on the services covered and co-pays for services, consumers should contact their local plan directly.

Special Care Plans typically impose a one year pre-existing condition exclusion for those joining their plan. However, as we noted in our January newsletter, the plans have agreed not to impose this requirement on those who were terminated from adultBasic coverage and who enroll in their plans **by May 2, 2011.** This waiver of the pre-existing condition exclusion only applies to those who were in subsidized adultBasic paying $36/month for the coverage. Those who were on the adultBasic wait list who were buying the coverage at full cost WILL be subject to pre-existing condition exclusions should they now decide to join Special Care.

Individuals affected by the termination of the adultBasic Care program are encouraged to call PHLP's Helpline at 1-800-274-3258 for advice about their health care coverage options.

Special Care Phone Numbers and Premiums

Blue Cross of Northeastern Pennsylvania (1-888-445-7930): $131.78 per month
Capital BlueCross (1-800-682-2393): $192.44 per month
Highmark Blue Cross Blue Shield (1-800-544-6679): $162.00 per month
Highmark Blue Shield (1-877-986-4571): $162.00 per month
Independence Blue Cross (1-866-282-2702**)**: $148.70 per month

Happy Birthday Affordable Care Act!

March 23, 2011 marked the first anniversary of the enactment of the federal health care reform law now known as the Affordable Care Act. This landmark legislation is being implemented in stages. While many of the major provisions don't take effect until 2014, a number of important changes are already in effect:

- Children under age 26 can now stay on their parents' commercial health insurance plan. Families USA estimates that as a result of this new law 89,100 young adults in Pennsylvania are eligible to stay on their parents' plan.

- Children with pre-existing conditions such as cancer, asthma or diabetes cannot be denied health care coverage based on that condition. 177,900 children in Pennsylvania are estimated to be protected by this provision.

- Anyone, including children, with a new insurance plan can obtain preventive services such as screenings, counseling and check-ups without paying a co-payment. This means children's vaccinations are now covered with no co-payment.

A "new insurance plan" is defined as a plan newly created or an existing plan where the benefits or co-payments have been modified by more than just health care inflation.

- People in original Medicare now have coverage for many preventive services at no cost. There is no co-payment for check-ups, screenings or health counseling. This includes vaccinations like flu shots and the pneumonia vaccine, counseling to stop smoking, and cholesterol screenings, mammograms, prostate screenings and colonoscopies. People on Medicare can now also get an annual check-up with no co-payment. More than 2.2 million people in Pennsylvania are estimated to be eligible for this new coverage.

- Small businesses - those with fewer than 25 employees and average wages of less than $50,000 - who provide health insurance to their employees now qualify for a tax credit up to 35% to help them pay for the coverage. As many as 160,700 small businesses in Pennsylvania may qualify for this credit.

- Seniors and people with disabilities who reached the "donut hole" in their Medicare Part D drug coverage received a one-time $250 rebate check last year. Now, in 2011, those reaching the donut hole will receive a 50% discount on brand name drugs and a small discount on generic drugs as well. 247,400 Medicare beneficiaries in Pennsylvania received a rebate check last year.

- Each state has been given the option to create, and receive federal funding for, a high-risk pool to help people with pre-existing conditions find affordable health insurance. Pennsylvania's high-risk pool is called PA Fair Care and enrollees pay a $283 monthly premium for this coverage. Approximately 2,700 people are currently enrolled in PA Fair Care. More information can be found at: http://www.portal.state.pa.us/portal/server.pt/community/health_insurance/9189/pa_fair_care/666211

- The law prohibits any lifetime dollar limits on health insurance coverage and sets a minimum cap for annual limits, which will rise each year. In 2011, annual limits can be no less than $750,000.

New Law Allows Those Receiving Public Benefits and Receiving Tax Refunds to Save More Money

For years, many individuals and families were afraid to save their federal tax refunds for fear it would mean they no longer qualified for public benefits such as food stamps, Medical Assistance, and Supplemental Security Income (SSI). In the past, those tax refunds could be counted as income or a resource and cause an individual or family to lose their much-needed benefits. However, a new law passed in December 2010 has simplified the rules on how tax refunds such as the Earned Income Tax Credit, Child Tax Credit or any tax refund are treated in determining eligibility for public benefit programs.

Under the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*, any ***federal*** tax refund received will not count as income in the month received when determining eligibility for federally funded programs. That same refund will also not count as a resource for 12 months after the refund is received. The new law affects all federally funded public benefits programs including state and local programs that may have partial federal funding. These programs include: Temporary Assistance for Needy Families (TANF), Low Income Home Energy Assistance program (LIHEAP), Social Services Block Grant, Child Care & Development Block Grant, Supplemental Nutrition Assistance Program (SNAP – formerly known as the food stamp program), Medical Assistance, the Children's Health Insurance Program, and Supplemental Security Income (SSI) benefits.

This new law allows individuals and families to save tax refunds such as the Earned Income Tax Credit or Child Tax Credit for up to 12 months without affecting their eligibility for a federally-funded benefit they are already receiving or one that they are trying to receive. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 should have a positive effect on individuals and families who would like to save their tax refund for a "rainy day" in the coming year.

PACE–Like Benefit Still Available for Adults in the Medicare Waiting Period

Adults under 65 years old who have been approved for Social Security Disability Income (SSDI) and who are currently in their two year waiting period for Medicare coverage are still able to get help with their prescription costs through a program similar to the PACE program for those 65 and older.

This "PACE-like" program is the result of a lawsuit settlement between two pharmacy benefit management companies (Caremark and Express Scripts) and the PA Attorney General's office. The $1.6 million settlement is being used to provide eligible individuals with low-cost prescriptions ($6 for generics/ $9 for brand names) for one year. There is no income limit to qualify for this help, but someone must be receiving SSDI cash benefits and be in their two year Medicare waiting period.

Although enrollment is limited, the Department of Aging reports that funds are still available and consumers are urged to apply for this benefit. Interested individuals should contact the PA Pharmaceutical Assistance Clearinghouse at 1-800-955-0989 to start the application process.

PHLP and North Penn Legal Services are jointly sponsoring three upcoming trainings:

Resources for the Uninsured

Need health care? Lack health insurance?

This training for the general public and health advocates will identify resources for the uninsured. Both insurance programs and non-insurance resources will be covered. Insurance programs covered will include Medicaid, PA Fair Care, PACE, and Special Care. Other resources covered will include community health centers & dental clinics, prescription assistance programs, and hospital charity care.

May 10, 2011 @ 10:30am-12:00pm
YWCA of Northcentral PA
815 West Fourth Street
Williamsport, PA 17701

May 13, 2011 @ 1:30pm-3:00pm
Lackawanna College
Towanda Center
1 Elizabeth Street, Suite 2
Towanda, PA 18848

May 27, 2011 @ 10:30am-12:00pm
King's College
Sheehy-Farmer Campus Center
Lane's Lane
Wilkes Barre, PA 18711

Please contact Kyle Fisher (kfisher@phlp.org or 1-800-274-3258) for additional information about these trainings or to RSVP.

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