Health Law PA News

Newsletter of the Pennsylvania Health Law Project

Harrisburg Philadelphia Pittsburgh

Statewide Help Line: 1-800-274-3258/ TTY: 1-866-236-6310

On the Internet: www.phlp.org

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Medical Assistance Consumers to Receive Co-payment Refund Checks

DPW has begun sending refund checks ranging from $1 to $311 to some Medical Assistance recipients were charged co-pays in error. DPW is issuing refund checks to two groups:

Women enrolled the Breast and Cervical Cancer Prevention and Treatment Program (BCCPT) Under the federal Deficit Reduction Act, women enrolled in BCCPT were not to be charged co-pays for services or medications provided under that program after April 1, 2006. DPW is now issuing refund checks to 1,111 women who were erroneously charged co-pays.

Adult Recipients receiving DME/supplies. PHLP identified and informed DPW of an error resulting in

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INSIDE THIS EDITION

Medical Assistance Fee-for-Service adopts HealthChoices Definition of Medical Necessity

In late April, the Department of Public Welfare issued a bulletin stating that the fee-for-service program will use the definition of "medically necessary" currently contained in HealthChoices contracts. The bulletin can be found at http://www.pabulletin.com/secure/data/vol37/37-16/687.html. This definition is critical since most denials of payment for Medicaid services are based on a claim by DPW or its contractor that the service was not medically necessary. The change was the result of a recommendation by the Consumer Subcom-

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Draft Assisted Living Bill Introduced

Over the years, there have been numerous legislative proposals aiming to license and regulate Assisted Living Facilities. Although many facilities in Pennsylvania call themselves "Assisted Living" Facilities, they are all currently licensed as personal care homes. Because personal care homes are not designed or equipped to permit individuals to age in place and support them with increasing levels of care and services, and because nursing facility care is so expensive for the state, many have felt that a separate licensure status for Assisted Living Facilities is needed.

This legislative session, there has been renewed activity around Assisted Living. There are already two bills in the House (HB 375 – Representative Katherine Watson and HB 1213 Representative McIlvaine Smith) and one in the Senate (SB 704 – Senator Pat Vance) related to Assisted Living. Additionally, the Rendell Administration is working on a bill of its own, which is expected to be introduced in the coming weeks by Representative Phyllis Mundy.

Each bill differs. For example, the Mundy bill (a draft of which was publicly released in early May and can be viewed on PHLP's website www.phlp.org) and the Watson bill are stand-alone bills whereas the McIlvaine Smith and Vance bills are bills that would amend the existing statutory provisions around personal care homes to include assisted living.

Of primary concern to consumers is

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Behavioral HealthChoices Expands to Remaining 15 Counties in PA

DPW, Office of Mental Health and Substance Abuse Services (OMHSAS) is continuing as scheduled with the implementation of the HealthChoices Behavioral Health Program throughout the remainder of the state. On January 1, 2007, the 23 NorthCentral Counties implemented the Behavioral HealthChoices Program.

Effective July 1, 2007 the remaining 15 counties in the state will implement the HealthChoices Behavioral Health Program. Those 15 counties are Erie, Crawford, Mercer, Venango, Cambria, Blair, Somerset, Bedford, Fulton, Franklin, Carbon, Monroe, Pike, Clinton and Lycoming. Virtually all persons on Medical Assistance (MA) in these counties (with a few exceptions) will receive behavioral health services through the managed care plan that contracted with the county mental health office. The behavioral health plan for Erie, Crawford, Mercer, Venango and Cambria is Value Behavioral Health. The plan for Blair, Somerset, Bedford, Franklin, Fulton, Clinton and Lycoming is CBHNP – Community Behavioral Health Network of PA. The plan for Carbon, Monroe and Pike is CCBHO – Community Care Behavioral Health Organization.

Those on MA in these 15 counties will not have to do anything to be enrolled in the behavioral health managed care plan, the enrollment will be automatic and will take effect on July 1st. Everyone currently on Medical Assistance should receive a welcome letter and a Member Handbook from their respective plan.

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Philadelphia To Use New Emergency Medical Assistance Form For Immigrants

Immigrants who are in a non-qualified immigrant status (such as student visas, work visas, or undocumented) are not eligible for full Medical Assistance, and can only be temporarily eligible if they have an Emergency Medical Condition. Medical Assistance requires immigrants to document their Emergency Medical Condition by getting a detailed written letter from a doctor. This creates at least two major obstacles towards immigrant coverage. First, the busy schedules of doctors makes it unrealistic to expect them to take the time to write out a letter. Second, even when doctors do write a letter, the doctors have no way of knowing the specific criteria Medical Assistance wants to know about.

In Philadelphia, the Philadelphia County Assistance Office has agreed to accept a new standard Emergency Medical Condition Verification form completed by a doctor instead of the doctor's letter requirement. The new form asks the doctor to provide all of the relevant criteria, and has numerous "check boxes" to make the form very simple and quick for a doctor to complete. Advocates or consumers interested in a copy of this form can contact Leonardo Cuello at PHLP, at LCUELLO@PHLP.ORG or 215-625-3896.

Advocates and consumers outside of Philadelphia should note that a copy of the form has been provided to the Department of Public Welfare's Secretary, Estelle Richman, to request her consideration of using the form statewide. Consumers and advocates interested in commenting on the form can contact the Secretary's office and their local County Assistance Office administrators.

Highmark Blue Cross and Independence Blue Cross Propose Merger

Highmark Blue Cross and Independence Blue Cross, which cover western and southeastern PA respectively, announced plans to merge in late April. A merger between the two plans would create the largest health insurance company in the nation. The two plans have said that the merger would benefit consumers but have not been clear on exactly how consumers would be benefited. Some health policy experts have expressed concern that combining the two companies could stifle competition and result in reduced access to health insurance for consumers and lower payments to providers.

While the two companies have little geographic overlap, affiliates of the two companies compete in the HealthChoices Leigh-Capitol region of Medical Assistance- Gateway Health Plan is an affiliate of Highmark Blue Cross and AmeriHealth is an affiliate of Independence Blue Cross. The combination of the two companies would leave the larger company with 78% of the Medical Assistance market in that region. It is not yet clear how the Department of Public Welfare would deal with the merger.

The CEOs of the two companies have said that with the estimated $1 billion in savings from a merger, they would use about $300 million to hold the administrative-fees part of premiums flat for two years. They have also said that they would spend $650 million over six years to expand coverage for uninsured Pennsylvanians. Currently, the two companies spend about $154 million towards coverage of the uninsured.

The Pennsylvania Department of Insurance received the merger application on

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Comprehensive Guide to Medicare Part D Now Available!

PHLP just completed a comprehensive guide to the Medicare Part D Program entitled Medicare Part D: A Guide For Advocates and Providers Who Work With Older Adults in Southwestern Pennsylvania. This 45 page Manual provides an overview of the Medicare Prescription Drug Program and how it works. There are chapters on all aspects of Part D including:

- Medicare Basics
- Part D Plan Coverage Options
- Choosing a Plan
- Enrolling in a Plan
- Using the Part D Benefit
- Appeals and Grievances
- The Low Income Subsidy (a/k/a "Extra Help")

With this Manual providers and advocates will be able to assist their consumers who have been denied a low-income subsidy as well as assist those having problems using their Part D Plan or having problems getting the medications they need from their Part D Plan. The Guide also provides detailed information on how certain senior populations (for example, dual eligibles, those on PACE/PACENET, those in the Chronic Renal Disease Program) are specifically impacted by Medicare Part D.

Although the Guide was created for use in Southwestern PA, much of the information is applicable statewide. It is now available to be read and downloaded through PHLP's website at www.phlp.org.

Bills Introduced to Cover the Uninsured

The bill that would create Cover All Pennsylvanian's, Governor Rendell's plan to cover the uninsured in Pennsylvania, has been introduced in the Pennsylvania House by Representative Eachus as House Bill 700, the "Pennsylvania Health Care Reform Act." Among other changes from earlier drafts, HB 700 specifies the benefit package.

Another bill concerning health care was introduced into the Pennsylvania State Senate, Senate Bill 300, the "Family and Business Health Care Security Act." This bill would create a single payer health care system and would cover the uninsured and underinsured.

PHLP staff are available in Southeastern PA to conduct trainings on Part D to help social service agencies and their clients navigate the Part D system. Trainings focus on the rights that dual eligibles have under Part D and the appeals and grievance processes that are available to all Part D enrollees.

To learn how to help get your clients' needs met through Medicare Part D, contact the PHLP HELPLINE to schedule a training (1-800-274-3258 voice or 1-866-236-6310 TTY). Please let us know if you require any special accommodations for persons with hearing and/or vision needs.

USA Today Focuses National Attention on Uninsured Waiting for Medicare

The April 11, 2007 issue of USA Today carried an article entitled "Life in Medicare's Waiting Period". The article described the growing problem of persons with significant disabilities who receive Social Security Disability Insurance (SSDI) but who have no health insurance benefits. This results from the fact that once a person is awarded SSDI they must wait 2 years before they are entitled to Medicare health insurance benefits. While they are in that 2 year waiting period many of these individuals go without health care because their income exceeds the limits of other public health programs, yet is not high enough to afford private coverage.

One of the consumers featured was a PHLP client who is disabled by lung cancer and a stroke. When she was awarded SSDI benefits of $1160 a month, she was knocked off Medical Assistance because her income exceeded MA's limits. The only other public health program available (adultBasic) has a long waiting list and does not cover medicine. Purchasing private insurance would cost her over $300/month which she cannot afford. As a result, according to the article, she "tries to avoid going to the doctor and is relying on providence to keep her well."

Her dilemma is true for many Pennsylvanians with disabilities who are in the 2 year waiting period for Medicare. A Commonwealth Fund report by the Medicare Rights Center entitled "Too Sick to Work, Too Soon for Medicare: the Human Cost of the Two-Year Medicare Waiting Period for Americans with Disabilities," which focuses on this problem, can be viewed online at: http://www.medicarerights.org/Too_Sick_To_Work_Too_Soon_For_Medicare.pdf

DPW Delays Elimination of Voluntary HMO Option

Following a review by the Secretary of Public Welfare, and despite opposition from the Consumer Subcommittee of the Medical Assistance Advisory Committee, DPW has announced its intention to eliminate the HMO option in 26 counties. However, the transition will not occur until the budget negotiations are completed, in order to give the legislature an opportunity to take action on this issue. Consumers had pointed to the difference in benefits, the loss of the right to go out of network for care where provider shortages exist, and the positive effect of competition. The Department countered with arguments that the networks of the plans are very similar, and the differences in benefits and co-payments are minimal, and fee-for-service is cheaper.

Impact Award For PHLP

On March 23, 2007, PHLP received the Glaxo Smith Kline Impact Award. PHLP was one of eight winners selected this year for excellence in addressing community health concerns in Southeastern Pennsylvania. The recognition carried with it a $40,000 grant. PHLP thanks GSK and the community organizations that supported us for the award.

No More Paper Vouchers in the Fee-for-Service System

On July 1, 2007, DPW is eliminating the paper vouchers used to keep track of the 18 outpatient visit limit in the fee-for-service system. The 18 visit limit is NOT being eliminated, but will be tracked electronically. One advantage to the change, which was recommended by consumers, is that when providers erroneously require a voucher for an exempt service or from an exempt recipient, the system will not charge it against the recipient. Also, consumers will not have to worry about replacing lost vouchers. One complicating factor, however, is that consumers cannot easily track how many vouchers they have left. DPW proposes to address this by notifying recipients that they can phone the DPW call center for this information.

MA Home Health Rules No Longer Require the Recipient to be "Homebound"

Responding to the integration mandate of the Americans with Disabilities Act, DPW has issued an MA Bulletin eliminating the requirement that a recipient be "Homebound" in order to qualify for home health services. The Bulletin # 1249-07-01 can be found at: http://www.dpw.state.pa.us/General/Bulletins/003673169.aspx?BulletinId=4066.

AmeriChoice to Terminate Jefferson Health System

AmeriChoice is sending letters to its members telling them that effective July 1, 2007, Jefferson Health System will no longer be part of its provider network. About 16,000 MA recipients have a Jefferson doctor for primary care, and use the Jefferson system, according to DPW. Patients are being told that they can change HMOs if they want to keep their doctor, or change doctors (and perhaps other providers as well) if they want to keep AmeriChoice. Jefferson Hospitals include Thomas Jefferson, Albert Einstein, Frankford, Magee Rehab, Bryn Mawr, Paoli Memorial, Riddle Memorial and Lankenau . Health Department regulations at 28 PA Code Section 9.684 permit an enrollee to continue a course of treatment with a provider who is being terminated from a plan for 60 days following notification to the member of the termination.

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adults being erroneously charged copays for supplies (predominantly diapers or pull-ups) The Department has mailed out checks ranging from $1 to $145 to over 17,000 recipients who were charged co-pays in error.

DPW sent persons receiving the checks a notice informing them that these refund checks **<u>are not income</u>** and will not affect eligibility for other public programs or benefits. DPW instructed those receiving checks that they should contact the DPW call center if they got a check in error

Medicare Part D Training: Helping Consumers Overcome Barriers

The PA Health Law Project will be conducting FREE trainings for advocates and providers in Southwestern PA working with Medicare consumers with physical, sensory, and/or developmental disabilities to help them overcome barriers to getting their prescription drugs through Part D.

- First part of the training will focus on information to help overcome barriers many consumers are still facing such as enrollment, the low-income subsidy, "new dual eligible" issues, and Part B vs. Part D coverage.

- Second part of the training will focus on the Part D appeals and grievance processes so you can help the consumers you work with navigate the appeals process and get the medications they need.

Trainings will be held at the following locations in Southwestern PA:

Waynesburg, PA-June 12, 2007 (10am-Noon)
Eva K. Bowlby Public Library
Meeting Room, Lower Level
311 N. West Street
Waynesburg, PA 15370

Indiana, PA—June 14, 2007 (1:30-3:30)
Indiana Free Library
Conference Room
845 Philadelphia Street
Indiana, PA 15701

Monroeville, PA-June 21, 2007 (10:00am-Noon)
Monroeville Public Library
Program Room, Lower Level
4000 Gateway Campus Blvd.
Monroeville, PA 15146

Beaver, PA-June 13, 2007 (10am-Noon)
Beaver Area Memorial Library
Large Meeting Room
100 College Ave
Beaver, PA 15009

Monessen, PA-June 19, 2007 (10am-Noon)
Monessen Public Library & District Center
Meeting Room
326 Conner Ave
Monessen, PA 15062

Please call the PA Health Law Project Helpline to RSVP at 1-800-274-3258 (voice) and 1-866-236-6310 (TTY). You can also RSVP by e-mailing eguay@phlp.org. Please let us know if you require any special accommodations for persons with hearing and/or vision needs.

Please post or forward this flyer

(Continued from page 2- BH HealthChoices expansion)
Members must receive mental health and drug & alcohol services from providers in their plan's network unless the plan approves otherwise. They have 60 days from July 1st to transition to an in-network provider.

There are additional services available under HealthChoices Behavioral Health than are covered under the current MA-FFS system. Mental health services covered in MA-FFS include: outpatient services, partial hospitalization, inpatient hospitalization, intensive case management and resource coordination, as well as residential treatment services, family based mental health services and behavioral health rehabilitative services for kids under 21. In addition, HealthChoices covers: crisis services, clozapine services, mobile therapy for adults and peer support specialist services. Drug & alcohol services covered in MA-FFS include: outpatient, hospital detoxification, hospital rehabilitation, and methadone maintenance. In addition, HealthChoices covers: intensive outpatient, partial hospitalization, halfway house, non-hospital detoxification and non-hospital rehabilitation.

Members must be provided a choice of at least 2 providers for each in-plan ambulatory service within 30 minutes travel time in urban areas and within 60 minutes travel time in rural areas. Access standards for inpatient and residential services is at least two providers for each in-plan service, one of which must be within 30 minutes travel time in urban areas and within 60 minutes travel time in rural areas. Providers in the plans' networks must be able to provide face-to-face treatment intervention within one hour for emergencies, within 24 hours for urgent situations, and within seven days for routine and specialty services.

Access to services from the Medical Assistance Transportation Program (MATP) is also improved for MA recipients in HealthChoices. In the MA-FFS system, MATP is only required to provide transportation or reimbursement for transportation to the closest MA provider. In HealthChoices, MATP is required to provide transportation or reimbursement for transportation to any network provider no matter the distance, including network providers in a county other than the member's county of residence.

In HealthChoices, members have additional appeal rights. If the behavioral health plan denies mental health or drug & alcohol services that are prescribed, members can still file an appeal through the fair hearing process but can also file a "grievance" with the plan. Members can also file a "complaint" if they have issues, problems or concerns with a provider or with the behavioral health plan. Each plan's Member Handbook provides information on how to file complaints, grievances and fair hearings.

HealthChoices members in these 15 counties who have questions about the changes in access to mental health or drug & alcohol services should contact their Behavioral Health Plan's Member Services Line. In Erie County the Value number is 866-404-4560. In Crawford, Mercer and Venango counties the Value number is 866-404-4561. In Cambria County the Value number is 866-404-4562. HealthChoices members in Blair, Somerset, Bedford, Franklin, Fulton, Clinton and Lycoming can contact CBHNP at 888-722-8646. Members in Carbon, Monroe and Pike should contact CCBHO at 866-473-5862.

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how the following topics will be addressed:

1. Ensuring privacy, dignity, self-direction, choice, independence, and autonomy in residency and services, including choice of services provider.
2. Outlining and protecting residents' rights.
3. Evaluating needs and service planning with a resident around the resident's preferences in how those needs will be met.
4. Assuring full and fair disclosure of requirements and expectations to potential residents.
5. Requiring facilities to meet 2006 Life Safety Code and Americans with Disabilities Act requirements for new facilities.
6. Prohibiting facilities from making consumers waive away the facility's liability to use care towards the consumer (regardless of whether the consumer has contracted with the facility for services and not just for residency).
7. Obligating facilities to reasonably accommodate needs and preferences without constant license to discharge at-will instead of meeting needs or preferences.
8. Guaranteeing strenuous enforcement tools for and activities by the oversight agency.
9. Providing sufficient, accessible, private living space and bedroom for all consumers, regardless of income.
10. Elucidating clear minimum standards for staff and administrator qualifications and initial training requirements that must be satisfied with demonstrated competency prior to independent work with residents as well as continuing education requirements.

(Continued from page 1- Medical Necessity definition)
mittee of the Medical Assistance Advisory Committee in order to provide uniformity and best practice to the MA program.

The definition states that a service, item, procedure or level of care should be covered by Medical Assistance if it fills one of the following three prongs:

1. Will, or is reasonably expected to, prevent the onset of an illness, condition, injury or disability.
2. Will, or is reasonably expected to, reduce or ameliorate the physical, mental or developmental effects of an illness, condition, injury or disability.
3. Will assist the recipient to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the recipient and those functional capacities that are appropriate of recipients of the same age.

The regulatory definition at 55 PA Code 1101.21 could be interpreted as more restrictive. DPW has promised the Consumer Subcommittee that it will change the language in the regulation to match the language in the bulletin.

If consumers or advocates encounter problems with DPW physicians or ALJs refusing to apply the Bulletin, they should contact PHLP.

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Medicare Information available for consumers at mymedicare.gov

Medicare consumers can get important information about their Medicare accounts through the internet. Sign up at mymedicare.gov to get information about Medicare claims that have been paid, see what Medicare plans you are enrolled in and copies of Medicare forms that you need.

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April 27, 2007. It must review the application before the merger could occur. The application and supporting documents are available on the Department of Insurance website at www.insurance.state.pa.us. Comments can be sent to the Department of Insurance at: Robert Brackbill, Chief, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or via e-mail at: rbrackbill@state.pa.us.

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