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

Volume 10, Number 4 July 2007

Governor and General Assembly Reach Agreement on 2007-08 Budget

On Tuesday, July 17, 2007 the Governor signed the state budget bill (HB 1286) that was passed by the General Assembly late the night before. A number of other pieces of legislation passed the General Assembly as part of the budget negotiations and have either been signed or are awaiting his signature. The budget includes funding for substantial reduction of the emergency MR waiting list, including elimination of the entire list of persons waiting for outpatient services. The Department of Public Welfare (DPW) will not be tossing its HMO contractors out of 26 counties where managed care is an option for Medical Assistance recipients, as the Governor had proposed. Nor will the state be taking over responsibility for all Medicaid prescription drug coverage from the HMOs, a carve-out which had been proposed by the Governor to cut costs for a second year in a row. The budget gave DPW

(Continued on page 7-Budget Agreement)

INSIDE THIS EDITION

DPW Secretary Holds Ventilator Dependency Not Required for Michael Dallas Waiver

The Michael Dallas Waiver Program provides home and community based services to technology dependent individuals of any age who are determined to need a Special Rehabilitation Facility level of care. The Office of Medical Assistance Programs (OMAP) within the Department of Public Welfare (DPW) has historically interpreted the "technology dependent" requirement for Michael Dallas waiver as being limited to persons who are ventilator dependent.

PHLP recently represented a client who was denied the Michael Dallas Waiver because DPW had determined the client to not be

(Continued on page 10-MDW Decision)

Assisted Living Legislation Passed

Over the years, there have been numerous legislative proposals to license and regulate Assisted Living Facilities (ALFs). Although many facilities in Pennsylvania call themselves "Assisted Living" Facilities, they are all 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, many have felt that a separate licensure status for Assisted Living Facilities is needed.

This legislative session, however, a bill has become law. Senate Bill 704 has passed the House and Senate. It was signed by the Governor on July 25, 2007 and takes effect in 90 days.

Under the law, the Department of Public Welfare is charged with crafting regulations for licensure of Assisted Living Facilities. No facility can obtain licensure until the Department has final regulations in place. Additionally, no facility can call itself Assisted Living unless it has been licensed as such by the Department. Because the regulations process usually takes some time, it is unclear what existing facilities that use this term will do in the interim.

The details of how care and services will be delivered, how staff will be trained, and more remain to be articulated in the regulations; however, the standards are required, by the law, to meet or exceed those that apply to personal care

(Continued on page 11- Assisted Living)

Important Reminder Regarding Kids with Autism and Other Developmental Disorders who Need "Wraparound" Services

On June 24, 2005, DPW's Offices of Medical Assistance Programs and Mental Health and Substance Abuse Services issued a Bulletin revising the requirement for evaluations and re-evaluations for Behavioral Health Rehabilitation Services (BHRS or "Wraparound") for kids with behavioral health disorders compounded by developmental delays. This Bulletin became effective on August 1, 2005.

With the implementation of this Bulletin, evaluations for children and adolescents with behavioral health needs compounded by developmental disorders such as Autism or other Pervasive Developmental Disorders (PDD) may include a recommendation that wraparound services be authorized for up to 12 months when medically necessary. Prior to this Bulletin, all children and youth, regardless of their mental health diagnosis, were required to have evaluations completed every 4 months to determine the continued need for wraparound services. However, as a result of the work and recommendation of DPW's Autism Task Force, children with a diagnosis of Autism, PDD or other developmental delays needing wraparound services can have those services prescribed and authorized for up to 12 months at a time.

This bulletin applies to children and adolescents who receive Medical Assistance in the Fee-For-Service system as well as in the behavioral health managed care system. However, in order to obtain a 12-month authorization, the psychologist or

(Continued on page 10- Wraparound Authorization)

Paying Family Caregivers under Home and Community Based Waivers

Finding qualified, reliable, and continuous caregivers for individuals who need long term care or supportive services can be a challenge. Often, whether due to workforce shortages or other issues, family members are required to fill in and provide needed care. Family members often miss work or other scheduled activities, which may impact that person's job security. More and more consumers want the freedom to hire and train their own staff and to craft and manage their own staff schedules to ensure receipt of the personal care and personal assistance services they need. While efforts are ongoing in Pennsylvania around consumer direction generally, we thought it would be helpful to review the existing rules around whether a family member who provides services can be a **paid** caregiver.

At present, the Medicaid program does not permit family members to get paid for providing necessary services to children or adults who receive Medicaid state plan benefits. This poses an ongoing problem for families with children who need regularly scheduled and delivered services, especially when workforce issues often make it impossible to maintain regular staffing to meet their scheduled needs.

Children and adults who participate in one of Pennsylvania's 11 Medicaid Home and Community Based Waiver (HCBW) programs may be in a different position. Some of the Home and Community Based Waivers in Pennsylvania allow for family members to be paid caregivers. Generally speaking, the family member must be at least 18 and usually has to meet some or all of the training requirements for other paid caregivers.

(Continued on page 6-Family Caregivers)

Understanding the Medical Assistance Transportation Program (MATP)

The Medical Assistance Transportation Program (MATP) provides free transportation to medical services for everyone who receives Medical Assistance (MA). MATP can help you get to your medical appointments as long as they are covered by Medical Assistance. A person who has both Medicare and MA can also use MATP services to get to any Medicare provider. For example, MATP can be used to get to appointments with your doctor, dentist, psychologist, psychiatrist, drug & alcohol treatment clinics, pharmacy to pick up prescriptions, hospital for testing, and medical equipment suppliers.

One contractor or agency in each county runs the MATP program locally. The contractor can provide actual rides, public transit tickets in advance, or reimbursement for mileage, parking, tolls, or for public transit costs you that you pay out of pocket. Your individual needs and costs will determine the type of transportation (i.e. public transportation, provider vehicle, or your own vehicle) you take to your medical appointment.

You must register with your local MATP provider in order to access reimbursement or receive actual rides to your medical appointments. If you need to ride on paratransit, you may need your doctor to fill out a form stating why you cannot take public transportation or why you cannot drive yourself to your appointment. The MATP contractor will provide this form to you. Once you have registered, you should receive a brochure that explains how to use your county MATP system.

The MATP program is administered by the Department of Public Welfare's Office of

(Continued on page 7-MATP)

New Ongoing Special Enrollment Period for Medicare Beneficiaries Who Qualify for the Low Income Subsidy

Effective June 20, 2007, any Medicare beneficiary who is not a dual eligible but who qualifies for the Low Income Subsidy to help them with Medicare Part D costs now qualifies for an ongoing Special Enrollment Period (SEP). **This SEP allows all LIS-eligible individuals to change their Part D Plan at any time.** Previously, individuals who were not dual eligibles but who qualified for the LIS were limited to one Plan change during the year (and only if Medicare facilitated their enrollment into a Plan). In 2007, Medicare expanded this to allow all LIS consumers to make one Plan change during the year. Now, LIS-eligible individuals can change plans on a monthly basis. This SEP begins the month that an individual is found eligible for the LIS and remains in effect as long as she continues to qualify for the LIS. Plan changes become effective the first of the month after the Plan receives the enrollment request.

If consumers with LIS are having problems changing their Part D Plan under this new SEP, please contact the PA Health Law Project Helpline at 1-800-274-3258 (voice) or 1-866-236-6310 (TTY).

Announcing Medical Assistance Ombudsman Program

Good News! The **Medicaid Ombudsman Program** was recently implemented by the Department of Public Welfare. Every County Assistance Office has a supervisor or executive director who is also designated as the MA Ombudsman. The MA Ombudsman has received cross-training on other programs, departmental offices and issues that intersect and go beyond MA eligibility. They also have an extensive contact list who they will contact on a client's behalf.

The MA Ombudsmen are a resource for caseworkers, advocates, legislative offices, community organizations and providers. They are not directly available to clients. Clients must still go thorough their caseworker first, but the caseworker will use the MA Ombudsman as a resource to assist with the client's issues.

The MA Ombudsman may be helpful to provide a way to integrate and connect with HMOs, behavioral

(Continued on page 11-MA Ombudsman)

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.

Accessing Mental Health and Drug & Alcohol Treatment Services for Children & Adolescents on Medical Assistance and CHIP

Children and Adolescents on Medical Assistance (MA) or the Children's Health Insurance Program (CHIP) are entitled to a wide range of behavioral health treatment services when those services are determined to be medically necessary. When children are showing symptoms of mental health issues or drug and alcohol dependency, families are stressed and worried. Timely and efficient access to evaluations and treatment services are critical for children and families.

Services for Kids on MA - The vast majority of kids (and adults) on MA receive behavioral health services through a Behavioral Health Managed Care Plan while physical health services are obtained through a Physical Health Managed Care Plan, the Access Plus Program, or Fee-for-Service (ACCESS card). Families do not have a choice of Behavioral Health Plans; each county selected one plan. The plan for each county can be found on PHLP's website on pages 26 & 27 of "The Many Doors to Consumer Empowerment – A Guide to Advocacy for Mental Health Consumers in Pennsylvania" (available at www.phlp.org/Website/Mental%20Health/Consumer%20Guide%20Statewide%20Version.pdf).

Behavioral health services must be obtained by a provider in the network of the plan, unless otherwise approved by the plan. Families can contact their behavioral health plan for a list of providers. Under the rules that govern the Behavioral Health Managed Care Plans, there must be at least two providers to choose from within 30 minutes from the member's home in urban areas and within 60 minutes in rural areas.

The mental health services available to children and adolescents up to age 21 are: outpatient services including psychiatric outpatient clinic, licensed psychologist and psychiatric services; partial hospitalization; inpatient hospitalization; crisis intervention services; intensive case management; resource coordination; clozapine support services; family based mental health services; behavioral health rehabilitation services (BHRS or "wraparound"); and residential treatment facility. Additional services for those ages 18-21 include mobile mental health treatment and peer support services.

The drug and alcohol services available to children and adolescents up to age 21 are: outpatient services; intensive outpatient; partial hospitalization; halfway house; hospital detoxification; hospital rehabilitation; non-hospital detoxification; non-hospital rehabilitation; and methadone maintenance.

In Behavioral Health Managed Care, the provider network must provide face-to-face treatment intervention within one hour for emergencies, within 24 hours for urgent situations, and within 7 days for routine appointments and for specialty referrals. If families cannot access timely services for their children they should contact the health plan for help finding another in-network provider or to get approval for an out-of-network provider.

(Continued on page 9-Accessing BH Services)

(Continued from page 3-Family Caregivers)

According to the waivers filed with the Centers for Medicare & Medicaid Services (CMS) and the waiver manuals posted on the Department of Public Welfare and Department of Aging websites, certain family members can be paid to provide services under the various waiver programs. The services a family member can be paid to provide differ from waiver to waiver as described below. Generally, personal care and personal assistance services include helping the individual with activities of daily living.

Aging Waiver and Options program – Family members (other than spouse) may receive payment to provide personal assistance services.

Attendant Care Waiver and Act 150 program – Family members (other than spouse) may receive payment to provide personal assistance services.

Commcare Waiver – Family member (other than spouse) may receive payment to provide personal assistance, personal care, transportation, rehabilitation, support services, cueing, or coaching.

Independence Waiver - Family members (other than spouse or parent of minor child) may receive payment to provide personal assistance services, chore services, or service coordination.

OBRA/CSPPPD Waiver - Family members (other than spouse or parent of minor child) may receive payment to provide personal assistance services, chore services, or service coordination.

Consolidated Waiver - Any family member* may receive payment to provide personal assistance, transportation, Home and Community Habilitation (Unlicensed), Supported Employment - Job Finding and Job Support, Home Finding, and Personal Support Services.

*As long as the family member would not normally provide services for free for the individual as a matter of course in the usual relationship among members of a nuclear family; otherwise, the service would need to be provided by a qualified provider of services funded under the waiver.

(Continued on page 11-Family Caregivers)

PHLP's "Refer the Uninsured" Project

The Pennsylvania Health Law Project has begun a special effort to counsel Pennsylvanians without health insurance on their options, to represent those who have been wrongly denied publicly financed insurance, and to help the uninsured increase their visibility in the public eye. We are calling this the "Refer the Uninsured" Project.

This month, the number of persons on the waiting list for Pennsylvania's adultBasic program exceeded 100,000. The Insurance Department estimates the number of uninsured persons at 900,000. We know that our resources will only permit us to reach a fraction of these persons. However, we want to reach out to as many of the uninsured as possible. At the same time, PHLP is seeking funding to support its increased efforts in this area.

Please refer your uninsured clients, patients, and constituents to PHLP at 1-800-274-3258 or 1-866-236-6310 (TTY).

(Continued from page 1-Budget Agreement)

more than twice what the Governor had asked for in funds for autism services. The $9,955,000 in state funding should draw down an additional $13,029,000 in federal funds.

On July 20, the Governor signed a series of bills (HB 1251 through 1255 and SB 455) which should have the effect of improving access to health services by expanding the scope of practice for several types of practitioners. These include: physician assistants, certified registered nurse practitioners, clinical nurse specialists, nurse midwives, and dental hygienists. This expansion was part of the Governor's "Prescription for Pennsylvania." A second part of Rx for PA to pass was legislation aimed at reducing health care facility acquired infections. Pursuant to SB 968, health care facilities and ambulatory surgical facilities will be required to develop infection control plans, and those that reduce the number of health care facility acquired infections by 10% in a year will qualify for a bonus payment starting in 2009.

One major disappointment was the passage of SB 704, the Assisted Living law. The bill is barebones legislation that allows persons who need the nursing home level of care to be served in a newly created type of facility called Assisted Living. This should have the effect of reducing Medical Assistance costs, but will also reduce standards of care. It allows for the so-called negotiated risk between ownership and residents, which has been used in other states to extract unwarranted waivers of liability from unsuspecting residents. It leaves much to regulation, but requires only that the standards for Assisted Living be at least as good as for personal care homes. It gives priority for home and community based services waivers to residents of assisted living facilities, thereby potentially cannibalizing the other waivers for the elderly and those with disabilities. See the Assisted Living article beginning on page 2 for further information about this law.

HB 1295 contains language stating that the Medical Assistance Transportation Program (MATP) is only to be used as a payment of last resort for eligible MA recipients. DPW has stated that this language is not new, and will not result in any policy change.

(Continued from page 3-MATP)

Medical Assistance Programs. For information regarding the rules and instructions each local MATP program must follow, see the Department's Rules and Instructions for MATP program providers available at: http://www.dpw.state.pa.us/Resources/Documents/Pdf/AnnualReports/MATP_Handbook.pdf.

A list of each county's MATP contractor is available on the DPW website at: http://www.dpw.state.pa.us/LowInc/MATP/003670191.htm. You can also call the Pennsylvania Health Law Project Helpline to find out your county's contractor or if you are having trouble enrolling in your local MATP program, obtaining reimbursement for rides, or scheduling rides through your local MATP program. The Helpline number is (800) 274-3258 or (866) 236-6310 (TTY).

Please feel free to copy and post or distribute this announcement.

PHLP
Pennsylvania
Health Law Project

Medical Assistance Transportation Program (MATP) Basics Training

Learn how MATP works in Philadelphia and gain helpful tips in obtaining MATP services

Wed. October 10, 2007
10:00 -11:30 AM
Philadelphia

Call The Pennsylvania Health Law Project
Help-Line to Sign Up —1-800-274-3258 or 1-866-236-6310/TTY

Call The Pennsylvania Health Law Project
Help-Line to Sign Up —1-800-274-3258 or 1-866-236-6310/TTY
Email staff@phlp.org

Visit us online at
www.phlp.org !!

Location

Philadelphia Bar Association
1101 Market Street—11th Floor
Philadelphia, PA

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

(Continued from page 5-Accessing BH Services)

Many of the mental health and drug& alcohol services require prior approval from the member's behavioral health plan before services can be received. If services are recommended by the appropriate clinician but denied by the plan, families can appeal the denial by requesting a grievance from the plan and/or by filing a fair hearing with the Department of Public Welfare. For information and assistance on filing appeals go to PHLP's website at www.phlp.org/Website/New%20brochures%202004/AppealsBrochures11.pdf.

Those few individuals on MA who do not receive behavioral health services through a managed care plan, such as those enrolled in the HIPP (Health Insurance Premium Payment Program) receive services in the fee-for-service system with their ACCESS card. Services must be accessed from providers who accept the MA ACCESS card. Those who receive behavioral health services through the fee-for-service system are not entitled to a choice of providers or access to providers within 30 to 60 minutes as required in the managed care system. If services are denied in MA, families can appeal by filing a fair hearing request through DPW.

Services for Kids on CHIP - The behavioral health services available through the CHIP Program are much less comprehensive than those available through MA. Kids on CHIP receive all services from a managed care plan. Some CHIP plans subcontract with a behavioral health plan to provide the mental health and drug and alcohol services available under CHIP. Kids must access services from a provider in the CHIP plan or the subcontracted behavioral health plan. The CHIP plans are required to list the names of the mental health and substance abuse providers in their provider directories in addition to contact information for the behavioral health plan if there is one.

Mental health services covered by CHIP include inpatient hospitalizations services with a limit of 90 days per year for physical and mental health services combined. Outpatient hospital services include counseling or therapeutic treatment. Outpatient mental health services are limited to 50 visits per year and can be exchanged for inpatient hospital days.

Drug and alcohol services covered by CHIP are limited to 7 inpatient detoxification days per year with a lifetime maximum of 4 inpatient stays. Outpatient treatment is limited to 90 visits per year with a lifetime maximum of 360 days. Non-hospital residential treatment is limited to 90 days per year with a lifetime maximum of 360 days.

Each CHIP contractor can choose to provide additional services beyond these minimal requirements set by the Department of Insurance. Families should check the CHIP Member Handbook to see if additional services are provided by their CHIP plan.

Kids on CHIP with significant mental health or drug and alcohol issues may qualify for MA regardless of family income. Call our Helpline for more information at 1-800-274-3258 or 1-866-236-6310 (TTY).

PHLP assists families trying to access behavioral health services for their children or adolescents. For help accessing mental health or drug and alcohol services or help regarding denial of services, contact the PHLP Helpline at the numbers listed above.

(Continued from page 2- Wraparound Authorization)

physician making the recommendation for BHRS (wraparound) must specifically request a 12-month authorization.

Participants of the Autism Task Force and DPW have agreed that progress for children with behavioral health needs combined with developmental delays tends to be slow and gradual in response to treatment. As such, Stakeholders and the Department have agreed that evaluations every 4 months were often redundant and that annual evaluations would be adequate in most cases.

Stakeholders and DPW also concur that wraparound services can be prescribed by clinicians other than psychologists and psychiatrists. As a result, this Bulletin permits additional treating physicians, namely pediatric neurologists and developmental pediatricians, to have the ability to prescribe wraparound services.

PHLP assisted in drafting this Bulletin, and we encourage families who are experiencing any problems regarding authorizations of wraparound when the evaluator requests services for up to 12 months and the Behavioral Health Managed Care Organization or the Office of Medical Assistance Programs authorizes services for a shorter period than prescribed to call our Helpline. We also encourage families to call when a developmental pediatrician or pediatric neurologist evaluates and prescribes the wraparound services and the plan or MA refuses to accept that evaluation as valid. Our toll free Helpline number is 1-800-274-3258 or 1-866-236-6310 (TTY).

This Bulletin, "Psychological/ Psychiatric/Clinical Re-Evaluations and Re-Authorizations for Behavioral Health Rehabilitation (BHR) Services for Children and Adolescents with Behavioral Health Needs Compounded by Developmental Disorders" can be viewed at www.dpw.state.pa.us/General/Bulletins/003673169.aspx?BulletinId=1078.

(Continued from page 1-MDW Decision)

technology dependent. The client had a tracheotomy tube and feeding tubes (J tube and G tube). This individual required regular suctioning and monitoring of oxygen levels, J tube and G tube maintenance and monitoring, and intervention for seizures. This individual was not on a ventilator.

Following an unfavorable hearing decision, PHLP filed a Request for Reconsideration to the Secretary of DPW setting out the improper exclusion of testimony by the Appellant's witnesses and failure to consider the testimony of two physician experts who testified on the Appellant's behalf regarding the individual's dependency on technology and need for skilled nursing services.

On Reconsideration, Secretary Richman reversed the hearing decision and sustained the appeal. In her Final Order, the Secretary stated: "Based on the totality of the evidence, including the seizures and required life-sustaining vital tubal devices/equipment, I find the Appellant to be technology dependent."

This is an important decision in that it recognizes that an individual does not need to be ventilator dependent in order to qualify for the Michael Dallas Waiver. PHLP is currently working on the implementation of this Order with DPW's Bureau of Long-Term Care.

(Continued from page 2- Assisted Living)

homes at present. Supporters of the bill believe this provides a good foundation upon which to build the new standards. Opponents of the law point to the fact that the existing personal care home regulations have not sufficiently protected those low-acuity individuals residing in personal care homes and that any standards for higher-acuity populations, like that anticipated for assisted living, must significantly exceed existing personal care home standards.

The law permits nursing facility clinically eligible individuals to reside in licensed Assisted Living Facilities and receive supplemental services therein permitting them to potentially "age in place". Some consumers will not be allowed to enter or remain in an ALF due to the law's list of excludable conditions. The law also permits facilities to obtain written waivers of liability (called informed consent agreements) for resident activity or behavior that counters the facilities recommendations for the resident.

It is expected that Home and Community Based Services Waiver dollars will soon be available to help fund care in an Assisted Living Facility, and the Department of Public Welfare has announced plans to submit a waiver application to the Centers for Medicare and Medicaid Services expressly to fund services provided in ALFs.

The new assisted living law provides a long overdue framework for licensing Assisted Living Facilities. Most of the details about how these facilities will look, function, and serve consumers will evolve through the regulations process. The Pennsylvania Health Law Project will continue to provide updates in the months ahead.

(Continued from page 4-MA Ombudsman)

health organizations and drug and alcohol providers. Additionally, the Ombudsmen will have nurses through OMAP who they can work with and facilitate approval of specialized treatment or medical equipment. They will also have contacts for issues that deal with dual eligibles and Medicare, Third Party Liability issues, mental health and substance abuse issues, etc.

If your office or organization would like to obtain an MA Ombudsman Contact list, please call our helpline at 1-800-274-3258 or email staff@phlp.org.

(Continued from page 6-Family Caregivers)

Person/Family Directed Support Waiver – Any family member * may receive payment to provide personal assistance services.

*As long as the family member would not normally provide services for free for the individual as a matter of course in the usual relationship among members of a nuclear family; otherwise, the service would need to be provided by a qualified provider of services funded under the waiver.

Please call the PHLP Helpline at 1-800-274-3258 or 1-866-236-6310 (TTY) if you have questions about family members being paid as caregivers under the different Waiver Programs. Also, PHLP is anxious to hear from **families struggling to find coverage for approved hours under EPSDT or straight Medicaid services.**

Do you currently get the Health Law PA News through the mail?
Would you like to get this newsletter by e-mail?

If so, contact staff@phlp.org to change the way you get the Health Law PA News!

PHLP Mourns the Loss of Health Advocate Crystal Blanding

Crystal Blanding passed away on Saturday, June 23 following a ten month battle with cancer. Crystal was a member of the Philadelphia Welfare Rights Organization and served on the Consumer Subcommittee of the Pennsylvania Medical Assistance Advisory Committee for over a decade. She was part of the next generation of advocates, carrying on the tradition of Louise Brookins, who mentored her, and Shirley Beer. Crystal had just accepted an appointment to PHLP's Board of Directors when she suffered a relapse of her illness. We at PHLP will miss Crystal's wit, wisdom and aggressive advocacy on behalf of low-income health care consumers.

Pennsylvania Health Law Project
Lafayette Building, Suite 900
437 Chestnut St.
Philadelphia, PA 19106