

# Health Law PA News

NEWSLETTER OF THE PENNSYLVANIA HEALTH LAW PROJECT

HARRISBURG ❖ PHILADELPHIA ❖ PITTSBURGH

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## DPW Proposes Medicaid Cuts

### Comments on Medicaid Cuts Due Nov. 4

#### Prescription Coverage For 7000 Pennsylvanians Would Be Cut

On October 5<sup>th</sup>, the Department of Public Welfare (DPW) published proposed regulations to cut healthcare for tens of thousands of Pennsylvanians. The regulations would totally eliminate a category of Medical Assistance called "NMP spend-down," thereby disqualifying about 7,000 persons. They would cut another 8,000 persons from a program called MNO spend-down, by limiting the available deductions. And they would change the rules governing eligibility for long-term care.

The spend-down programs permit people whose income is above the eligibility limits to deduct medical expenses from their income in order to qualify for MA to cover other bills. Many of the people who would lose NMP coverage are on Social Security disability or retirement and have incomes slightly above the poverty level

(currently \$738 a month for one person). For people on Social Security disability less than 2 years, NMP spend down is often their only health insurance because it takes 2 years to get Medicare. For persons with disabilities on Medicare, NMP spend-down is their only prescription coverage, since Medicare does not cover prescriptions, and the state's PACE program is limited to persons who are 65 or older.

NMP spend-down was established as a result of a decision by the Pennsylvania Supreme Court, *Crammer v. DPW*, 449 PA 528, 296 A.2d 815 (1972). If Pennsylvania eliminates NMP spend down, it will join Alaska as the only states, of the thirty three which have a spend-down program, which do not make prescriptions available.

Opponents have argued that elimination of NMP spend down may not save the Commonwealth any money. They say that many of those 7000 people who will no longer be able to afford their medications will get worse, and have to be hospitalized or end up in nursing homes, at state expense.

The Pennsylvania Medical Assistance Advisory Committee has unanimously recommended that DPW not cut NMP spend down.

#### DPW to Cut 8,000 Pennsylvanians from MNO Spend-down

DPW's also proposes to deprive about 8,000 persons annually of health care coverage, by changing the rules for MNO spend-down. Under current regulations, families and individuals who apply for MNO spend-down (a six month program, as opposed to NMP, for which one must qualify monthly) program can use any outstanding medical bills as deductions from their income. Under the

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change, DPW would only count bills for services which occurred during the three months before the month of application. This type of spend down is often used by persons with catastrophic illness or injury who either don't have health care coverage, or whose coverage fails to cover their condition.

Opponents argue that the change is a trap for the unwary and unfortunate. Affected people will include those whose hospital or doctor are slow to bill them. Particularly vulnerable will be the working poor and others with inadequate health care coverage, who find out months later that their private or employer based-coverage has refused to pay.

### **MA Recipients Could Be Stranded In Nursing Homes**

Of four proposed changes to long-term care eligibility, the one which consumers have most strongly criticized is the elimination of the "home maintenance" deduction. If a person goes into a nursing facility temporarily, Pennsylvania's Medical Assistance program now lets them set aside part of their income to keep up their residence. The idea is that if a person does not keep up the mortgage, rent, taxes, etc., there may not be a home to return to. The deduction is set at the SSI benefit level, which is presently \$572.40 per month. It is only available in situations where the person's doctor certifies that they will return home within six months. The rest of the person's income, except for \$30, generally goes to the nursing facility.

Critics of the proposed change say that the home maintenance deduction can mean the difference between a person staying in a nursing facility for six months, or the rest of their life. They say that the potential loss to the Commonwealth far exceeds any short-term savings. While the deduction in any individual case could not exceed \$3,334.40 (which assumes the person remains in the facility for 6 months), the average cost to the state for nursing home care is \$3,870 per month. Thus, if the individual stays in a nursing home for just one more month all savings to the state from this regulatory change will be lost.

The Medical Assistance Advisory Committee voted unanimously in opposition to both the NMP spend-down and home maintenance cuts. Also, the House Health and Human Services Committee voted to recommend to the Independent Regulatory Review Commis-

sion (IRRC) that all of the DPW proposed cuts be disapproved.

### **How to Comment:**

Persons interested in reviewing the proposed regulations can find them at [www.pabulletin.com](http://www.pabulletin.com). Written comments from the public are due at DPW by November 4, 2002. Such comments should be sent to: DPW, Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120. Telephone: 717-787-4081.

## **Comments Due on Personal Care Home Regulations**

The welfare Department's long-awaited personal care home regulations were published for public comment in the Pennsylvania Bulletin on October 5, 2002. The proposed regulations contain a number of broader consumer protections than currently exist. These include: i) elimination of the requirement that state inspections of facilities be announced in advance ii) requiring a comprehensive assessment of individuals within 24 hours of admission, iii) increases in training and qualifications for staff and administrators, iv) requirement that the facility be open 365 days per year, v) larger bedrooms for residents with physical disabilities, and vi) a complaint procedure which residents can use without retaliation by staff.

Some areas of the regulations were left alone, despite argument by consumer advocates that changes are needed. These include: i) permitting 4 unrelated residents per room, ii) no increase in staff requirements for those administering medications, iii) no requirement of unannounced inspections, iv) only 60 square feet required per resident per room (about the same as for an inmate), v) no minimum standard for personal hygiene care, vi) no requirement for wheelchair accessibility, vii) no requirement for air conditioning, viii) permitting up to 16 hours between dinner and breakfast, and ix) one toilet and sink per four residents and one shower or tub per 15 residents.

In some areas, the proposed regulations would decrease consumer protections. For example: i) annual inspections would not be required, and instead, DPW need only schedule inspections of 75% of facilities every three years, ii) DPW does not need to inspect secured units prior to their opening, iii) there is no basis for measuring the competency of staff persons being trained, and iv)

*(Personal Care Homes Continued on page 6)*

## PA Begins Name-Based HIV Reporting



On October 18<sup>th</sup>, 2002, the Pennsylvania Department of Health (DOH) began implementing the new HIV name-based reporting regulations. These new regulations require physicians, hospitals and other HIV testing sites (including sites run by DOH, the county or municipal health department, or by community-based organizations), and the laboratories that analyze collected specimens, to report, by name, people who:

- (1) test positive for HIV;
- (2) have low CD4 T-lymphocyte cell counts; or
- (3) are pregnant women with positive HIV test results whose newborns have been exposed to the virus before birth.

The HIV reporting regulations require that providers report the names of people who meet any of these three criteria to the DOH or to local health departments in counties or municipalities that have local health departments.

The Pennsylvania Health Law Project (PHLP) is collaborating with the Department of Health, The AIDS Law Project, and the Pennsylvania Coalition of AIDS Service Organizations (PCASO), to ensure that all of the required reporters get the training they need to be able to comply with the informed consent and privacy requirements of Pennsylvania's Confidentiality of HIV-Related Information Act (Act 148) (35 P.S. § 7601 et seq.).

### TIMETABLE UNFOLDS STATEWIDE

DOH has established the following timetable for implementing the reporting requirements statewide:

As of **Friday, October 18<sup>th</sup>**, the following sites **are** required to begin name-based reporting of individuals who test positive for HIV:

- All testing sites in Pennsylvania that are run by the Department of Health, except those in Philadelphia
- All testing sites in Allegheny County, including hospitals, labs, testing sites run by community based organizations, and physicians;
- All County and Municipal testing sites in the State, except those in Philadelphia;
- All physicians statewide, except in Philadelphia.

As of **Monday, November 4<sup>th</sup>, 2002**, the following sites will be required to begin name-based reporting of individuals who test positive for HIV:

- All other hospitals, labs, and testing sites run community based organizations in the state, except those in Philadelphia.

Implementation of the name-based reporting regulations has been delayed in the City of Philadelphia until **Monday, December 2nd, 2002**, to permit additional training for providers and education for consumers.

### *ANONYMOUS TESTING STILL AVAILABLE*

Anyone seeking HIV testing who does not want to have her/his name reported to the Department of Health can still get an anonymous test. There are over 120 anonymous HIV-testing sites statewide. Consumers should be able to get a list of the anonymous HIV testing sites in their area from any HIV testing site or from the Department of Health. A complete list of these anonymous HIV testing sites will be posted on the Department of Health's website.

As these new regulations go into effect statewide, PHLP will be working closely with the Department of Health, The Aids Law Project, and others to ensure that consumers know their rights and options when seeking HIV testing and treatment in Pennsylvania, and providers get the information they need to be able to comply with the HIV reporting regulations and the consumer protections in Act 148.



## MA Enrollments for Workers With Disabilities Hit Snags

Earlier this year, the Department of Public Welfare (DPW) kicked off the new Medical Assistance for Workers with Disabilities (MAWD) program, with much promise. Estimates were that about 10,000 persons would gain health care coverage under this new category. Most were expected to be Social Security Disability recipients with countable income above the Healthy Horizons level (\$738 per month), but below the MAWD level (\$1,846 per month). Because the federal law prohibits states from imposing minimum hour or earnings requirements, it was expected that many applicants would be persons who were able to work a few hours per month, perhaps babysitting or performing non-strenuous activities. As of this writing, enrollments have been below expected levels, and applicants are facing unanticipated barriers to eligibility.

Figures released by DPW at the end of August show 911 enrollees. Bucks County has the highest enrollment at 70. By contrast, Philadelphia has only 36 enrollees. Carbon, Mifflin and Wayne Counties have yet to enroll anyone. The Consumer Subcommittee of the Medical Assistance Advisory Committee has been trying to determine why the enrollments are low. It appears that part of the blame may rest with DPW's Policy Clarification PMW10385338.

The "clarification", which has been sent to County Assistance Offices, but is not in regulation or generally available to the public, takes a strict view of what is required of an applicant to prove self-employment. It instructs workers: *"in most situations, the individual will need to submit tax forms as proof of self-employment. For individuals who have formed a self-employment business that has been in operation for less than 3 months and tax forms have not been filed, require documentation of business practices such as log of hours, business ledgers, and a customer list to verify the employment effort. At the end of the quarter, the individual must submit proof of filling tax forms. For those individuals who are self-employed and not earning sufficient income to file quarterly taxes, require documentation of business practices (business plan, log of hours, business ledgers, customer list). Monitor these self-employment efforts and encourage individuals to file taxes if income increases. The department is requesting verification that is more substantial than a note from an*

*individual for self-employed MAWD applicants/recipients. Some type of business records and/or tax forms must verify the work effort. These records need to provide specifics: days worked, number of hours, hourly wage charged, where employment took place, customer list, etc. For individuals who are self-employed, the payment for the work effort must be reasonable for the community in which the individual lives..."*

The consumer subcommittee has protested to DPW that the policy clarification undermines the spirit of the MAWD program and violates the federal prohibition against requiring a minimum number of hours and a minimum hourly rate. Furthermore, DPW caseworkers appear to have no training in tax law, so as to distinguish between employed and self-employed applicants, or to determine if or when a tax filing is necessary.

While this issue is being debated, advocates would be advised to have their clients comply, as best they can, with the requirements of the clarification. Keeping track of hours worked, having a plan to advertise for more customers if the applicant is ever able to take on more work, and affirming to the worker that he or she has reentered the workforce, are important steps to establishing eligibility. Advocates and consumers who encounter problems with the MAWD program should call PHLP at 1-800-274-3258.



## HealthChoices Expansion to the Northeast Region

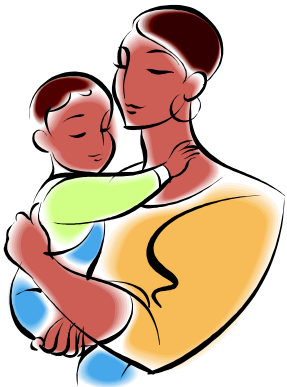
DPW is continuing its expansion of HealthChoices (mandatory managed care for Medical Assistance recipients) to the Northeast region of the state beginning July, 2003. The HealthChoices NE region consists of Carbon, Lackawanna, Luzerne, Monroe, Pike, Schuylkill, Susquehanna, Wayne and Wyoming counties.

Beginning October 1, 2002, all voluntary HMO direct marketing activities can only take place at the County Assistance Offices. HMOs may no longer contact consumers directly by mail or phone or at any other locations. In July, 2003 HealthChoices information will be mailed to approximately 106,000 MA consumers who will have until the end of 2003 to choose a Physical Health HMO and a Primary Care Physician (PCP). Those who do not make a choice will be auto-assigned to an HMO and a PCP.

Consumers will be able to choose between one of four Physical Health HMOs- namely: Gateway Health Plan,

*(Northeast, Continued on page 6)*

### Enroll Now! Adult basic Coverage (ABC) Enrollment Climbs Quickly Toward Cap



Persons who might qualify for the state's Adult Basic Coverage (ABC) program are urged to apply quickly, or face being put on a waiting list. The new program, operated through the Pennsylvania Department of Insurance, started in July 2002. It offers a basic health insurance

package, without pre-existing condition limits, to uninsured adults who have family income below 200% of the federal poverty level (currently \$3,017 per month for a family of four). The premium is \$30.

There are about 40,000 slots available statewide under the ABC program. Once they are taken, applicants are put on a waiting list until someone drops out or the state decides to increase the funding. Before the end of September, 18,409 persons had been found eligible. Allegheny County had the most enrollees at 2,622. Philadelphia had 2,360 and both Erie and Westmoreland had over 1,000. Several ru-

*(ABC, Continued on page 6)*

### New Book Helps Consumers Access Mental Health and Drug & Alcohol Services

Staff at the Pennsylvania Health Law Project have created books for 9 counties entitled, "How to Obtain Mental Health and Drug & Alcohol Services in \_\_\_\_\_ County." The nine counties include Allegheny, Beaver, Fayette, Indiana, Armstrong, Greene, Washington, Westmoreland and Lawrence. There is also a book being created for Butler County that is expected to go to print in the next few weeks. These books were funded by a Foundation that specified these 10 counties.

The books include information on how to access mental health and drug and alcohol services for persons with Medical Assistance, Medicare, CHIP, commercial insurance or no insurance. Consumers, providers and advocates are provided with detailed information about where to go, who to call and what they are entitled to in their respective counties. Details are also included about the help families can get from the Student Assistance Programs (SAP), what services are provided through the Medical Assistance Transportation Program (MATP), and help available to cover mental health medications. Although the books were tailored specifically for these individual counties, they do contain useful information pertinent to all counties statewide. Each book can be found on our website at [www.phlp.org](http://www.phlp.org).

(Northeast, Continued from page 5)

Three Rivers Health Plan, AmeriHealth Mercy, and Health America/Health Assurance. For behavioral health (mental health and drug & alcohol treatment) needs, consumers will go through the Behavioral Health HMO chosen by their county. Lackawanna, Luzerne, Susquehanna and Wyoming counties have joined to form a non-profit corporation called Northeast Behavioral Health Care Consortium to deliver behavioral health care to their residents. Carbon, Monroe, Pike, Schuylkill and Wayne are collaborating to form Rural Solutions, Inc to monitor behavioral health care delivery and utilization in those counties.

Stay tuned to the future Newsletters for further updates on the Northeast region!



### DPW Holds Hearings on Services for Kids with Autism

The Department of Public Welfare held 3 public hearings throughout the state during July and August to listen to comments on behavioral health

services needed for children with autism. All three hearings were well attended by parents, providers and advocates. These opportunities for public comment were required by the legislature in the budget that was passed for fiscal year 2002-2003.

Many in attendance wondered what would be done with the testimony provided at these hearings. At the September meeting of the Consumer Subcommittee of the MAAC, Suzanne Love reported the Department is planning to hire an outside contractor to review all the testimony and create a report to be given to the next administration. The Consumer Subcommittee will be provided with a summary of that report. Ms. Love also stated there would be no further action taken by this administration regarding the development of new behavioral health services for children with autism.

(ABC, Continued from page 5)

ral counties (Forest, Montour, Sullivan and Union) trail well behind, with fewer than ten enrollees. Information on how to apply can be obtained by calling 1-800-GO BASIC, or by visiting the Insurance Department's website at [www.state.pa.us](http://www.state.pa.us).

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apparently, residents must use the facility's complaint procedure before contacting DPW.

Persons wishing to comment may review the regulations at [www.pabulletin.com](http://www.pabulletin.com). Comments must be received, by November 4, 2002. Any comments should be directed to: DPW, Office of Licensing and Regulatory Management, Telita Nevius, Director, Rm 316 Health and Welfare Building, Harrisburg, PA 17120. For TDD, use the AT and T relay: 800-654-5984.

## Health Law PA News

Health Law PA News is published by the Pennsylvania Health Law Project approximately every other month for Medical Assistance, CHIP, Medicare, and uninsured consumers and their advocates. The PA Health Law Project is a non-profit, statewide legal advocacy organization dedicated to empowering low-income Pennsylvanians to access healthcare. PHLP has three offices:

### Pittsburgh

650 Smithfield St., Ste 2130  
Pittsburgh, PA 15222  
412-434-5779

### Harrisburg

101 S. Second St., Ste. 5  
Harrisburg, PA 17101  
717-236-6310

### Philadelphia

924 Cherry St., Ste 300  
Philadelphia, PA 19107  
215-625-3663

PHLP also runs a statewide toll-free help line available to consumers on Medical Assistance, CHIP, and Medicare, or who are uninsured at 1-800-274-3258.

## 2002 PA Gubernatorial Candidates: Different Prescriptions for Health Care in Pennsylvania

With the 2002 Gubernatorial election only days away, the candidates on the ballot in Pennsylvania offer a wide range of views on health care in our state. What follows are some highlights from the two major gubernatorial candidates' official health care platforms. To be sure, each candidate's view is more complex than these snapshots. For more complete details about these positions, and about the candidates, please refer to the candidates' websites, which are provided below.

### **Candidate: Mike Fisher**

Party: Republican

Website: [www.mikefisher.com](http://www.mikefisher.com)

According to information on his website, Mike Fisher plans to:

- Use revenues from slot machines at racetracks to increase funding to the PACE and PACENET programs.
- Implement a new PACENET PLUS program with an income eligibility limit of \$20,999 per year for an individual and \$25,199 for couples.

Divide the \$11 billion tobacco settlement money in the following way:

- 30 percent to provide health insurance for the uninsured and disabled.
- 19 percent for medical research at universities and other research facilities
- 13 percent for home and community-based health care services for the elderly
- 12 percent for smoking cessation programs, almost \$42 million next year
- 10 percent to reimburse hospitals for treating the uninsured
- 8 percent for expanded PACENET coverage to provide prescription drugs to Pennsylvania seniors
- 8 percent for a health care endowment which can be utilized for future programs.

### **Candidate: Ed Rendell**

Party: Democratic

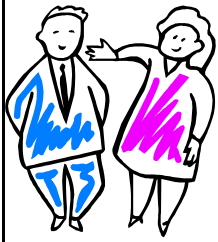
Website: [www.rendellforgovernor.com](http://www.rendellforgovernor.com)

According to information on his website, Ed Rendell plans to:

- Expand eligibility for Medical Assistance to an additional 48,000 uninsured people by seeking a HIFA (Federal Health Insurance Flexibility and Accountability Act) Waiver.
- Work to improve enrollment rates for State Children's Health Insurance Plan (SCHIP)
- Increase funding to Community Health Centers by \$25 million in state dollars and additional federal funding.
- Seek higher Federal reimbursement rates for Medicare & Medicaid managed care companies, and ensure that these companies adequately cover mental health care.
- Work to stabilize the PACE and PACENET programs by making the state lottery system more profitable. Ensure continued access to prescription discount programs.
- Lobby for Federal Medicare prescription drug benefits.
- Continue efforts to improve nursing home care, and examine cost and quality effective alternatives for seniors.

### PHLP Staff Update

PHLP welcomes our new paralegal, Ann Ritter.



Before joining our staff in early October, Ann worked in California as a paralegal for a law office that works to improve prison conditions. She has experience working with children and adults with developmental and physical disabilities, and worked for two years at a summer camp for children living with chronic blood diseases. She is returning to her hometown of Philadelphia after a five year absence, and is very excited to be working with us!

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