Health Law PA News

Newsletter of the Pennsylvania Health Law Project
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HealthChoices Expansion to North/Central PA

In January DPW issued a public discussion paper outlining its plan to expand HealthChoices (mandatory managed care for MA recipients) to the remainder of the state by January, 2005. This "North/Central Zone" is made up of 42 counties where approximately 470,000 MA consumers currently reside. According to the Discussion Paper, DPW plans to split this region into three "Subzones":

- The **Northeast Subzone** is made up of Susquehanna, Pike, Wayne, Wyoming, Lackawanna, Luzerne, Monroe, Carbon, Schuylkill, Northumberland, Montour, Columbia, Union and Snyder counties and DPW plans to implement HealthChoices there in **January, 2003**

*(See **North/Central** on page 2)*

Unexpected Act 68 Reg Changes Reduce Consumer Protections

In January, *Health Law PA News* reported that the Pennsylvania Department of Health (DOH) had issued its final Act 68 regulations and had requested comment from stakeholders. However, in an unexpected turn of events, DOH filed revised "final regulations" with the Independent Regulatory Review Commission (IRRC) after the Insurance Federation, a leading lobbying group for the insurance industry, objected to a number of provisions.

These newly revised DOH regulations appear to have been substantially modified to conform to insurance industry interests. Notwithstanding these concessions, the insurance industry urged the committees in the House and Senate to recommend IRRC disapproval unless even more changes were made. DOH requested IRRC to toll the timeframes so they could make further changes.

In the new regulations, a number of consumer protections are lost or weakened. The more major changes include:

- Eliminating fines on plans for false, misleading, or unfair advertising practices.

- Removing specific requirements on plans for composition of their boards of directors in order to prevent conflicts of interest.

- Plans will now have 30 days instead of just 5 to

*(See **Act 68** on page 2)*

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*(**North/Central** from page 1)*

- The **Northwest Subzone** consists of Erie, Crawford, Mercer, Venango, Clarion, Jefferson, Clearfield, Cambria, Blair, Somerset and Bedford counties. HealthChoices will be implemented there in **January, 2004.**

- The **Central Subzone** is made up of Warren, McKean, Potter, Tioga, Bradford, Forest Elk, Cameron, Clinton, Lycoming, Sullivan, Centre, Huntingdon, Mifflin, Juniata, Fulton and Franklin counties which DPW plans to bring into HealthChoices in **January, 2005.**

DPW's proposal would impose the same HealthChoices program as in the Southeast and Southwest, and as is being implemented in the Capital/Lehigh region later this year, on the rest of the state. The Consumer Subcommittee of the Medical Assistance Advisory Committee (MAAC) has reacted with caution and concern to this "one size fits all" plan.

The Subcommittee is concerned that unlike the other HealthChoices regions, the North/Central Zone is primarily very rural, with many counties experiencing a chronic shortage of primary care doctors, dentists and hospitals. Additionally, the subcommittee feels that the discussion paper fails to address the scarcity of behavioral health services (mental health and drug and alcohol treatment) available in many of the North/Central counties, or the ability of individual counties to handle the "carve out" of those services.

Also, the committee has pointed out the need to assure county MATP programs are improved and expanded so they can respond to additional requests for transportation outside of the county (and possibly outside of the Subzone) that come with the expansion of managed care.

DPW is holding hearings across the North/Central Zone to receive public input on the Position Paper. Hearings have already taken place in Scranton and State College. A Hearing in Erie has been rescheduled (due to snowy weather) for **Friday, April 20th from 9:30 to 2:30 at the Erie County Public Library**. To schedule a time to speak at this hearing and/or to obtain a copy of DPW's Discussion Paper call (717) 772-6783. DPW is also accepting written comments to its planned HealthChoices expansion at N-Central@dpw.state.pa.us, or by mail to: DPW/OMAP, Bureau of Policy, Budget & Planning, P.O. Box 8046, Harrisburg, PA 17105. ■

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*(**Act 68** from page 1)*

respond to requests about whether or not a specific medication is on their formulary.

A major change to the regulations removes plans' obligations to include in their literature members' rights as patients and enrollees. These rights include: timely handling of grievances and appeals, patient access to information on diagnosis, course of treatment, and anyone providing services, the right to give informed consent before undergoing a procedure, access and confidentiality of medical records, and the right to receive emergency services without delay. Rather, plans are able to replace this specific information with a general statement that the plan is committed to member rights, and a listing of member responsibilities.

The newly revised proposed regulations also modify several aspects of the complaint, grievance, and appeal process that are important to consumers:

- Plans would not be required to provide a neutral employee to assist members in the grievance and appeals process.

- Plans would not be required to make a physician licensed in the relevant specialty present at a hearing; rather, this person could submit a written report.

- Requests for expedited review of grievances would be required to include clinical justification as to why the member's life, health, or ability to regain maximum function would be threatened by delay. In previous regulations, a doctor's certification would be adequate.

DOH re-filed the regulations on March 24, and the standing committees have 10 days to review them. The IRRC will vote on these regulations on April 5, 2001. Despite these changes, many consumer groups are urging approval of these regulations so Act 68 can be fully implemented. ■

Preparing for HealthChoices in the Lehigh/Capital Region

Pennsylvania's MA Mandatory Managed Care program *HealthChoices* is coming to the ten counties of the Lehigh/Capital region later this year. These counties include Adams, Berks, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Northampton, Perry, and York. Starting in October, the Department of Public Welfare will "convert" MA recipients living in these 10 counties who are currently enrolled in voluntary HMO's to HealthChoices. By April of 2002, virtually all MA recipients in the region will be enrolled in one of four participating HMO's. Those who do not select a plan by that time will be automatically enrolled in one. The Pennsylvania Health Law Project is available to provide information and training to advocates and consumer groups on HealthChoices during and after its implementation in the Lehigh/Capital area.

A managed care delivery system is fundamentally different from a fee-for-service system. One of the most obvious differences is that members are limited to the plan's network, and must select a Primary Care Provider (PCP)—usually a doctor, but also sometimes a certified nurse practitioner—who is responsible for overseeing and coordinating all of the member's healthcare needs. In order to see specialists, consumers must get referrals from their PCP. Plans must make a directory of their providers available to members, and members must be able to get updated provider information by calling the plans. Patients with special medical needs may ask to designate a specialist as their PCP; also, children can have pediatricians as PCP's.

Under managed care, many services prescribed by doctors and other providers must be reviewed by the health plan before the plan will cover it. This is known as "prior-authorization," and plans often require it for such benefits as medications, home health services, surgery, durable medical equipment, and other high-cost benefits. In order to obtain prior authorization, the prescribing provider must fill out a form or write a letter to the plan explaining why the service being requested is medically necessary. If a plan requires prior-authorization on a service or item, and the prescriber does not request it, the service or item will be denied.

Another important aspect of managed care for consumers is the restricted formulary. Each HMO has its own formulary, which is a list of medications that it will pay for. When consumers need drugs not on their plan's formulary, they must either have their doctor seek an exception, or their doctor must prescribe an equivalent drug that is on the plan's formulary. MA recipients with ongoing prescriptions should investigate what plans' formularies include their drugs before choosing an HMO.

Reductions and denials of services are not infrequent under managed care, and consumers need to know that they can appeal *any* adverse decision by an HMO. Plans are required to maintain a two-level internal grievance process, followed by a third level of external review. Furthermore, MA recipients are always entitled to file for a DPW fair hearing. PHLP is available to assist and support recipients in the grievance and appeals process.

Under HealthChoices, behavioral health services are covered separately from physical health services. Each county in the region will either provide coverage directly, or contract with a behavioral health managed care organization to provide it. This coverage must be coordinated with the consumer's physical health plan, which is responsible for all medications (including most behavioral health meds).

Consumers who currently use the Medical Assistance Transportation Program (MATP) will be able to get transportation to providers who are in their plan's network, regardless of distance to that provider. In HealthChoices areas, county MATP programs are required to provide or arrange for transportation to any provider with whom a consumer has an appointment, as long as that provider is in the plan's network. This is true whether the provider is in or out of county.

If you have any questions, please feel free to contact PHLP at 1-800-274-3258. We are available to provide advocacy and support, and to conduct trainings for advocates and consumer groups on HealthChoices in the Lehigh/Capital area. ■

Governor Proposes Bold Measure to Expand Home and Community Based Services for Seniors and People with Disabilities

In a February 7th Department of Aging Briefing on the Governor's Budget Proposal, Secretary Browdie revealed Governor Ridge's exciting new proposal on home and community based care.

The Governor has declared his intention to "attack the institutional bias" in long term care, inform consumers of their options sooner than they are currently informed to enable them to make real choices, earn federal matching funds wherever possible, and use funds to maximize lasting structural impact.

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Governor Ridge proposed both funding and infrastructure development. For example, the key features of his plan include expanded assessment, counseling, and care management being available to all consumers and including discussion of both financial and care options.

One especially promising feature is the proposed bridging program, which would not include estate recovery for home and community based care, as is required under Medicaid. The bridging program would provide a seamless system for a consumer with resources up to $40,000 to enter the system, receive home and community based services at 50% of the cost of services, and transition to Medical Assistance Waiver funded slots when their assets have been reduced to the MA level. For these individuals there would be no additional charge for case management or assessment.

The Governor's proposal would significantly increase waiver slots, so that far more Pennsylvanians could be served in their homes. These home and community based services would be funded in part by the Tobacco Settlement monies and in part by federal matching funds through the Medical Assistance program.

The Governor feels that this initiative would permit meaningful choice for consumers of long term care, helping Pennsylvania to lead states in providing home and community based care and in preparing for the future.

This is a bold proposal that would provide care to many Pennsylvanians. ■

IF YOU WORK WITH SENIORS, READ THIS!

Did you know that many Seniors who are on the state's PACE (or Pharmaceutical Access Contract for the Elderly) program are actually eligible for Medical Assistance? Several thousand people enrolled in PACE are eligible to receive a larger package of free healthcare benefits than they do now!

Some 21% of PACE participants have monthly incomes below $716. Many of these individuals also have resources (not including their house, car, clothing or furniture) below $2000. These individuals would be eligible for full Medical Assistance. Through Medical Assistance, they would not only receive full prescription drug coverage with little or no co-payments, but they would have all their Medicare premiums, co-payments, and deductibles paid for by the state (a potential savings of $700 per year just in premiums). Additional benefits would include the right to free transportation to medical appointments through the Medical Assistance Transportation Program and more.

If someone you know would be eligible for full Medical Assistance, call or have them call the Pennsylvania Health Law Project at (800) 274-3258. We can help evaluate their eligibility and supply them with an application and instructions. ■

New MA Policy Expands Home Health Coverage for Kids

Medical Assistance covers in-home nursing and home health aides for children with medical conditions requiring nursing or personal care. Previously, the nurse reviewer and Medical Consultant for MA limited coverage of in-home nursing or home health aides to the hours the parent/caregiver was at work, traveling to and from work or, if medically necessary, during the parent's sleeping hours. In-home nursing or home health aides were not covered during the hours the parent/caregiver was in the home or engaged in non-work activities, even if the parent/caregiver had other children to care for or other responsibilities.

This means that MA will now consider the other responsibilities the parent/caregiver has when not at work, such as caring for other children, shopping, cooking, etc., in determining the number of hours of in-home nursing or home health aides they will cover.

As a result of a court case brought by the Pennsylvania Health Law Project, MA has revised its policy on coverage of in-home nursing and home health aides when the parent/caregiver is not at work. According to a letter from the Department of Public Welfare's Legal Counsel, in-home nursing and home health aide "*services will not be denied on the ground that a parent/caregiver is available unless the Department determines that the parent/caregiver is actually available to provide the care. The actual availability of the parent/caregiver is based on the parent/caregiver's work schedule and other responsibilities relating to the home and family, in addition to sleep or work.*"

This means that MA will now consider the other responsibilities the parent/caregiver has when not at work, such as caring for other children, shopping, cooking, etc., in determining the number of hours of in-home nursing or home health aides they will cover. While the court case involved regular MA ("fee for service"), the same policy should apply to children enrolled in MA HMOs (HealthChoices and voluntary MA HMOs).

Parents/caregivers who feel they need additional hours of in-home nursing or nurses aides because of home or family responsibilities should talk with their child's physician about prescribing additional hours. If the doctor agrees, a new request for the additional hours should be made to MA (or the HMO for children enrolled in an HMO) by the physician or home health agency. In addition to the child's medical condition, the request should specify the parent/caregiver's home or family responsibilities that render the parent/caregiver unavailable to care for the child during the hours being requested. Note that if the other parent is not at work during hours for which nursing is being requested, the unavailability or inability of that parent to care for the child will also need to be shown.

If the hours of in-home nursing care or home health aide services are denied or reduced, the parent/caregiver has the right to appeal. The denial/reduction notice from MA or the HMO explains how to appeal. For assistance in obtaining in-home nursing or home health aide services from MA or a MA HMO (including assistance with appeals), call the Health Law Project at 1-800-274-3258. ■

1999 HealthChoices Behavioral Health Annual Report is Released

The Office of Mental Health and Substance Abuse Services (OMHSAS) has released the 1999 Annual Report on the HealthChoices Behavioral Health Program. This Annual Report was compiled to summarize the HealthChoices program, highlight

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the accomplishments of the year and to outline the objectives for future years. It provides information on the HealthChoices program in the Southeast and

*(See **Annual Report** on page 6)*

*(**Annual Report** from page 5)*
the Southwest for 1999.

The Report shows the number of people who received services in terms of the mental illness for which they were treated such as depression or schizophrenia. It looks specifically at service utilization by county in three categories of services; inpatient psychiatric, inpatient drug and alcohol, and residential treatment facilities. In the Southeast, service utilization was compared from 1998 to 1999. In the Southwest no data could be compared since 1999 was the first year of implementation for HealthChoices. However, the Report did identify that there was no utilization of inpatient drug and alcohol services in two of the ten counties in the Southwest, specifically Armstrong and Greene Counties, which is concerning to consumers. Likewise, in the Southeast, only Chester County had an increase in inpatient drug and alcohol services while every other county had moderate to dramatic decreases in services.

Also included in this document is the number of complaints and grievances filed by consumers with the health plans in the Southeast and the Southwest. The information does not give a breakdown of which complaints and grievances were filed with which health plan.

The Report also contains a variety of additional data and information that may be of interest to consumers, providers and advocates. For a copy of this 1999 HealthChoices Behavioral Health Annual Report contact Peggy Sostar at the Office of Mental Health and Substance Abuse Services at 717-772-6738. ■

Good News for Medical Assistance Transportation (MATP) Recipients

Two exciting things have recently occurred at the state level regarding the MATP Program. First, the Office of Social Programs (OSP) finally issued its new Instructions and Requirements for the MATP. This document contains the policies and procedures manual the counties must follow when running their MATP program. The Instructions and Requirements were totally rewritten in light of the new uniform standards developed by OSP for the MATP program statewide. Among the new policies and procedures detailed in this manual:

- Escorts must be allowed to accompany a patient on a MATP trip at no cost if the patient is under 18, if the patient cannot travel independently, or if the patient cannot speak English and needs the escort to translate.

- The county agency must have a written complaint process for issues involving its MATP operations or management policies and distribute it to clients.

- County agencies must establish service areas that accommodate the transportation requests of clients and must arrange transportation outside of the county/service area.

- Requests for mileage reimbursement also include parking and toll costs and clients must be reimbursed within two weeks of the request.

The Instructions and Requirements will soon be available on DPW's Website and will be listed at www.dpw.state.pa.us/general/guides.asp#osp

Also, DPW announced its proposed budget for FY 2001-2002 and included $6.3 million to expand the MATP program. This money is to be used for:

- providing door to door transportation for those who need it (currently MATP is a curb-to-curb service)

- providing urgent care transportation across the state (currently the state only requires this in HealthChoices counties)

- providing rides home from the Emergency Room for consumers.

Stay tuned for more developments, and feel free to call the Pennsylvania Health Law Project at 1-800-274-3258 if you have any questions or concerns. ■

Consumers Troubled by new Residential and Part-Day Regs

The Department of Public Welfare's Office of Licensing and Regulatory Management is in the process of changing the regulatory framework for the licensing of all Adult Residential and Adolescent and Adult Part Day Facilities. DPW plans to take the presently existing separate licensing regulations for each of the subtypes of facilities and providers that fall within these two broader categories, and to consolidate them into a single set of regulations each for Residential Facilities and for Adolescent and Adult Part Day Facilities.

Facilities include: freestanding drug and alcohol residential and halfway house treatment facilities (RTF's), mental health RTF's, long term structured facilities, mental health crisis residential facilities, community residential rehabilitation facilities, personal care homes, family living homes, and community homes.

Part-day providers include: vocational and adult training facilities for mental retardation, psychiatric outpatient clinics, partial hospitalization, older adult daily living centers, and drug and alcohol treatment facilities.

Many of the regulations will apply to all providers regardless of type. There is a real concern whether this one-size-fits-all approach will provide adequate requirements and consumer protections. This has also been described by DPW as a process to establish "minimum health and safety requirements," and has been seen by some as an effort at deregulation.

There is great concern on the consumer side that this proposed deregulation of these facilities will lead to lesser protections for consumers. If consumer concerns regarding adequate protections are not heard and addressed by DPW, the resultant consolidated regulations could have a resoundingly negative impact on consumers who access the services of these facilities in the future.

There are two 3-day stakeholder sessions coming up in April and May, which will provide an opportunity for discussion and comment on the structure and content of the proposed single licensure regulations. Any consumer groups who are stakeholders are strongly encouraged to attend and to make their voices heard. PHLP will be preparing an analysis of the proposed regulations, which will be available on our website.

If you would like more information on this topic, please give us a call at 1-800-274-3258. ■

Kirk T. Settlement Now in Effect

Kirk T. is a class action lawsuit brought by the Disability Law Project challenging the delays children in MA experience in receiving Behavioral Health Rehabilitative Services (BHRS). The case was recently resolved by a settlement agreement that is now in effect. This settlement requires the Department of Public Welfare to monitor the delivery of behavioral health rehabilitative services. These services apply to children and adolescents under the age of 21 who have been authorized to receive mobile therapy (MT), behavioral specialist consultant (BSC) and/or therapeutic staff support (TSS). The settlement requires that all of the prescribed services must be in place within 60 days from the date the services were requested. If services are not in place within 60 days, consumers, family members or advocates should contact their OMHSAS (Office of Mental Health and Substance Abuse Services) Regional Office and ask to speak with the Community Services Area Manager. The Community Services Area Manager is then responsible for contacting Medical Assistance or the Health Plan within 24 hours to begin resolution of the problem. The Community Services Area Manager can be reached in the:

- Southeast region at 610-313-5844
- Western region at 412-565-5226
- Central region at 717-772-7352
- Northeast region at 570-963-4335

If consumers or family members would like assistance in contacting their regional office or if they do not get satisfaction after they call, please contact us at the Pennsylvania Health Law Project at our toll-free help line at 1-800-274-3258. Please keep in mind that as reported in *Health Law PA News* in January of this year, DPW now requires prior-authorization for TSS services in the fee-for-service system. ■

Announcements

We represent Medicare-MA Clients

Did you know that the Pennsylvania Health Law Project provides direct representation to lower-income Medicare recipients with Medicare coverage and service cases? If you have clients who are dually eligible for Medical Assistance and Medicare and are having trouble getting Medicare to approve services or having trouble negotiating the Medicare HMO world, call (800)274-3258.

Attention Lehigh/Capital Area!

PHLP staff are available to conduct trainings for consumers and advocates on HealthChoices Mandatory Managed Care during and following its implementation in the Lehigh-Capital region. Please contact our office at 1-800-274-3258 for more information. Also, watch Health Law PA News over the coming months for features on issues important to consumers in all HealthChoices and voluntary managed care regions.

Medicare and Prescription Drugs

PHLP is gathering stories and experiences of anyone in PA who has Medicare, and cannot afford their prescriptions. We will be compiling an anthology of experiences to report to the state. If you have a story you'd like to share, or if you know someone who does, please contact Bob Murken at 1-800-274-3258.

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