

# Health Advocate

E-Newsletter of the National Health Law Program

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## 2014: Our New Year's Resolutions

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### Key Resources

CMS.gov Resources for Assisters, [here](#).

Helping Consumers with Payment and Eligibility Issues, Jan 2014, [here](#).

Helping Consumers with Eligibility and the Application Process Q&A, Jan 2014, [here](#).

Helping Consumers with the Application Process, Dec 2013, [here](#).

Helping Consumers with Eligibility and Plan Selection, Dec 2013, [here](#).

Helping Consumers with Casework, Jan 2013, [here](#).

Appealing Your Insurer's Decision Not to Pay, Dec 2013, [here](#).

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**Coming in February's Health Advocate:**

**New HCBS Regulations**

So we're off to a rollicking start in 2014 with over 2.1 million individuals newly enrolled in health insurance through the marketplaces and Medicaid. As we look ahead, here are our goals, expectations, and hopes for a productive and promising 2014!

### ACA Implementation

We're half-way through the first open enrollment period and millions of individuals have signed up for Medicaid, CHIP, and private insurance. Many of the initial problems with healthcare.gov have been resolved, making the enrollment process easier. We look forward to resolving the issues of transferring files between marketplaces and Medicaid/CHIP so that individuals eligible for these public programs can enroll as seamlessly through the marketplaces as those eligible for private insurance.

With three months left to go in the first open enrollment period (and the second open enrollment period starting late in 2014), we have lots of opportunities to enroll millions more. We also have to work to ensure enrollment leads to access to services. We will be vigilant to ensure statutory and regulatory policies and procedures are fully implemented, the glitches completely fixed, and that all marketplaces ensure due process and access to everyone without discrimination.

Another highlight of ACA implementation is that as of January 1, adults can no longer be denied coverage due to pre-existing conditions. Further, most insured individuals will have access to the full range of essential health benefits in addition to coverage of preventive services without cost-sharing that has already gone into effect. We also look forward to the release of proposed regulations implementing the ACA's nondiscrimination provision.

### Medicaid Expansion

Of course, a dominant theme in 2014 will be Medicaid Expansion. To date, about half of the states are implementing expansions and the other half are (hopefully) preparing to expand. In the expansion states, we expect services to be one of the dominant themes. Most states do not have state plan amendments (SPA) approved for the Medicaid Expansion benefit – the alternative benefit plan (ABP). During the beginning of 2014, states will be finalizing that benefit, filing their SPAs, and implementing the

new benefits packages. States will also weigh complex choices, such as whether to align traditional state plan benefits and the ABP. They will also be developing systems to figure out who are ABP “exempt” individuals (such as medically frail individuals). Aligning the traditional Medicaid benefit with the ABP would avoid states having to counsel individuals who are eligible for both sets of benefits how to choose.

In non-expanding states, we expect to see a number of states follow the steps of Arkansas, Iowa, Michigan, and others, and request flexibility to run Medicaid Expansion in alternative ways, such as using premium assistance or 1115 demonstration authority. Some states will attempt to bend and break the Medicaid rules, ignoring all of the critical reasons why special protections for vulnerable populations have always existed in Medicaid. Thus we will focus on the importance of consumer protections and the long-term integrity of Medicaid as we review state proposals that include features which may be bad policy or downright illegal. By the end of 2014, we hope to have welcomed numerous new states implementing the Medicaid Expansion while preserving all core Medicaid protections for beneficiaries.

## Protecting what Makes Medicaid “Medicaid”

In addition to working on Medicaid Expansion, we need to ensure Medicaid remains a strong and vibrant program for the millions of existing enrollees. Unfortunately, we anticipate continued pressure to transform Medicaid from a public entitlement program into private insurance coverage through administrative waivers or even legislative action. Such a move would gut the essential features of Medicaid that tailor coverage to the populations Medicaid is intended to serve: low-income adults, children, pregnant women, and people who are aged, blind or have disabilities. Such a move would abandon the stated purpose of Medicaid: to establish a federal-state cooperative program to enable states to furnish “rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.”

During 2014, NHeLP will focus on protecting what makes Medicaid “Medicaid,” namely:

- Medicaid is a legal entitlement and, as such, must operate consistent with Constitutional and statutory protections: ascertainable standards and due process protections.
- The amount, duration and scope of services must continue to be tailored to the targeted populations and include:
  - ✓ Home and community based services;
  - ✓ Early and Periodic Screening Diagnostic and Treatment services for children and youth;
  - ✓ Reproductive health services including family planning services and supplies;
  - ✓ Case management services; and
  - ✓ Non-emergency medical transportation.
- The targeted populations qualify for Medicaid precisely because they cannot meet the costs of daily living let alone medical care. Medicaid coverage must be affordable and avoid premiums and copayments that shut low-income people out of care.
- Medicaid is a publicly funded program and, as such, must be accountable and transparent to enrollees and taxpayers.

## Reproductive Health

2014 will also be a critical year for access to reproductive health services. The ACA requires most health plans to cover contraception as a preventive service without cost-sharing (§ 2713 of the Public Health Service Act). The U.S. Supreme Court will hear two cases brought by Hobby Lobby, a national chain of craft stores, and Conestoga Wood Specialties, a cabinet maker, that will determine if the owners of for-profit corporations can impose their personal religious beliefs on their employees and can be exempted from the contraception requirement. NHeLP has submitted amicus briefs in the lower courts and will submit an amicus to the Supreme Court. The Administration has already finalized a rule that exempts houses of worship. The rule also allows non-profit religiously affiliated organizations to refuse to cover contraception, but puts in place a mechanism through which their employees can still obtain the benefit. It is not clear how well this “accommodation” will work, or whether millions of employees of hospitals, universities, and charities will encounter barriers to basic preventive care.

As enrollment in the state and federal marketplaces ramps up, we will be monitoring how pregnant women who qualify for Medicaid based on pregnancy will be able to transition between the marketplaces and Medicaid to obtain all of the pregnancy-related services to which they are entitled without cost-sharing. Pregnant women are not eligible for the Medicaid Expansion; CMS, however, has agreed that a woman who becomes pregnant while enrolled in the Expansion should be able to stay with her providers, at least until her next redetermination. What happens next – whether she will have to transition to pregnancy-only coverage and a different set of providers, potentially at a late state of her pregnancy, is not yet clear. Moreover, pregnant women who are eligible for Medicaid based on pregnancy should be able to choose whether they want to enroll in the marketplace, pregnancy-only Medicaid, or both, to obtain all of the benefits to which they are entitled without cost-sharing. However, it appears that the computer systems for many of the state marketplaces and the federally facilitated marketplace do not allow women to make these choices about their coverage. We look forward to working with CMS to improve coverage for pregnant women.

Lastly, many states determine eligibility for family planning expansion services by disregarding all income, or parental income, to ensure that individuals and adolescents can obtain confidential services. As states convert to MAGI (Modified Adjusted Gross Income) rules which do not allow for such parental income disregards, we will be working with CMS and state agencies to maintain these confidential services for adolescents and adults.

## Other 2014 Activities

Congress is back in action and we need to ensure that any efforts to reduce funding for Medicaid, CHIP and ACA implementation are not enacted. While Congress did finish work on a two-year budget resolution in late 2013, we still face potential fights over raising the debt ceiling as well as how Congress moves the budget resolution through the appropriations process. And of course, we cannot ignore that the Congressional Budget Office highlighted capping Medicaid funding as one of the top ways to reduce the deficit. So we will be vigilant at watching deficit, budget and debt ceiling negotiations to ensure Medicaid and the ACA funding and policies remain safe and secure. And while the ACA reauthorized CHIP through 2019, its funding expires in 2015. As a result, we expect activities in 2014 to fund the program through 2019 as well as continue to enhance the program.

We wish all of you a happy, healthy and insured 2014! And we look forward to working with you to achieve our New Year's resolutions by year's end!

## About Us

The National Health Law Program protects and advances the health rights of low income and underserved individuals. The oldest non-profit of its kind, NHeLP advocates, educates and litigates at the federal and state levels.

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