

Health Advocate

E-Newsletter of the National Health Law Program

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2016: Our New Year's Resolutions Prepared by: Mara Youdelman

Key Resources

[NHeLP Comments:
Proposed Medicaid and
CHIP Managed Care
Regulations](#)

[NHeLP Comments:
Payment Parameters for
2017](#)

[NHeLP Comments: 1557
Nondiscrimination in
Health Programs and
Activities](#)

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

We're off to a roaring start in 2016 with over 8.5 million individuals enrolled in health insurance through the Marketplaces in the first six weeks of open enrollment 3 (OE3), an increase of over 2 million from the same time last year. And, an additional 13.5 million individuals have enrolled in Medicaid and CHIP since October 2013. As we look back and ahead, here are our goals, expectations, and hopes for a productive and promising 2016!

ACA Implementation

We're almost half-way through OE3 and millions of individuals have renewed or newly enrolled in Medicaid, CHIP, and private insurance. Healthcare.gov is working even more smoothly during this open enrollment period, and a number of changes have improved the consumer experience for enrollment.

Continued innovation to the technological systems are also accompanied by improvements in policies that ensure access to services. For example, revisions to notices from the federally facilitated Marketplace now ensure that eligibility notices contain the income data on which a decision is based, so that consumers can confirm that correct data was used to determine their eligibility, as well as tax credit and cost-sharing assistance amounts. In addition, revisions to the eligibility notice and "data matching" (or inconsistency) notices will help ensure consumers better understand their eligibility and rights.

We will continue to advocate for implementation of statutory and regulatory policies and procedures to ensure due process and access for everyone without any discrimination. We also will continue monitoring implementation of essential health benefits to ensure effective coverage of all statutorily required categories and improve network adequacy requirements so that insured consumers have tangible access to services. Finally, we will be advocating for consumer protections in the Marketplace "Innovation Waivers" authority that HHS will define in 2016 and that will become available to states starting January 1, 2017.

Medicaid Expansion

A continuing theme in 2016 will be Medicaid expansion. To date, 30 states plus the District of Columbia have implemented expansions. In 2015, Alaska, Indiana, Montana, and Pennsylvania all began their Medicaid expansion coverage. In 2016, we hope

Louisiana will join the list of expansion states, as the state legislature paved the way and the new Governor has expressed his support. Additionally, the governors of South Dakota, Virginia, and Wyoming have included Medicaid expansion in their 2017 budget proposals.

While we support continued expansion, we remain concerned that many of the recently expanding states continue to request additional flexibilities to run Medicaid expansion in ways that undermine Medicaid's effectiveness, such as using premium assistance or waivers of long-standing Medicaid requirements. We will work to prevent states that have already expanded from implementing new costs or restrictions.

And for the states looking to initiate Medicaid expansion for the first time, we will advocate against attempts to undermine longstanding, essential Medicaid beneficiary protections. For example, expansion should not come with burdensome premiums or co-pays on individuals living below or near the federal poverty level, work requirements, "lockouts," or other policies limiting enrollment of eligible individuals, or reductions or exclusions of services (such as non-emergency transportation). Such policies are not legal; they are bad health policy; and, every time CMS approves such policies for one state, it simply lowers the bar for all states. We will continue our focus on the importance of consumer protections and the long-term integrity of Medicaid as we review state proposals that include features that may be bad policy or downright illegal. By the end of 2016, we hope to have welcomed numerous new states implementing the Medicaid expansion while preserving all core Medicaid protections for beneficiaries.

Nondiscrimination

HHS released a long-awaited proposed rule in 2015 to implement the ACA's nondiscrimination provision, Section 1557. For the first time, federal regulations would explicitly prohibit sex discrimination in health care. The proposed regulation also takes the groundbreaking step of prohibiting discrimination on the basis of gender identity and sex stereotyping. This includes, for example, prohibitions on insurance plan exclusions that categorically exclude transgender individuals from coverage for health care services related to gender transition. In November 2015, NHeLP submitted extensive comments on the proposed regulation. We also coordinated the [comments](#) for The Leadership Conference on Civil and Human Rights where we brought together the voices of the entire civil rights community to advocate for a robust final rule and enforcement.

The final regulation is expected this year, and NHeLP will provide an in-depth analysis. Additionally, we expect that the finalized rule will offer new opportunities to ensure that no one faces discrimination in health care on the basis of race, ethnicity, language, immigration status, gender, gender identity, sexual orientation, disability, or age.

Protecting what Makes Medicaid "Medicaid"

In addition to working on Medicaid expansion, we need to ensure that Medicaid remains a strong and vibrant program for the targeted Medicaid population groups. As of October 2015, over 71.4 million individuals were enrolled in Medicaid and CHIP. Unfortunately, we anticipate continued legislative efforts to transform Medicaid from a public entitlement program into private insurance coverage. Such a move could gut the essential features of Medicaid that tailor the coverage to the population groups Medicaid is intended to serve: low-income children, pregnant women, people who are aged, blind or have disabilities, and adults.

As we have done for over 45 years, NHeLP will spend 2016 protecting what makes Medicaid "Medicaid," namely: maintaining the legal entitlement; ensuring ascertainable standards and due process protections when eligibility and/or services are denied or not acted upon with reasonable promptness; ensuring the affordability for Medicaid and avoiding premiums and copayments that shut low-income people out of care; and ensuring that Medicaid is accountable and transparent to enrollees and taxpayers. For more on NHeLP's thoughts on what makes Medicaid

“Medicaid,” take a look at [What Makes Medicaid, Medicaid: Five Reasons Why Medicaid is Essential to Low-Income People.](#)

We will also be focusing on the Medicaid eligibility and renewal processes, ensuring that all those who have enrolled in Medicaid are able to maintain their coverage if they continue to meet eligibility requirements.

We expect to release an updated version of our Advocates Guide to the Medicaid Program by the end of 2016. Keep an eye out for it as much has developed in Medicaid since publication of our 2012 edition. Since 1986, this guide has been the leading authoritative reference on Medicaid.

Medicaid Managed Care

NHeLP has been leading efforts to ensure that updates to the federal Medicaid managed care regulations reflect 21st century health care and support greater protections of enrollees’ rights. We submitted [comments](#) in response to the proposed revisions to the Medicaid managed care regulations in 2015, and our comments were relied on by many other organizations as they drafted their own comments. We expect the final regulations to be released in 2016, and we will provide an in-depth analysis.

Throughout our collaborations with state partners this year, we will maintain a high focus on policies that ensure network adequacy; enrollment and disenrollment protections; adequate amount, duration and scope of services; and due process; and on provisions that protect the full range of reproductive health services, home and community-based services for individuals with disabilities, and culturally and linguistically accessible care. We will continue to analyze and monitor developments in care delivery reform, including accountable care organizations.

Reproductive Health

2016 will be another critical year for access to reproductive health services. While we will be on the front lines opposing actions to limit women’s and adolescents’ abilities to make their own decisions about sexuality and pregnancy, NHeLP will be working with state and national allies to advance proactive measures to improve reproductive health access. In 2014, NHeLP and the California Family Health Council sponsored groundbreaking legislation in California ([SB 1053](#)) to ensure that women can choose the contraceptive method that works best for them without interference from their insurers. In 2016, we will focus on implementation of the California law as well as working with state advocates around the country who want to replicate those efforts. At least three states have introduced legislation based on our model bill.

Continuing among our top reproductive health priorities will be ensuring that religious objections (refusals) do not impede women’s access to services, advocating for comprehensive pregnancy coverage in Medicaid, and limiting “[medical management techniques](#)” – insurer practices that restrict an individual’s contraceptive choices. Catholic hospital mergers across the country threaten to undermine access to reproductive health services, and the Supreme Court will hear cases from non-profit religious employers who are arguing that filling out a form to notify others about their objections to covering contraception is a burden on their religious beliefs. NHeLP will be submitting an amicus brief in this case. In addition, we will continue to work with Planned Parenthood in the courts to protect the right of Medicaid enrollees to choose a Planned Parenthood clinic as their family planning provider.

Last, as millions of individuals of reproductive age are enrolled in Medicaid expansion, it is critical that reproductive health and low-income health advocates understand how the Medicaid program covers and facilitates access to reproductive health care services. In 2016, NHeLP will release an updated Advocates’ Guide to Reproductive Health in the Medicaid Program and launch a series of trainings and webinars across the country. Stay tuned!

Other 2016 Activities

Congress will be back in action, and we need to ensure that any efforts to reduce funding for Medicaid, CHIP, and ACA implementation are not enacted. In an election year, we face new challenges as we get closer to November, since each party will be looking to bolster its chances for the election. We will continue to monitor budget, deficit, and debt ceiling negotiations to ensure Medicaid and the ACA funding and policies remain safe and secure.

So we have lots on our plates for 2016, as we are sure you do as well. We look forward to working with all of you and wish you a happy, healthy, and insured 2016!

About Us

The National Health Law Program protects and advances the health rights of low income and underserved individuals. NHeLP advocates, educates and litigates at the federal and state level.

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