



Short Paper #1

The ACA and Consumer Assistance Programs October 2010

Prepared by: Lorraine Jones

Introduction

The Patient Protection & Affordable Care Act (PPACA) promises to bring about the most significant reforms to our health care system in more than a generation, affecting the financing, delivery, quality, and availability of health care services for all Americans.¹ Recognizing that consumers will need to understand new health programs and new protections, section 1002 of the PPACA includes provisions to establish and strengthen consumer assistance programs across the country. On October 19, 2010, the U.S. Department of Health and Human Services awarded nearly \$30 million in Consumer Assistance Program grants to 40 states, territories, and the District of Columbia.

This issue brief will provide information about the PPACA consumer assistance provisions. It will then highlight exemplary activities underway through the California-based Health Consumer Alliance, which NHeLP has led since 1998.

Explanation of PPACA Section 1002

Section 1002 of the PPACA added section 2793 to the Public Health Service Act to provide federal grants to States and Territories to establish, expand, or provide support for the establishment of independent offices of health insurance consumer assistance or ombudsman programs (CAPs).² The CAPs will educate individuals about their insurance options and rights, help them enroll in an insurance plan, and assist them with complaints. The CAPs will also collect information and provide data about consumers' experiences using their health insurance.

The law appropriates \$30 million dollars for the first year to fund CAPs starting in 2010 and authorizes future appropriations as necessary.³ On August 20, 2010, President Obama requested another \$30 million in funding for a second cycle of consumer assistance grants for 2011.⁴

On July 22, 2010, the Department of Health and Human Services' Office of Consumer Information and Insurance Oversight (OCIO) released an invitation to states to apply for the grants

¹ The National Health Law Program has prepared an in-depth analysis of many PPACA provisions. See National Health Law Program, *Analysis of the Health Care Reform Law: PPACA and the Reconciliation Act*, http://www.healthlaw.org/index.php?option=com_content&view=article&id=456:health-reform&catid=51&Itemid=212.

² 42 U.S.C. § 300gg-93.

³ *Id.*

⁴ Fiscal Year (FY) 2011 budget amendments for the Department of Health and Human Services (August 20, 2010)

and laid out the grant requirements and application process.⁵ Applications for the first year funding were due on September 10, 2010,⁶ and, as noted above, the awards were announced on October 19th.

For a complete list of grantees and summary of how each grantee will use their new resources, visit:

http://www.healthcare.gov/news/factsheets/capgrants_states.html

Specific features of the CAPs include:

Structure

Consumer assistance grants will go to the states. Each state is eligible for one grant.⁷ Grant amounts are pegged to the state's population.

States can use the funding to expand and strengthen (but not re-finance) models that are already in place, as well as invest in new activities.⁸ The CAP can be operated from the state department of insurance, the attorney general's office, independent state consumer assistance agencies, or some other state agency. The state can also contract with one or more non-profit organizations to provide services.⁹ Insurance companies cannot be CAPs.

Contracting with nonprofit community-based organizations should receive particular consideration. These CBOs can bring community partnerships, experience and the goodwill and trust of the community to a CAP, ensuring that community education is a success and that on-the-ground problems are identified and addressed.¹⁰

Independence

CAPs must be an independent office of health insurance consumer assistance. States must show that CAPs can advocate freely and vigorously on behalf of consumers. CAPs must be able to act on behalf of consumers, or as their designated agent, in group health plan and health insurance coverage appeals processes.¹¹ CAPs run by governmental agencies that adjudicate appeals must show how they will file appeals on behalf of consumers free of conflicts.¹²

⁵ Office of Consumer Information and Insurance Oversight, Affordable Care Act (ACA) – Consumer Assistance Program Grants, Initial Announcement, Invitation to Apply for FY 2010, CFDA: 93.519, July 22, 2010, <https://www.grantsolutions.gov/gs/preaward/previewPublicAnnouncement.do?id=11720> (hereinafter Grant Instructions).

⁶ *Id.* at 3.

⁷ *Id.* at 6.

⁸ *Id.* at 4.

⁹ *Id.* at 6.

¹⁰ See Community Service Society of New York and Community Catalyst, *Making Health Reform Work: State Consumer Assistance Programs* at 23 (August 2010).

¹¹ HHS.gov web site, Frequently Asked Questions about the Grant Opportunity, http://www.hhs.gov/ociio/initiative/consumer_grants_qa.html, (last visited September 3, 2010)

¹² Grant Instructions, *supra* note 5, at 6.

Scope of Services

Section 1002 of the PPACA details five functions of CAPs:

1. Help consumers enroll in group health plan or health insurance coverage by providing information, referral and assistance;
2. Educate consumers about their rights and responsibilities in group health plans and health insurance coverage;
3. Assist with the filing of complaints and appeals, including filing appeals with the internal appeal or grievance process of the group plan or health insurer involved and providing information about the external appeal process;
4. Collect, track, quantify and analyze information/data on the problems and questions consumers have and report it to the Department of Health and Human Services;
5. Help consumers with problems getting premium tax credits.¹³

The grant instructions provide that the functions must also include:

- accepting inquiries and complaints from uninsured consumers;
- assistance that is culturally and linguistically appropriate;
- interpreter services to those with limited English proficiency and modes of communication that accommodate consumers with disabilities;
- capacity to work with vulnerable populations, including individuals with limited English proficiency and individuals with disabilities; and
- services available to residents throughout the State through walk-in access and a toll-free number or hotline with staff to answer calls in real time, during normal business hours and with 24-hour voicemail access and calls returned within 24 hours;
- close coordination with State insurance regulators, consumer assistance organizations, and State Medicaid programs.¹⁴

Programs must help consumers with understanding and enrolling in private health insurance, group health plans (both private ERISA plans and nonfederal governmental plans), State high risk pools, and the new Federal high risk pool program.¹⁵ CAPs must help consumers with problems involving the new rights prescribed under the PPACA, including rescission, pre-existing exclusions for children, dependent coverage to age 26, the federal high risk pool program, prevention services, annual and lifetime benefit maximums, appeals and grievances, premium rate increases, medical loss ratio-rebates, and discrimination based on salary.¹⁶

Notably, CAPs will not be required to provide direct assistance to consumers on issues and problems related to Medicaid and Children's Health Insurance Programs (CHIP). However, CAPs must make appropriate referrals for such consumers,¹⁷ and they must collect data on consumer

¹³ PPACA § 1002 (adding § 2793 (c)(1)-(5), (d) of the Public Health Service Act (PHSA)).

¹⁴ Grant Instructions, *supra* note 5, at 6.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 14.

questions about public coverage including Medicaid, CHIP, State high-risk pools and the new federal Pre-existing Condition Insurance Plan, as well as about private coverage.¹⁸

Despite the separation of Medicaid and CHIP programs from the grant's purview, consumer assistance programs work best when they serve consumers with all types of coverage so that they can continue to serve consumers whose coverage changes among the many coverage options in our patchwork system and can serve all members of a family even if they have different sources of coverage.¹⁹ Well-functioning CAPs will, thus, need to address this issue as well.

Data Collection

Programs must report data on the types of problems and questions consumers experience with health coverage, how the problems are resolved,²⁰ caseload (cases opened, active, and closed), caller demographics, coverage involved, problem types, referrals and the responsiveness of the entities on referrals, case resolution, recovered benefits, provider and industry behavior, and other data HHS requests.²¹

HHS's Office of Consumer Support in OCIO will provide a data reporting software program that will generate the reports HHS requires but OCIO does not require grantees to use HHS software.²²

Data collected on the types of problems faced by health care consumers is critical for identifying systemic issues and lays the ground work for policy advocacy to address them. PPACA specifically charges the Secretary of DHHS to use this information to determine where enforcement action is needed

California's Health Consumer Alliance Model

Consumer assistance programs already exist across the country.²³ One example of a large, well established program is the Health Consumer Alliance (HCA). Since 1998, HCA has provided the functions listed in the PPACA to help low-income Californians get the quality health care they need. Each of HCA's nine health consumer centers, housed within community-based legal services offices, assists consumers through telephone hotlines, email, in-person appointments, and out-stationed visits in hospitals, courts, or health fairs. HCA provides individual assistance in all the languages needed for each of its communities. Last year, that meant services were provided in 22 different languages.

HCA helps consumers with all types of coverage and those with no coverage at all, including consumers with Medi-Cal, Healthy Families (California's CHIP), employer-based coverage, individual coverage, the uninsured, and consumers with multiple types of coverage. HCA's

¹⁸ *Id.* at 4.

¹⁹ See *Making Health Reform Work: State Consumer Assistance Programs*, *supra* note 10, at 22.

²⁰ Grant Instructions, *supra* note 5, at 4.

²¹ *Id.* at 20.

²² *Id.* at 7.

²³ The Community Service Society of New York report, *Making Health Reform Work: State Consumer Assistance Programs in the States*, *supra* note 10, details several models nationally, including HCA, with lessons learned for PPACA funded consumer assistance programs.

comprehensive approach to solving an entire families' coverage and service issues, regardless of coverage source and coverage changes, ensures families can have their problems resolved with one phone call instead of many.

For most consumers, HCA advocates provide advice and referrals and answer questions to help resolve problems. Advocates facilitate communication between the consumer and a health care plan or provider and clarify policies and options to obtain coverage. Because HCA's partners are legal services organizations, HCA advocates are expert at finding the structural barriers causing consumers' problems and crafting individual fixes and systemic changes. Advocates also represent consumers in legal adjudications and litigate problems when necessary.

HCA conducts extensive outreach and education on a range of issues, including coverage options and health consumers' rights. Advocates share information with other community organizations, providers, and county departments, and take referrals of consumers who need individual assistance. Outreach is tailored to local communities' language needs using face-to-face meetings, radio PSAs, or visits to farm workers in the field, depending on what consumers want.

HCA advocates receive ongoing training and education through the National Health Law Program and Western Center on Law and Poverty. These support centers are available to consult with HCA offices to help resolve the inquiries they receive. The support centers have also developed a comprehensive library of advocate's issue briefs and plain language consumer brochures available in 14 languages (available at www.healthconsumer.org).

HCA advocates use a custom database to capture demographic and coverage data on each consumer helped, as well as information on the barriers consumers face enrolling in health programs, maintaining health coverage, and accessing services. Combining this data from across the state amplifies common problems and details where systems are breaking down for consumers. Through the knowledge and experience gained from helping individuals, HCA strives to improve the broader health care system locally, statewide, and nationwide. HCA has used this information to prepare reports (available at www.healthconsumer.org) for State administrative and legislative bodies and U.S. congressional committees, which over time have explored a range of subjects – from problems with dental services, the affects of Medi-Cal cuts, hospital bill headaches, complex Medi-Cal eligibility rules, and the burdens of cost-sharing on low-income individuals. This data is also used to help HCA to develop policy recommendations to get rid of these barriers.

Conclusion

Snapshot of California's Health Consumer Alliance

- HCA has assisted 129,006 consumers since 1998.
- 29% of consumers are uninsured when they contact HCA for help; 37% have Medi-Cal, 4% have private insurance. The remainder has other public insurance.
- 52% of consumers assisted are Hispanic; 27%, White; 10%, Asian/Pacific Islander; 7%, Black; 1%, Native American.
- Services are provided in Spanish in 31% of cases, in English in 63% of cases, and the rest in 20 other languages.
- 48% of consumers helped are at or below 100% of the federal poverty level (FPL); 31% are between 101 and 150% FPL; 12%, 151 to 200% FPL; 4%, 201% to 250% FPL; and 4% are over 250% FPL.

PPACA provides a rare opportunity to expand health consumer assistance across the country and to ensure its new protections and coverage options help consumers in need. Consumer assistance programs, like HCA, work best when they:

- ✓ serve consumers with all types of coverage;
- ✓ provide a full scope of services, including legal representation in administrative fair hearings and other adjudications when needed;
- ✓ have expert substantive support for individual technical assistance and staff training,
- ✓ collect comprehensive data and advocate for system reform based on consumers' problems, and
- ✓ are based in or contract with trusted nonprofit community-based programs that can reach and assist low-income and vulnerable individuals and families in a manner appropriate to the community.

For further information, please contact:

Lorraine Jones

jones@healthlaw.org

www.healthlaw.org

www.healthconsumer.org