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Page 1 of 2

PENNSYLVANIA AGENCIES

Department of Health releases courtesy copies of new managed care regulations to IRRC, standing committees and commentators. On November 1, 2000, the Bureau of Managed Care of the PA Department of Health sent courtesy copies of its revised final form regulation to the Independent Regulatory Review Commission (IRRC), the standing committees and all entities that submitted comments on the draft regulations published in the PA Bulletin on December 18, 1999. The unofficial release of the proposed regulation is intended to give IRRC and the standing committees time to digest the revised regulations. The Department also released a voluminous preamble that addresses the 1400 comments received by the Department following the publication of the first draft of the regulations in December of 1999. According to the cover letter, there will not be a public comment period on the revised final regulations. The Department intends to submit the final regulations to the IRRC in January 2001.

FEDERAL COURTS

Court finds no standing in FQHC's lawsuit for recovery of supplemental Medicaid payments. On October 4, 2000, a federal judge in Maryland ruled that an FQHC does not have standing to maintain a suit against the State of Maryland challenging the state's practice of taking supplemental payments from a managed care organization in which the FQHC was the primary shareholder. The case stems from a federal law requiring states to make supplemental payments to FQHCs where less than 100% of reasonable costs are paid by the Medicaid MCO. The FQHC argued that Maryland's practice of taking supplemental payments from Medicaid MCOs violates federal law and requested prospective relief. The court agreed that Maryland's practices may frustrate Congressional intent to promote FQHC-owned MCOs through the use of federally guaranteed loans. Nonetheless, the court ruled that the Maryland had not acted wrongfully and, to the extent that the FQHC was injured, such injury was incurred because the FQHC was a shareholder of the MCO. As a shareholder, the FQHC did not have standing to maintain the action, since shareholders may not seek redress for wrongs against the corporation. *Maryland Community Health System v. Glendening, Governor of Maryland et al., No. JFM-99-1486 (D. Md., Oct. 4, 2000)*

Kaiser Sues Medicaid Officials in Colorado. According to a recent report, the Denver based Kaiser Foundation Health Plan of Colorado has filed suit against the Colorado Department of Health Care Policy and Financing on the basis that the State underpaid the Plan for a four year period. The complaint alleges that under Kaiser's contract with the State, premiums were to be calculated at ninety-five percent of the per capita cost of providing the same services to an actuarially equivalent non-managed care population. The lawsuit alleges that the State informed the plan in 1998 that a report by a consulting firm revealed that the State failed to follow the terms of the contract with regard to the calculation of rates. The lawsuit follows similar legal action, now on appeal, in which a court awarded Rocky Mountain HMO \$15 million dollars. *Kaiser Foundation Health Plan of Colorado v. Colorado Department of Health Care Policy and Financing, Colo. Dist. Ct., No. 00CV7278, complaint filed 9/28/00*.

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FEDERAL AGENCIES

\$840 million recovered by DOJ in health care fraud cases in FY 2000. Once again, the Department of Justice reported that health care fraud cases topped the list of annual recoveries. The DOJ collected over \$840 million in health care fraud cases out of a record total of \$1.5 billion for all civil fraud recoveries. This amount includes the largest civil fraud recovery ever: a \$385 million settlement with Fresenius Medical Care to resolve allegations of wrongdoing by its kidney dialysis subsidiary. Approximately \$1.2 billion of the DOJ settlements and judgements for all fraud cases arose from whistleblower lawsuits. The DOJ reported payments to whistleblowers totaling approximately \$173 million. *Department of Justice News Release, Nov. 2, 2000.*

REPORTS AND STUDIES

Declining number of uninsured. Reversing a 12-year trend, the Census Bureau reported that the population without health insurance actually declined in 1999, the first decline since 1987 when comparable health insurance statistics became available. In 1999, 15.5% of the population were uninsured, down from 16.3% in 1998. Although 1.7 million more people were able to obtain health insurance coverage in 1999, there were still 42.6 million people without health insurance coverage for the entire year in 1999. Although Medicaid insured 12.9 million poor people, 10.4 million poor people still had no health insurance in 1999. The results of the report are based on the March 2000 current population survey conducted by the Census Bureau. *Health Insurance Coverage: 1999, U.S. Census Bureau.*

A decline in welfare case load results in sicker Medicaid risk pool. According to a report issued by the Center for Health Care Strategies, Inc., recent declines in welfare case loads have resulted in a sicker population remaining in the Medicaid program. The study used data from the 1997 National Survey of America's Families ("NSAF"). This study found that adults who left Medicaid were less likely to report fair or poor health, less likely to have a work-limiting condition, less likely to have an inpatient stay, less likely to have a physician visit and less likely to have emergency room visits than Medicaid recipients. Not surprisingly, adults who left Medicaid were generally in better health and had lower utilization rates than those who remained in the program. The report also compared long-term welfare recipients with new adult welfare entrants and adults returning to the Medicaid program. The results found that, while new adult welfare entrants included a large number of women who recently gave birth, recent enrollees were generally healthier and had lower utilization rates than long-term recipients. Adults returning to the welfare rolls, however, were more likely to have health conditions, mental health visits and visits to the emergency room. The study found that welfare entrants are more costly than long-term recipients. The study concluded that, among adults, the declining welfare rolls resulted in a Medicaid risk pool that was sicker, however, in children, there was little evidence that falling case loads had any effect. The report is available on-line at: <http://newfederalism.urban.org/html/discussion00-06.html>.

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Prior issues are available on request. Please direct inquiries to Jerry R. Hogenmiller or L. Jane Charlton, Thomson, Rhodes & Cowie, P.C., Tenth Floor, Two Chatham Center, Pittsburgh, Pennsylvania 15219, (412) 232-3400, TRC_Law@nauticom.net.