Dateline: May 18, 2012

DPW Publishes Final Regulations on OLTL Rates and Services

In the May 19, 2012 edition of the Pennsylvania Bulletin, the PA Department of Public Welfare (DPW) published rules and regulations on Long-Term Living Home and Community-Based Services. (See article below.) The new rules that were developed under Act 22 establish or revise provider payment rates or fee schedules, reimbursement models and payment methodologies for certain services and establish provider qualifications. The final-omitted rulemaking affect providers participating in the Aging, Attendant Care, COMMCARE, Independence and OBRA home and community-based (HCBS) waiver programs and the Act 150 program. DPW says that the new rules are intended to ensure that expenditures for FY 2011-2012 remain within the aggregate amount appropriated for HCBS programs by the General Appropriations Act of 2011. DPW notes that the Commonwealth HCBS programs have grown 452% in the past 11 years and the costs have increased from $66 million in FY 2000 to $1.014 billion in FY 2011. DPW said that it is promulgating regulations to strengthen program integrity and to improve cost efficiencies of these programs, the Department is promulgating regulations. The final-omitted rulemaking creates two payment methods for the payment of services under the HCBS programs. The first method establishes a fee schedule rate for the provision of a service. DPW will publish the fee schedule rates as a notice as part of the MA fee schedule in the Pennsylvania Bulletin. The second payment method is for a limited number of goods and services provided through the HCBS programs. The list of vendor goods or services will also be published as a notice in the Pennsylvania Bulletin. FMI: See www.pabulletin.com. The waivers are at http://www.portal.state.pa.us/portal/server.pt?open=514&objID=733116&mode=2.

OLTL Establishes New Rates and Rules for HCBS Services

In the May 19, 2012 edition of the Pennsylvania Bulletin, the PA Department of Public Welfare (DPW) published final rules and regulations on Long-Term Living Home and Community-Based Services (HCBS). The final-omitted rulemaking applies to HCBS providers rendering services for the Aging, Attendant Care, COMMCARE, Independence and OBRA HCBS waivers (waivers) and the Act 150 program. The final rulemaking addresses prerequisites for participation, ongoing responsibilities of providers, service coordinator qualifications and training, critical incident and risk management. The rules require providers to report critical incidents and to adhere to policies and procedures regarding prevention, reporting, notification, investigation and management of critical incidents. Providers are also required to meet the risk management requirements as specified in the approved applicable waivers. DPW will be conducting provider monitoring at least once every 2 years. The rules detail how a corrective action plan will be developed and implemented by a provider who is found to be in noncompliance. Providers are required to create and implement quality management plans. Under the final rule services are to be paid as either a fee schedule service or a vendor good or service. DPW will publish services specific to each waiver and the Act 150 program. The rules establish a fee schedule rate for a waiver or Act 150 service under the MA Program fee schedule. FMI: See www.pabulletin.com.
DPW and CCAP Agree on Implementation of Proposed Human Services Block Grant

On May 18 the PA Department of Public Welfare (DPW) and the County Commissioners Association of Pennsylvania (CCAP) issued jointly a Human Services Block Grant Update dated May 18, 2012. The memo offers the most recent account of agreements that DPW and CCAP have reached on implementing a block grant proposal for human services that was proposed by PA Governor Tom Corbett in his FY2012-13 budget plan presented in February. (See article below on Page 2.) In the May 18 update DPW and CCAP reassert that the Human Services Block Grant will provide counties the flexibility to prioritize funds to meet local needs. Under the proposal, starting on July 1, 2012, non-Medicaid and non-IDEA county appropriations including Mental Health Community Programs, Intellectual Disabilities Community Base, County Child Welfare Special Grants, Homeless Assistance Program, Act 152, Behavioral Health Services and Human Service Development Fund appropriations would be consolidated into one appropriation, the Human Services Block Grant. DPW and CCAP reports that they have made substantial progress on the block grant and that they are working on many other needed reforms to the county human services system. For the DPW-CCAP update contact PARF at parfmail@parf.org.


DPW and CCAP Outline Plans for Implementing Human Services Block Grant

In a Human Services Block Grant Update issued by PA Department of Public Welfare (DPW) and the County Commissioners Association of Pennsylvania (CCAP) on May 18 DPW and CCAP provided details on the implementation of block grant for human services funding proposed by PA Governor Tom Corbett in February 2012. DPW and CCAP agreed that the block grant be allocated to counties proportionally, based on the current aggregate distributions. In subsequent years DPW in consultation with CCAP would consider a revision to the distribution formula. In phasing-in the proposed block grant DPW and CCAP say that there will be a gradual process over a two-year period in which counties have the ability to fund programs as they currently do. Minimum funding levels for each of the program categoricals have been developed. Under the plan counties may continue funding in the current categorical line items in the block grant in the same manner that they currently are. Counties however that are interested in fully managing their block grant before FY 2014-15 may submit a waiver request to DPW. For FY 2012-13, each county will be required to expend a set rate of their allocation on the seven categorical areas. The combined rate requirements will account for approximately 50% of the counties allocation. For FY 2013-14, the categorically required spending will account for approximately 25% of each county’s allocation. Each county will have full flexibility and full management of the block grant by FY 2014-15. DPW and CCAP say that a portion of each county’s block grant allocation would be spent based on the current categoricals in the first two years. A new streamlined reporting document has been shared with counties. DPW will require annual planning of how counties propose to utilize human services funding to address local demands. The county plan would be submitted to DPW for approval, outlining the county’s proposed utilization of the block grant funds. Each county will develop their plan utilizing a public process to solicit local stakeholder input for the spending of the human service block grant. Discussion between DPW and CCAP continues on establishing outcome measures to include in the block grant. FMI: Contact PARF at parfmail@parf.org.
PHC4 Reports PA Hospitals Increase Profit Margins and Uncompensated Care

On May 17, the Pennsylvania Health Care Cost Containment Council (PHC4) released its *Hospital Financial Analysis 2011, Volume One*. PHC4 reports the state’s acute care hospitals saw their profit margin increase during the 2011 fiscal year while uncompensated care increased substantially. The statewide total margin of the 168 General Acute Care (GAC) hospitals in Pennsylvania increased during the fiscal year that ended June 30, 2011 by 1.67 percentage points, from 5.26% to 6.93%. The value of care for which hospitals were not compensated — either bad debt or charity care — grew by 11.2 percent in FY 11, or about $99 million, from $891 million the prior year to $990 million. Overall net income grew by $769 million, from $1.92 billion in Fiscal Year 2010 (FY 10) to $2.69 billion in FY 11. Of that, $551 million, or 72 percent, came from improvement in operating income; the remaining $218 million came from non-operating income. With the $551 million gain in operating income, from about $1.58 billion in FY 10 to $2.13 billion in FY 11, the statewide average operating margin grew from 4.37% to 5.58%. Last year, 33 hospitals, or 20 percent, posted a negative total margin. The previous year, 39 hospitals, or 24 percent of those reporting, had a negative total margin. In FY 09, 74 hospitals, or 45 percent, reported losses. The number of hospitals that sustained a three-year average loss declined to 37, or 23 percent, by the end of FY 11. For the three-year period ending in FY 10, 41 hospitals had a negative average total margin. The 165 GAC hospitals included in the analysis collectively posted a three year average loss declined to 37, or 23 percent, by the end of FY 11. For the three-year period ending in FY 10, 41 hospitals had a negative average total margin. The 165 GAC hospitals included in the analysis collectively posted an increase in operating revenue of $2.07 billion, or 5.7%, from FY 10 to FY 11, while operating expenses increased by $1.52 billion, or 4.4%. The number of hospitals with negative operating margins declined from 54 in FY 10 to 44 in FY 11. Of those, 35 were smaller hospitals with less than $150 million in net patient revenue. The Volume One Financial Analysis of GAC hospitals is the first of three that PHC4 publishes annually. *Volume Two on Ambulatory Surgery Centers and Volume Three on non-GAC hospitals* will appear later this year. See [www.phc4.org](http://www.phc4.org).

DOH Seeks Comment on PA Maternal and Child Health Services Block Grant

In the May 19, 2012 edition of the *Pennsylvania Bulletin*, the PA Department of Health, Bureau of Family Health announced officially that that the Bureau of Family Health (Bureau) is accepting public comments on the Commonwealth's draft of the Title V Maternal and Child Health Services Block Grant 2011 Report and 2013 Application from June 4, 2012, through July 3, 2012. A draft of the application will be electronically accessible through the Department of Health's web site at [http://www.health.state.pa.us](http://www.health.state.pa.us). Comments must be submitted in writing to Steve Heuer at stheuer@pa.gov or in hard copy to the following address. Comments must be received no later than 5 p.m. on July 3, 2012. FMI: See [www.pabulletin.com](http://www.pabulletin.com).

Upcoming PARF Medical Division Meeting Rescheduled to July 10

The PARF Medical Division was originally scheduled to meet in Harrisburg on Wednesday, June 20, 2012. In order to accommodate various schedules, this meeting is being rescheduled and will be held on Tuesday, July 10, 2012 at 10:00 am. The meeting will be held at Dixon University in Harrisburg. A meeting notice and details of the upcoming meeting to be held on July 10 will be sent to PARF members at least three (3) weeks prior to the meeting date. If more information is needed, please contact PARF at parfmail@parf.org.
PA Democratic Policy Committees Review Proposed Cuts in Human Services

Members of the PA House and Senate Democratic Policy Committees held meetings on May 15 and 16 to review with local providers the proposed cuts in human services included in FY 2012-13 state budget plans. On May 16 members of the PA Senate Democratic Policy Committee met area human service providers in Northeastern Pennsylvania to discuss current public policy issues and the adverse effects of the proposed 20 percent state funding reduction for human services. The committee has been gathering input from providers and advocates throughout the state on the impact the Governor’s proposed budget will have upon their ability to continue to provide adequate services in their communities. On May 15 at a public hearing today in Philadelphia, the PA House of Representatives Democratic Policy Committee heard from advocates for education, the disabled and children regarding the cuts that PA Governor Tom Corbett proposed in his 2012-13 budget plan. The hearing focused on the governor’s proposed twenty percent (20%) cut to programs for the people with disabilities and cuts to basic education. FMI: For more information about the Policy Committee and hearing materials See http://www.pasenate.com/?p=9960. For more information about the Policy Committee and hearing materials, visit www.pahouse.com/PolicyCommittee. See http://www.pahouse.com/pr/096051512.asp

PA House Democratic Policy Committee Holds Hearing on Lifelong Learning

On May 16 The PA House of Representatives Democratic Policy Committee heard from education advocates and employment experts at a public hearing that the Committee held to look at the role of lifelong learning in Pennsylvania’s workforce development. The testimony focused on the changing skill sets needed throughout a person’s career and the ways for workers to transition and improve their competencies. Testimony was offered on the need for lifelong training supports for people with disabilities. Arlene Solomon, director of employment and education services at Horizon House, described the Education Plus program that Horizon House offers to people with psychiatric disability, substance abuse disorders, and/or learning disabilities. Solomon urged legislators to consider support and expansion of the Education Plus program. Mattie Harrigan, associate director of employment services, Philadelphia Developmental Disabilities Corporation (PDDA), reported on efforts of PDDA in adapting to the challenges of the workplace in which advances in technology and work redesign require retraining of workers with disabilities. For more information about the Policy Committee and hearing materials, visit www.pahouse.com/PolicyCommittee.

Employment in PA Improves in April 2012

On May 17 the PA Department of Labor and Industry (L&I) reported on Pennsylvania’s employment situation for April 2012. L&I indicated that Pennsylvania’s seasonally adjusted unemployment rate was 7.4 percent in April, down one-tenth of a percentage point from the 7.5 percent March rate. Pennsylvania’s unemployment rate was below the U.S. rate of 8.1 percent, and has been below the U.S. rate for 48 consecutive months, and at or below the U.S. rate for 66 consecutive months. The state’s unemployment rate was down 0.5 percentage points from April 2011. For a more detailed breakdown of seasonally adjusted jobs data at the sector level, please contact the Center for Workforce Information & Analysis at 1-877-4WF-DATA, or visit www.paworkstats.state.pa.us. May 2012 labor force and nonfarm jobs statistics will be released June 14, 2012.

On May 18 Centers for Medicare & Medicaid Services (CMS) issued an Informational Bulletin from the Center for Medicaid and CHIP Services (CMCS) with new guidance on affordable insurance exchanges. Consumers in every state will have access to coverage through an Affordable Insurance Exchange on January 1, 2014. If a state decides not to operate an exchange for its residents, the US Department of Health and Human Services (HHS) will operate a federally-facilitated exchange (FFE). The CMCS bulletin is available at http://cciio.cms.gov/resources/files/FFE_Guidance_FINAL_VERSION_051612.pdf

The bulletin describes how HHS will consult with a variety of stakeholders to implement a federally-facilitated exchange (FFE), how States can partner with HHS to implement selected functions in an FFE, and key policies organized by exchange function. The CMCS bulletin outlines key areas of coordination among FFEs, Medicaid, and CHIP programs related to information technology, business processes, and customer service. In addition, the CMCS bulletin describes approaches for determining applicants’ eligibility for Medicaid and CHIP based on information from applications submitted to an FFE. PARF members are encouraged to review the guidance document closely. Please contact Jessica Kahn with questions at (410) 786-9361 or via e-mail at Jessica.Kahn@cms.hhs.gov. On May 18 HHS also released an Exchange Blueprint that states may use to demonstrate how their Affordable Insurance Exchange will work to offer a wide range of competitively priced private health insurance options. The Blueprint also sets forth the application process for states seeking to enter into a Partnership Exchange. If a state chooses to operate its own exchange or a partnership exchange, HHS will review and potentially approve or conditionally approve the Exchange no later than January 1, 2013, so it can begin offering coverage on January 1, 2014. To see the State Exchange Blueprint, visit http://cciio.cms.gov/resources/other/index.html#hie, or access it directly at http://cciio.cms.gov/resources/files/Exchangeblueprint05162012.pdf.

CMS Publishes Rule on Settings for HCBS, Seeks Comment on New Requirements

On May 3, 2012 the Centers for Medicare and Medicaid Services (CMS) published in the Federal Register a proposed rule that would revise Medicaid regulations to define and describe State plan home and community-based services (HCBS) under the Medicaid program, as amended by the Affordable Care Act (ACA). The proposed rule would also provide home and community-based setting requirements for the Community First Choice State plan option, as added by the ACA. The proposed rules supersede previous proposed rules (April 2, 2008 regarding State plan HCBS and February 25, 2011 regarding the Community First Choice State Plan Option home and community-based setting requirements). PARF is working with its national association partner ACCSES to provide comment to the Centers for Medicare and Medicaid Services (CMS) on newly proposed requirements for community based settings for home and community based services issued on May 3, 2012. The new rules would affect services provided through the CommCare waiver program and other HCBS services. CMS explains that it plans to fully consider all comments received and align decision making and language pertaining to home and community-based setting requirements across Community-First Choice, State plan HCBS under Section 1915(j), as well as HCBS waivers under Section 1915(c). CMS has proposed a 60 day comment period. The comment close date for the proposed rules is July 2, 2012. Comments should be forwarded to PARF at parfmail@parf.org.
Oregon Court Rules ADA Integration Mandate Applies to Employment Services

On May 17 the U.S. District Court in Oregon issued a 16-page Opinion and Order in the case Lane v. Kitzhaber, 3:12-cv-00138-ST. The Lane complaint claims that failure to provide supported employment services violates Title II of the Americans with Disabilities Act (ADA) and the integration mandate. United States Magistrate Judge Janice M. Stewart rejected the arguments by the state of Oregon that the Olmstead integration mandate does not apply to employment services. The Court granted the state defendants’ motion to dismiss the complaint, but without prejudice and with leave to amend, while directing the Plaintiffs how to correct the wording of the complaint. The Court determined that the plaintiffs have valid cognizable claims under Title II of the ADA and that the integration mandate applies to the provision of employment-related services. The Court said that some allegations in the complaint go beyond a request that Oregon "reallocate their available resources in a way that does not unjustifiably favor segregated employment in sheltered workshops at the expense of providing supported employment services to qualified individuals." Wording in the complaint that can be construed to "seek the forbidden remedy of requiring defendants to provide an adequate level of employment services to enable plaintiffs to obtain a competitive job" must be removed. For that reason, Judge Stewart granted the State's Motion to Dismiss without Prejudice and with Leave to Amend and gave the plaintiffs until May 29 to file an amended complaint "to cure the problems identified in this Opinion and Order." The case was filed by Disability Rights Oregon and co-counsels Center for Public Representation, Perkins Coie LLP and Miller Nash LLP, on behalf of eight individuals with intellectual or developmental disabilities. FMI: See http://www.droregon.org/news/oregon-court-rules-that-the-ada-integration-mandate-applies-to-employment-services. See http://www.ada.gov/olmstead/olmstead_new.htm. See also http://www.ada.gov/olmstead/documents/lane_soi.pdf.

HUD Funds Available for Housing for Extremely Low-Income Persons with Disabilities

On May 15 the U.S. Department of Housing and Urban Development (HUD) announced that is making $85 million available to state housing agencies to provide affordable supportive housing for extremely low-income persons with disabilities. This is the first time in the history of HUD’s Section 811 Supportive Housing for Persons with Disabilities Program that funding will be offered to state housing agencies that meet new eligibility criteria, including having a partnership with a state health and human services and Medicaid agency to provide essential support and services. The Notice of Funding for the Section 811 Project Rental Assistance is posted on www.Grants.gov. Entities have until July 31, 2012 to apply for funding. Under new eligibility requirements, only state or local housing agencies that are currently administering affordable housing programs are eligible for these funds. In addition, these entities must have established a formal partnership with a state health and human services and Medicaid agency to provide for referrals, tenant selection and perform other casework activities to ensure that individuals with the most critical need receive this supportive housing assistance. This round of funding will target the assistance to "extremely" low-income persons with disabilities – those who are at or below 30 percent of Area Median Income (AMI) – and limits to only 25 percent the number of apartments that can be set-aside for supportive housing for persons with disabilities in a building. FMI See http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2012/HUDNo.12-084.
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HHS OIG: Medicaid Rates for New York State Developmental Centers May Be Excessive

Based on its assessment of New York State's rate-setting methodology, the US Department of Health and Human Services (HHS) Office of Inspector General (OIG) determined that the payment rate for State-operated developmental centers might not have met the Federal requirement that payment for services be consistent with efficiency and economy. See HHS OIG Finds Medicaid Rates for New York State Developmental Centers May Be Excessive A-02-11-01029. HHS OIG says that if the state had used actual costs in calculating the Medicaid daily rate, its reimbursement would have totaled $858 million ($429 million Federal share) in state fiscal year (SFY) 2009, a difference of $1.41 billion ($701 million Federal share). If the state had used prior year actual costs as the starting point for its rate-setting methodology, its SFY 2009 Medicaid daily rate would have been $1,500, or 63 percent less than the calculated reimbursement rate ($4,000. FMI: See http://www.hhsoig.gov/oas/reports/region2/21101029.asp. See also www.hhsoig.gov.

CMS Hospital & Hospital Quality Open Door Forum on July 18

The next CMS Hospital & Hospital Quality Open Door Forum is scheduled for Wednesday, July 18, 2012 at 2:00 PM Eastern Time (ET). Please dial-in at least 15 minutes before call start time. For this Conference Call Only, to participate by phone: Dial: 1-800-837-1935 & Reference Conference ID: 52261655. Persons participating by phone do not need to RSVP. TTY Communications Relay Services are available for the Hearing Impaired. For TTY services dial 7-1-1 or 1-855-859-2056; Conference ID# 52261655. Encore is an audio recording of this call that can be accessed by dialing 1-855-859-2056 and entering the Conference ID. This recording will be accessible beginning 2 hours after the call ends and will expire after 3 business days. For ODF schedule updates, E-Mailing List registration and Frequently Asked Questions, visit our website at http://www.cms.gov/OpenDoorForums/.

National Provider Call on Inpatient Rehabilitation PPS Coverage Requirements on May 31

On Thursday, May 31 from 2:00 p.m. to 3:30 pm ET the Centers for Medicare and Medicaid Services (CMS) is hosting a national provider call on Inpatient Rehabilitation PPS Coverage Requirements. In its announcement of the call CMS says that beginning January 1, 2010, all Medicare Fee-For-Service (FFS) inpatient rehabilitation facility (IRF) claims were required to meet new coverage requirements for payment under the IRF prospective payment system (PPS). During the National Provider Call on May 31, CMS subject matter experts will provide an overview of these requirements. The CMS experts will address questions that providers continue to have as they apply these requirements. Medicare FFS providers, IRF providers, Recovery Audit Contractors, and Medicare Administrative Contractors are encouraged to participate. In order to receive call-in information, you must register for the call on the CMS Upcoming National Provider Calls webpage. Registration will close at 12pm on the day of the call or when available space has been filled; no exceptions will be made, so please register early. The presentation for this call will be posted at least one day in advance on the FFS National Provider Calls webpage. In addition, a link to the slide presentation will be emailed to all registrants on the day of the call. FMI: See www.cms.gov.