PA Governor Corbett Meets with HHS, Ponders Medicaid Expansion

On April 2 PA Governor Tom Corbett and his team met with U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius to discuss issues related to a potential expansion of Pennsylvania’s Medicaid program. Afterwards Governor Corbett said that he still had questions about expanding Medicaid and that he had requested more information from HHS about using the private insurance market to expand coverage. He said that he is awaiting further information from HHS and “no further decisions will be made at this time.” The meeting between Commonwealth and federal officials was held so that HHS would clarify information and answer additional questions on Medicaid expansion and implementation of a federally-funded health insurance exchange in the state. Corbett called the discussion meaningful. He said that he was interested in approaches “similar to what Arkansas and Tennessee are pursuing, coupled with significant reforms to Pennsylvania’s current Medicaid program to protect the program for those citizens who need it the most… Until we know whether or not significant reform is possible, I continue to have concerns that Pennsylvania’s Medicaid program will be able to serve, in a sustainable manner, the approximately one in four Pennsylvanians that would be covered under a full expansion.” Governor Corbett said that one of his purposes in meeting with HHS Secretary Sebelius was to verify that the 100 percent federal match was available for the Commonwealth.

(See below for story on HHS and Medicaid funding.) Meanwhile a study by the Rand Corporation on behalf of the Hospital and Healthsystem Association of Pennsylvania (HAP) found that expanding Medicaid would boost federal revenue to Pennsylvania by more than $2 billion annually, provide 340,000 residents with health insurance, provide a $3 billion boost in economic activity and sustain more than 35,000 jobs. Governor Corbett has said that implementing the program would mean an additional $4 billion in state costs as federal dollars are reduced in later years. FMI: For announcements by Governor Corbett see www.state.pa.us.

OVR Policy on Order of Selection Changed

On March 14 the Pennsylvania State Board of Vocational Rehabilitation approved changes to the PA Office of Vocational Rehabilitation (OVR) policy on the Order of Selection. The criteria that were defined through this change include the amount of time needed for VR services and the number of VR services needed. The Board decided that multiple vocational rehabilitation (VR) services are defined as two (2) or more VR services. Extended period of time has been defined as six (6) months from date of IPE. The policy is effective July 1, 2013. See Order of Selection 13-200.01. According to the Rehabilitation Act Sec. 101(a)(5) in the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities who apply for services, the State plan shall show the Order to be followed in selecting eligible individuals to be provided vocational rehabilitation services; provide the justification for the Order; assure that individuals with the most significant disabilities will be selected first; and provide information and referral services to individuals who do not meet the Order. FMI: Contact OVR Policy, Procedure, and Evaluation at 717-783-9964 or see www.dli.state.pa.us. See also http://www.dli.state.pa.us/portal/server.pt/community/l_i_home/5278
Pennsylvania Brain Injury Coalition Pushes Legislative, Funding Priorities

On April 9 the Pennsylvania Brain Injury Coalition, including PARF, will be joined by a bipartisan group of legislators as the Coalition outlines its key legislative priorities for 2013-2014. This year the coalition is supporting the Governor’s proposed increase to Services for Persons with Disabilities, serving an additional 1,282 individuals in a community setting. The coalition is also supporting legislation to create a Brain Injury Advisory Board (S.B. 136), to help Pennsylvanians make informed decisions about insurance (H.B. 648), and to strengthen the Safety in Youth Sports Act (S.B. 74). PA State Senator Andrew E. Dinniman, co-chairman of the Senate Brain Injury Caucus; Representative Tim Briggs, co-chairman of the House Brain Injury Caucus; Representative Richard Stevenson, co-chairman of the House Brain Injury Caucus; and Representative Thomas P. Murt, sponsor of H.B. 648. Also scheduled to present are: Barb Dively, president of the Acquired Brain Injury Network; Dan Keating, vice president of the Brain Injury Association of Pennsylvania; Deb Delgado, brain injury specialist, Disability Rights Network; and Gene Bianco, PARF President/CEO. FMI: See www.biapa.org, or contact Pennsylvania Brain Injury Coalition Chairman Mike Miller at mjmmiller@epix.net.

HB 114 Establishes Bill of Rights for People with Intellectual Disabilities in PA

On April 3 House Bill 1114 (PN 1351) was introduced in the PA House of Representatives establishing a bill of rights to protect individuals with intellectual disabilities. The bill calls for development of a five year plan to address the waiting list. The act is entitled the Individuals with Intellectual and Developmental Disabilities Bill of Rights Act. In the development of the plan required by HB 1114, the Department of Public Welfare shall conduct public hearings and obtain public comment from individuals with intellectual disabilities, their families and guardians and providers of services to the intellectual disability community. DPW is required to update the budget, statistical and financial data to the plan annually and submit an updated plan to the Governor, the General Assembly and the county intellectual disability program administrators on the anniversary date of the department's original submission of the plan. FMI: See www.legis.state.pa.us

SB 796 Introduced to Amend MH Procedures Act

On April 3 Senate Bill 796 (PN 827) was introduced in the Pennsylvania Senate by Senator Pat Vance and six additional sponsors of the bill who are seeking to amend the Mental Health Procedures and add language concerning thresholds for involuntary emergency mental health treatment. In seeking sponsors for the legislation, Senator Vance has said that current law sets a relatively high standard for an individual to meet before a court will intervene to ensure that treatment is provided. Often, the “clear and present danger” standard is so difficult to satisfy that significant and irreparable harm occurs before any treatment can be offered. Senator Vance said that the legislation she is proposing (SB 796) will allow the court to look at the totality of the circumstances in determining whether involuntary mental health treatment can be offered. She said that the legislation will allow mental debilitation to be considered as well as physical and will eliminate the requirement that an act be committed in furtherance of the threat. FMI: See www.legis.state.pa.us.
PA Revenue for FY 2013 Still Better than Expected

On April 1 the PA Revenue Department released its report on collections for March 2013, indicating that Pennsylvania continues to fall behind its monthly projections but still maintains a surplus for the year to date, albeit by a very small sum. The report indicates that Pennsylvania collected $4.2 billion in general fund revenue in March, which was $69.4 million, or 1.6 percent, less than anticipated for March. Fiscal year-to-date (YTD) general fund collections total $20.3 billion, which is $35.5 million, or 0.2 percent, slightly above estimate. Realty transfer tax revenue year-to-date ($246.4 million) is $17.4 million or 7.6 percent more than anticipated. Corporation tax collections year-to-date ($4 billion) are $254.8 million or 6.8 percent above estimate. Personal income tax collections year-to-date ($7.6 billion) are $27.8 million or 0.4 percent above estimate. Inheritance tax revenue year-to-date ($583.8 million) is $47 million or 7.5 percent below estimate. Sales tax collections year-to-date ($6.6 billion) are $244.5 million or 3.6 percent less than anticipated. Other General Fund tax revenue year-to-date ($1 billion) is $39.8 million or 3.8 percent below estimate. Non-tax revenue year-to-date ($260.5 million) is $66.7 million or 34.4 percent above estimate. For more information, visit www.revenue.state.pa.us.

IRRC Approves Psychiatric Rehabilitation Service Final-Form Regulation

On April 4 the Independent Regulatory Review Commission approved the psychiatric rehabilitation service final-form regulations. In a letter to Pennsylvania Department of Public Welfare Office of Mental Health and Substance Abuse Services sent on April 2 PARF endorsed the Psychiatric Rehabilitation Service Final-Form Regulation #14-521 (IRRC#2879), noting PARF has been engaged for more than two decades in efforts of the Department of Public Welfare Office of Mental Health and Substance Abuse Services in planning and developing a comprehensive set of regulations for psychiatric rehabilitation services. PARF encouraged the Independent Regulatory Review Commission to approve the final form regulations at its meeting on April 4. It said that PARF looked forward to working with DPW in offering providers information and technical assistance to assure proper implementation of the regulations. See www.irrc.state.pa.us

Michael Wolf to Serve as DOH Secretary

On April 5 Governor Tom Corbett named Michael Wolf as Secretary of the Department of Health. Wolf joined the health department in May 2011 as executive deputy secretary after working as Pfizer's director of worldwide public affairs and policy. He was named acting secretary in October 2012. FMI: see www.pa.gov.

PA Insurance Department Launches New Health Insurance Website

On April 3 the Pennsylvania Insurance Department announced that it has developed a new website at www.PAHealthOptions.com to help Pennsylvanians to learn more about health insurance. The website is intended to provide access to resources that will serve as a tool to compare coverage as well as to act as an online customer service tool. The website is designed to help consumers learn the basics about health insurance, understand their health insurance needs and options, answer health insurance questions, file a complaint or appeal a denied medical claim. See www.state.pa.us.
ODP Seeks Comment on Long-Range Goals

In updating stakeholders on planning activities of the Pennsylvania Department of Public Welfare (DPW) Office of Developmental Programs (ODP), DPW Deputy Secretary Fred C. Lokuta has described a plan and schedule for development of a long range plan for ODP. In his update Deputy Secretary Lokuta reported that the ODP Extended Team met in March 2013 and drafted a set of long-range goals for the developmental disabilities service system which were later reviewed and adopted by the ODP Core Team. After comment from ODP stakeholders due on April 8, the ODP Extended Team will review and consider feedback on April 16. After finalizing the long-range goals, Year 1 objectives will be developed and circulated for public review and comment. FMI: See www.odpconsultingt.net.

ODP Rescinds ID Bulletins

On April 5 the PA DPW Office of Developmental Programs issued ODP Announcement 6000-13-03 on Rescission of Class 3 Intellectual Disability Bulletins. The rescission is effective March 30, 2013. The bulletin rescinds various statements of policy that are no longer current. The following subchapters in 55 Pa. Code Chapter 6000 (relating to statements of policy) are being rescinded: Subchapter A – Child Abuse and Criminal History Clearances Subchapter G - Early Intervention Subchapter I - Support for Independent Living Subchapter J - Therapies and Specialized Services Subchapter K - Employment Subchapter M – Agreements. The following bulletins are obsolete: (a) 6000-88-02, Mandatory Child Abuse and Criminal History Clearances; (b) 6000-89-02, Public Law 99-457, Part H Adoption of the 14 Components as Policy; (c) 6000-90-02, Support for Independent Living; (d) 6000-90-03, Supplemental Grant Agreement for the 2176 Waiver; (e) 6000-90-04, Provider Agreements Under 2176 Waiver; (f) 6000-90-05, Therapy and Other Specialized Services; and (g) 6000-90-06, Policy on Employment for Persons with Mental Retardation. ODP says that the statements of policy are being rescinded because some policies discuss general information or procedures that do not reflect current practice while others contain information that is codified in 23 Pa. C.S. Chapter 63 or 55 Pa. Code Chapter 51 or is contained in the approved Consolidated and Person/Family Directed Support Waivers. FMI: Intellectual disability bulletins are publically available. All bulletins issued in 1985 or later may be obtained on the Department of Public Welfare website at http://services.dpw.state.pa.us/olddpw/bulletinsearch.aspx. Any ODP bulletin that is made obsolete may still be viewed on the Department of Public Welfare’s website at http://www.dpw.state.pa.us.

ODP Issues Announcement on Provider Monitoring and Qualification Calls for AEs

On April 3 the PA DPW Office of Development Programs issued Announcement 026-13 on ODP Provider Monitoring and Qualification Calls for Administrative Entities. The announcement is intended for administrative entities (AEs) and ODP staff with roles in the provider monitoring and qualification processes and encourages their participation in quarterly conference calls to discuss the provider monitoring and qualification processes. The first conference call will be held on April 24, 2013 from 1:00 pm to 2:30 pm. Starting in September 2013, two (2) calls will be scheduled for each quarter. The announcement includes a chart that summarizes the meeting dates, their scheduled times and the due dates for agenda items. See www.odpconsulting.net.
**PARF NEWS**

**Dateline: April 5, 2013**

**President to Release Budget on April 10**

President Barack Obama is scheduled to release his fiscal 2014 budget request on Wednesday, April 10. The request was officially due by the first Monday in February but was delayed according to the Office of Management and Budget (OMB) because of the uncertainties surrounding fiscal cliff negotiations and sequestration. Preliminary reports are that President Obama’s budget will steer clear of major cuts to Medicaid and that curbs on Medicaid spending are now off the table. The President in his budget reportedly will formally propose cuts to Social Security and Medicare in order to demonstrate his willingness to compromise and revive prospects for a long-term deficit-reduction deal. The budget plan will offer the final compromise proposal that the President offered to Speaker John Boehner late last year. The President’s budget will also propose a new inflation formula (a “chained” Consumer Price Index [CPI]) that would have the effect of reducing cost-of-living payments for Social Security benefits but still offer fiscal protection to low-income and elderly beneficiaries, administration officials said. The President has said that he would support the cost-of-living change and certain other reductions that have been called only if Republicans agree to additional taxes on the wealthy and certain infrastructure investments. President Obama’s proposed spending reductions include about $400 billion from health programs and $200 billion from other areas. In Medicare, the savings would mostly come from payments to health care providers, including hospitals and pharmaceutical companies. U.S. House of Representatives and Senate passed their own fiscal 2014 budget resolutions before breaking for Easter. FMI: See www.whitehouse.gov.

**Department of Justice Intervenes, Says Oregon Segregates People in Sheltered Workshops**

On March 27 the United States Department of Justice (DOJ) filed a motion moved to intervene in the class action lawsuit, *Lane v. Kitzhaber*, No. 12-cv-138 (D. Or.). The United States’ complaint in intervention alleges that the State has violated Title II of the ADA and Section 504 of the Rehabilitation Act by unnecessarily segregating thousands of individuals with intellectual and developmental disabilities (I/DD) in sheltered workshops, and by placing them at risk of such segregation, when they could be served in integrated employment settings. DOJ says that individuals who are at risk of unnecessary segregation include youth with I/DD who are referred for admission to sheltered workshops after graduating from or exiting Oregon secondary schools. DOJ said that it opened an investigation in October 2011 into whether Oregon is violating Title II of the ADA by placing persons with I/DD in segregated sheltered workshops when such persons are capable of working in integrated workplaces with appropriate supports and services, i.e., supported employment. The Center for Public Representation (CPR) and Disability Rights Oregon (DRO), along with two private law firms, filed *Lane v. Kitzhaber* to challenge segregated workshop placements under Olmstead. On August 6, 2012, the court certified a class defined as “all individuals in Oregon with intellectual or developmental disabilities who are in, or who have been referred to, sheltered workshops” and “who are qualified for supported employment services.” In June 2012, the Division filed a Statement of Interest in support of class certification and issued a Letter of Findings concluding that Oregon’s sheltered workshop system violated Title II of the ADA and Olmstead. FMI: For more information and links to key documents see http://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane. See also www.ADA.gov or call the toll-free ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY).
Sequestration to Reduce Developmental Disabilities State Formula Grants

On March 21 the Administration on Intellectual and Developmental Disabilities (AIDD) at the U.S. Department of Health and Human Services (HHS) released details regarding the impact of sequestration on fiscal 2013 state allocations for grant programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Help America Vote Act of 2002. The state-by-state estimates provided in the notice are preliminary and subject to change based on the new fiscal 2013 spending levels that took effect under the continuing resolution that has been signed into law. As required by the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget (OMB) calculates that sequestration requires an annual reduction of 5.0 percent for non-exempt non-defense discretionary programs and 5.1 percent for non-exempt non-defense mandatory programs. The law requires that every program, project and activity be cut by an equal percentage. For state formula grant programs, preliminary estimates of FY 2013 allocations with the 5.0 percent cut are calculated at the program level by taking the FY 2013 Continuing Resolution (CR) level (FY 2012 enacted plus 0.612 percent) and then reducing it by the amount required by sequestration. Final allocations will depend on Congressional appropriations, from which the calculated reductions will be subtracted.

State by state impacts can only be calculated by reducing the total resources available for a program and then running the statutory requirements for allotments. The statutory factors used to determine the allocations – such as funding level, population, and minimum allotments – vary across programs and result in variations among states in the magnitude of the reductions. See [http://www.acf.hhs.gov/sites/default/files/aidd/dda_hava_formula_grant_estimates_3_21_13.pdf](http://www.acf.hhs.gov/sites/default/files/aidd/dda_hava_formula_grant_estimates_3_21_13.pdf).

U.S. District Court Applies Federal Subcontractor Rules to Healthcare Providers

On March 30 the U.S. District Court for the District of Columbia Circuit ruled in UPMC Braddock v. Harris that three (3) hospitals affiliated with the University of Pittsburgh Medical Center (UPMC) qualify as federal subcontractors because they provide medical services to an HMO that has a prime contract with the federal government. The March 30, 2013 ruling subjects the hospitals to coverage under the U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP), which mandates equal opportunity by federal contractors and subcontractors. In an earlier agency ruling, the DOL Administrative Review Board (ARB) had determined that the hospitals qualified as subcontractors. Health care providers are being advised that the court's decision has broad implications for healthcare providers across the nation and that providers should now reevaluate their status as federal subcontractors. FMI: See [http://www.duanemorris.com/alerts/landmark_ruling_expands_OFCCP_subcontractor_coverage_to_healthcare_providers_4824.html](http://www.duanemorris.com/alerts/landmark_ruling_expands_OFCCP_subcontractor_coverage_to_healthcare_providers_4824.html). For more information contact Duane Morris at [http://www.duanemorris.com/practices/employmentlaborbenefitsandimmigration](http://www.duanemorris.com/practices/employmentlaborbenefitsandimmigration).
CA to Use Capitated Model for Serving Medicare/Medicaid Dual Eligibles

On March 27 the California Department of Health Care Services (DHCS) and the US DHHS Centers for Medicare and Medicaid Services (CMS) announced a signed Duals Demonstration Memorandum of Understanding (MOU) to integrate care for dual eligible beneficiaries as a component of California’s Coordinate Care Initiative (CCI). California is the fifth state to negotiate a memorandum of understanding (MOU) with CMS to test a capitated model of providing health care and long term services and supports to individuals dually eligible for Medicare and Medicaid. Four other states—Illinois, Ohio, Massachusetts, and Washington—have begun similar experiments. Other states, such as Florida, are moving low-income seniors to managed care under separate programs. California expects to enroll about 450,000 individuals in eight counties into Medicare-Medicaid plans beginning in October 2013. Individuals receiving services through California’s regional centers or state developmental centers or intermediate care facilities for people with developmental disabilities will be excluded from participation. FMI: See http://www.calduals.org/. For a copy of the MOU see https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/CAMOU.pdf

Federal Rule on State Maintenance of Efforts under IDEA Changed

The U.S. Department of Education has made a technical change to the state maintenance of effort (MOE) rule under the Individuals with Disabilities Education Act (IDEA). The change was included in the continuing resolution (CR), the spending bill for the rest of the 2013 fiscal year that Congress passed last month. Under an MOE, states cannot cut their own education spending below whatever amount they spent the previous year and still receive their full allotment of federal dollars under IDEA, unless they get special permission from the Department. A provision in the recent spending legislation clarified that while states that are out of compliance with the law will have their IDEA funding reduced, the cut will not be permanent. Instead, the reduction would just be for the year (or years) that the state was out of compliance and did not obtain a waiver. Once the problem had been fixed, the state could go back to its regular spending levels. Any surplus funds resulting from reductions in funding due to MOE violations would be divided among states that follow the rule as a one-time bonus. FMI: See http://insider.thearc.org/tag/maintenance-of-effort-moe/ and http://insider.thearc.org/tag/individuals-with-disabilities-education-act-idea/
HHS Guarantees 100 % Funding for New Medicaid Beneficiaries

On March 29 U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius announced a final rule with a request for comments that provides that effective January 1, 2014 the federal government will pay 100 percent of the cost of certain newly eligible adult Medicaid beneficiaries. These payments will be in effect through 2016, phasing down to a permanent 90 percent matching rate by 2020. The Affordable Care Act (ACA) authorizes states to expand Medicaid to adult Americans under age 65 with income of up to 133 percent of the federal poverty level (approximately $15,000 for a single adult in 2012) and provides unprecedented federal funding for these states. The final rule describes the method states will use to claim the matching rate that is available for Medicaid expenditures of individuals with incomes up to 133 percent of poverty and who are defined as “newly eligible” and are enrolled in the new eligibility group. Under the ACA states that cover the new adult group in Medicaid will have 100 percent of the costs of newly eligible Americans paid for by the federal government in 2014, 2015, and 2016. The federal government’s contribution is then phased-down gradually to 90 percent by 2020, and remains there permanently. For states that had coverage expansions in effect prior to enactment of the Affordable Care Act, the rule also provides information about the availability of an increased FMAP for certain adults who are not newly eligible. FMI: See http://www.medicaid.gov/State-Resource-Center/Events-and-Announcements/Downloads/MMF_Jan-Dec-2012_FINAL.PDF
For the full text see http://www.ofr.gov/inspection.aspx.

Congress Moves to Replace SGR, Establish New Approach to Physician Payment

On April 3 several chairs of the House Committees on Energy, Commerce and Ways and Means (including Representative Joe Pitts (R-PA), Chairman, Energy and Commerce Committee, House Health Subcommittee) released a proposed plan for a new approach to setting physicians' Medicare payments in the future. According to the updated proposal from House Republicans, payments would be based in part on quality metrics relative to the performance of peers, the physician’s own performance from previous years, and clinical improvement activities. The plan would repeal Medicare's sustainable growth rate (SGR) formula which determines physician payments. Lawmakers updated their original plan after seeking stakeholder feedback to a proposal that the Congressional representatives issued in February. The plan calls for providing physicians with a stable, predetermined fee schedule for a period of years (the schedule is not yet specified) in order to allow providers to transition to the alternative payment models. After the transition, payments would be based on performance measures. FMI: For more information see http://www.medpagetoday.com/PublicHealthPolicy/Medicare/38249. For a copy of the plan see http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/20130403SGR.pdf. For a copy of the original plan see http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/20130207SGRReregulation.pdf.