

Demand for Medicaid Exceeds Expectations

Amid the troubled launch of HealthCare.gov, officials are noticing a strong level of interest in Medicaid. Department of Health and Human Services (HHS) data released on November 13 shows that more than a quarter of all individuals who applied for coverage nationwide qualify for Medicaid.

Some state-based exchanges report that their Medicaid-eligible populations outnumber those eligible for private insurance. In Maryland, a state-run exchange, 3,498 individuals are eligible to enroll in private insurance thus far, while another 5,923 are eligible for Medicaid. The case is similar in Rhode Island and Washington.

While millions of new enrollees were anticipated as a result of Medicaid expansion in 25 states, an October study from the Kaiser Family Foundation suggests that enrollment will rise regardless of expansion. (cont. on page 3)



inside this issue

FDA Seeks Tougher Limits on Painkillers **P.2**

In Their Words: Sebelius, Tavenner on Healthcare.gov **P.3**

NCOIL to Host Session on Life Insurer Reserving, Captives **P.3**

Visit www.ncoil.org for info on upcoming NCOIL meetings!

FED WANTS TO JOIN IAIS, IMPACT ON U.S. INSURANCE REGULATION?

The Federal Reserve Board, which has oversight over various financial aspects of certain insurers, sought formal admission to the International Association of Insurance Supervisors (IAIS) in late October, prompting concerns from the NAIC and insurers over growing focus on bank-centric regulation. At the NCOIL Annual Meeting, legislators will discuss how the Fed's increasing involvement with IAIS could influence state insurance oversight.

The NAIC and various insurance companies have raised concerns about the FSB touting policy positions that are bank-centric and thus not appropriate for the U.S. insurance market, as well as the FSB's

encroaching influence over IAIS policy. The Fed's application for a designated seat on IAIS has enhanced these concerns.

If approved, the Fed would officially join the NAIC and the Federal Insurance Office (FIO) as the U.S. members of IAIS.

The Fed is currently a member on the Financial Stability Board (FSB), whose stated purpose is to work with IAIS to promote globally consistent supervision of the insurance industry, to help maintain fair and safe insurance markets, and to contribute to global financial stability.

PENSION DE-RISKING MODEL TO BE INTRODUCED AT NASHVILLE MEETING

The NCOIL Financial Services & Investment Products Committee will consider, for the first time, a model law on pension de-risking. The draft model law's declaration of intent states that the draft would provide protections to retirees whose pensions are transferred from a pension plan protected under the Employee Retirement Income Security Act (ERISA) to a substitute benefits provider, such as an insurance company, into annuities.

Model sponsor and past NCOIL President Rep.

George Keiser, ND, stressed the importance of this issue, saying that "Increasingly private companies are seeking to decrease their pension obligations by transferring pensions to third party providers. The transferred pensions often lose certain consumer protections provided under federal law. I am introducing the pension de-risking model law to insure that NCOIL is on the front end of deliberations on this emerging issue."

The model act contains (cont. on p. 2 sidebar)

Pension...

(cont. from page 1)

multiple consumer protections, such as requiring that all de-risking transactions include some form of third-party guarantee for coverage due to disruptions or payment shortfalls as a result of provider insolvency, mirroring coverage provided by the Pensions Benefit Guaranty Corporation (PBGC) under ERISA, and the ability for retirees to opt out of the de-risking transaction in favor of a lump sum payment. Protections from certain creditor claims and bankruptcy trustees also are included in the model law,



and state regulatory approval would be required for all de-risking transactions that affect more than 25 percent of retirees in that state.

Since the proposed model law was not introduced prior to the NCOIL 30-day deadline for documents to be considered at the NCOIL Annual Meeting, a two-thirds vote of the Committee will be needed. The Committee may determine to include the model into its charges for 2014.

FDA Seeks Tougher Limits on Painkillers, NCOIL Weighs in

After years of saying that Schedule III drugs like Vicodin and Lortab do not warrant the kind of rigorous regulation that other opioids do, the U.S. Food and Drug Administration (FDA) in late October announced a controversial reversal of opinion—one that critics say goes too far. The FDA recommendation could take effect in 2014 and reflects broad interest—including upcoming NCOIL action on its proposed best practices to curb opioid abuse—in halting a dramatic rise in opioid addiction and overdose.

The new restrictions would apply to Schedule III drugs that combine hydrocodone, which in its pure form is already subject to the tighter controls, with over-the-counter painkillers like aspirin and acetaminophen. The FDA wants to move these substances into Schedule II—which is reserved for drugs that can be legally prescribed but have the highest potential for abuse and addiction, such as oxycodone and morphine.

If the FDA has its way, patients who want to fill a prescription for Vicodin after dental surgery, for

instance, must hand-deliver the prescription to the pharmacy. Doctors would not be able to call the pharmacy, as they now can. In addition, the FDA recommendation would prohibit refills—whereas currently a patient can refill a Vicodin or similar Schedule III drug five times over six months.

The FDA decision also would add new storage and record-keeping requirements for pharmacists and may prevent some types of prac-

“If the FDA has its way, patients who want to fill a prescription for Vicodin, for instance, must hand-deliver the prescription to the pharmacy....In addition, the FDA would prohibit refills...”

tioners, such as nurses, from prescribing the drugs.

Groups including the American Medical Association (AMA) and the National Community Pharmacists Association (NCPA), among others, strongly oppose the FDA effort, saying that it would jeopardize the ability of patients who legitimately need the hydrocodone-combination drugs from receiving them.

Supporters, including congresspersons from some of the most opioid-impacted states, say that the dangers associated with misusing the hydrocodone-based drugs make reclassifying them essential and that patients who need the drugs would still be able to get them.

The FDA proposal now heads to the Department of Health and Human Services (HHS). The U.S. Drug Enforcement Administration (DEA), which has repeatedly urged the FDA to support the tighter controls, will have the final say.

Legislators at the NCOIL Annual Meeting in Nashville will pursue their own effort to rein in the opioid epidemic. On November 22, during a joint Workers' Compensation and Health Insurance Committee meeting, NCOIL legislators will put finishing touches on a multi-faceted set of best practices that aim to guide states looking to enact and implement critical reforms—such as regarding drug monitoring programs and prescribing practices. The best practices proposal is available at www.ncoil.org.

Save the Dates: NCOIL Future Meeting Sites

SPRING 2014

March 7 to 9
Savannah, GA

SUMMER 2014

July 10 to 13
Boston, MA

ANNUAL 2014

November 20 to 23
San Francisco, CA

SPRING 2015

March 6 to 8
location TBA

SUMMER 2015

July 16 to 19
Indianapolis, IN

ANNUAL 2015

November 12 to 15
San Antonio, TX

SPRING 2016

Feb. 26 to 28*
Little Rock, AR*

SUMMER 2016

July 14 to 17
location TBA

In Their Own Words: Sebelius, Tavenner Testify Regarding www.HealthCare.gov

Under pressure to fix www.HealthCare.gov after its troubled launch on October 1, a parade of Administration officials have testified before Congress over the last several weeks to explain what went wrong, what's being done to make things right, and when people can expect the federal exchange to work well. Below are excerpts from two such hearings.

Kathleen Sebelius

Secretary, Department of Health & Human Services (HHS) – from November 6 written testimony before the U.S. Senate Committee on Finance

"Unfortunately, the experience

on HealthCare.gov has been frustrating for many Americans. I want to assure you that HealthCare.gov can and will be fixed, and we are working around the clock to deliver the shopping experience that you deserve."

"Another place where we have seen a lot of consumer frustration is in their ability to successfully create an account. This issue is something that we identified on October 1st, and we have made significant progress since then...We are now able to process nearly 17,000 registrants per hour, or 5 per second, with almost no errors."

"Other fixes include software

configuration changes and optimization... We also added capacity by doubling the number of servers and have replaced the virtual database with a high-capacity physical one...While significant work remains, these changes are already making the shopping process easier for consumers."

Marilyn Tavenner

Administrator, Centers for Medicare & Medicaid Services (CMS) – from October 29 written testimony before the U.S. House Committee on Ways & Means

"To build the Marketplace, CMS used private sector contractors, just as it (cont. on p. 4)

NCOIL to Host Session on Principle-Based Reserving & Captives

On November 22, in conjunction with its Annual Meeting in Nashville, NCOIL will host a panel discussion regarding principle-based reserving (PBR) and the related issue of captive insurance. As the National Association of Insurance Commissioners (NAIC) promotes PBR in state legislatures, NCOIL will ask hard questions

aimed at giving state legislators a comfort zone as they consider enactment in their states. The discussion will serve as primer on how PBR works—as well as a forum for potential legislative and regulatory concerns, particularly in the wake of NYS' announcement that it will opt out of the PBR regime. Speakers will include regulator, consumer, and insurer representatives.



BIRNY BIRNBAUM
Center for Economic Justice (CEJ)



ROBERT EASTON
Exec. Deputy Supt./Ins.
NY Dept. of Fin. Services



PAUL GRAHAM
American Council of Life Insurers (ACLI)



COMM. JULIE MIX
MCPEAK (TN), Chair, NAIC
PBR Implementation (EX) TF



DAVID PROVOST
Dep. Comm., Captives
Div., VT Dept. of Fin. Reg.



SUPT. JOE TORTI III (RI)
Chair, NAIC PBR
Implementation (EX) TF

Medicaid...

(cont. from page 1 sidebar)

Publicity surrounding the Affordable Care Act (ACA) may be boosting Medicaid enrollment as lower-income populations hear that coverage is available. The Congressional Budget Office (CBO) projects seven million newly eligible for Medicaid by the end of 2014.

It remains to be seen how quickly eligible consumers move from determination to enrollment. The *New York Times* reported on November 11 that Healthcare.gov identifies Medicaid-eligible persons in the 36 states where the



federal government is running an exchange—but as a result of technical problems, the federal web site has yet to transfer the bulk of those applications to the state agencies that complete enrollment.

NCOIL will host a special session on Medicaid on November 23, during the NCOIL Annual Meeting in Nashville, that will feature perspectives from New York State, the National Association of Medicaid Directors, the Tennessee Hospital Association, and Amerigroup.



NCOILetter

Susan F. Nolan, Publisher/Editor
Candace Thorson, Managing Editor
Eric Ewing, Associate Editor
Jennifer Webb, Associate Editor

Simone Smith, Operations Coord.
Laurie Dingmon, Fin. Coordinator

Opinions expressed in the
NCOILetter do not necessarily
reflect NCOIL views or opinions.
The *NCOILetter* is published by
Nolan Associates LLC.

IN THEIR OWN...

does to administer aspects of Medicare. CMS has a track record of successfully overseeing the many contractors our programs depend on to function. Unfortunately, a subset of those contracts for HealthCare.gov have not met expectations."

"Our team has also brought in additional experts and specialists drawn from within government, our contractors, and industry, including veterans of top Silicon Valley companies....They are part of a cross-functional team that is working aggressively to diagnose the parts of HealthCare.gov that are experiencing problems, learn from successful states, prioritize issues, and fix them."

"Just a few weeks into a six-month open enroll-

(cont. from page 3)

ment period, while some consumers have had to wait too long to access the Marketplace via HealthCare.gov, the Marketplace is working for others..."

