# Health Law and Policy Update:
# October 15, 2012

**Please join us on Friday, October 19th, 2012 for the Colorado 2019 Summit , hosted by The Economic Opportunity Poverty Reduction Task Force of the Colorado General Assembly. Register here.**

**This week's updates**

- Study finds that frequent users of emergency rooms not "abusers"
- New England Journal of Medicine study brings up policy questions on pay for performance
- Medicaid per capita cap would shift costs to Colorado

What's New

**Study finds that frequent users of emergency rooms not "abusers"**

Health reform initiatives taking shape nationally and in Colorado continue to target frequent use of emergency rooms for cost reduction. It is often thought that frequent users of emergency rooms, known as "frequent flyers," take advantage of the costly health care system by seeking primary care through ERs. Colorado Public Radio's Eric Whitney reported last week, however, that research by the American College of Emergency Physicians (ACEP) shows that patient dependency on ERs has been overstated.

ACEP conducted seven studies in all that examined ER use in Wisconsin, Virginia and California. The studies indicate that most frequent ER users, defined as people who visit the emergency department two or more times within six months, are typically lower income and have chronic conditions. Moreover, the ACEP press release stated that frequent ER users often suffer from pervasive mental illnesses or substance abuse disorders and end up in the ER because no other resources are available to them. Dr. Andy Sama, author of the study, stated that physician access is also difficult for Medicare and Medicaid patients and that "the real issue is how quickly we can create better infrastructure."

The study points out that ER costs account for approximately 2 percent of health

care spending in the United States. This proportion, according to ACEP, indicates a good value for the significant chronic care needs of most ER patients.

**New England Journal of Medicine study brings up policy questions on pay for performance**

According to a Kaiser Health News report, one out of twenty hospitalized patients acquire an infection. Many people entering hospitals end up sicker, emphasizing the need for hospital reform. Thanks to House Bill 06-1045, Colorado requires data collection on certain hospital-acquired infection rates, including the areas of cardiac surgical site infections, orthopedic surgical site infections, and central line-related bloodstream infections. The State of Colorado Status Report on the Health Facility-Acquired Infections Disclosure Initiative allows consumers to look up infection rates by specific hospitals, making it easier for Coloradans to stay informed. On a national policy level, pay for performance, where reimbursement rates are linked to quality outcomes, is one incentive strategy adopted by CMS to target high infection rates. In 2008, CMS initiated a new policy that stopped making payments for treatment of certain infections patients acquired after hospital admittance.

A New England Journal of Medicine study, entitled Effect of Nonpayment for Preventable Infection in U.S. Hospitals, examined two infections (central catheter-associated bloodstream infections and catheter-associated urinary tract infections) targeted by the 2008 policy and one untargeted control infection (ventilator-associated pneumonia) to see if infection rates fell after the policy change. They found no evidence that the policy reduced infection rates. The authors give possible explanations for the policy's ineffectiveness that are worth noting.

- The NEJM explains that changes in how infections are classified in billing codes (as either present on admission or not) may account for the lack of policy effectiveness. They believe some hospitals may have responded to the CMS policy by simply changing billing practices.
- Some of the targeted infections were already the focus of other improvement initiatives, which accounts for why the infection rates had been declining prior to the policy implementation.

- The financial incentive of the policy is very limited. The study shows payment reductions could have been the equivalent of 0.6% of hospitals Medicare revenue.

The study urges policy makers to consider the need for greater incentives as they create additional pay for performance policies. Current research suggests pay for performance has not been cost-effective or efficient. There is also concern that the sickest patients will be harmed through pay for performance as doctors may be unwilling to treat them. To mitigate these concerns and findings, "greater attention should be given to the design of such nonpayment policies to ensure that they improve outcomes." CCLP hopes the Colorado community will begin considering some of the NEJM ideas as we examine new health reform strategies.

**Medicaid per capita cap would shift costs to Colorado**

Several major budget and deficit reduction decisions await the lame duck session of Congress after the November elections, and are playing a major part of current political debates. Plans for addressing deficit reduction are likely to include various types of proposals to cut Medicaid, such as per capita caps. Last week the Center on Budget and Policy Priorities (CBPP) released a paper detailing the numerous reasons a per capita cap on Medicaid would shift costs to the states and place Medicaid enrollees at risk. A per capita cap in Medicaid would limit the federal share of Medicaid expenses to a fixed amount per enrollee rather than a share of the state's overall cost of the program. Such a plan could shift considerable costs to the states. First, in order for a per capita cap to actually result in savings, the per capita rate has to be set lower than the current rate. Second, the current federal matching rate, which is 50 percent for Colorado, allows the amount of federal support to the state to vary, either up or down, based on the necessities of the Medicaid program in a given year. A per capita cap would likely result in reductions in benefits as states attempt to manage their financial obligations, and would make states less able to adjust for changing populations and population needs as, for example, the average age of Medicaid enrollees increases. CBPP's analysis provides a detailed account of the numerous problems that could arise under a per capita cap scenario.

For additional information and analysis of current federal budget issues, please refer

to two recently released publications from the Colorado Center on Law and Policy, on the expiration of the 2001 and 2003 tax cuts, and scheduled across the board spending cuts (sequestration).