Health Law and Policy Update:
December 14, 2012

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This week's updates

- **Big Medicaid victory for low income adults**
- **Additional federal guidance on exchanges, market reforms and consumer assistance**

What's New

Big Medicaid victory for low income adults

On Monday, HHS Secretary Kathleen Sebelius sent a letter to Governors as well as long awaited guidance in the form of Frequently Asked Questions regarding implementation of the Affordable Care Act's (ACA) required Medicaid expansion. The ACA requires states to expand Medicaid eligibility to persons with incomes under 138 percent of the Federal Poverty Level (FPL). However, while the U.S. Supreme Court upheld the constitutionality of the ACA, it also said that states may not be penalized by the federal government for failing to follow the law's requirement to expand Medicaid eligibility. That decision left open to interpretation the question of how much flexibility states had with respect to the expansion including, for example, whether they might redefine the population covered.

Probably the most significant directive from HHS in the FAQ released this week is that states that choose to expand Medicaid coverage must cover everyone up to 138% FPL, which is the coverage group outlined in the ACA This is very good news for advocates who were concerned that Medicaid would continue to be a patchwork covering people at various income levels across the country, leaving many low income working families without access to overage.

The FAQ says also that:

- States do not face a deadline in telling the federal government whether they plan to extend Medicaid coverage to those under 138 percent FPL.
- States have flexibility to stop and start the expansion and may terminate the expansion upon notice and approval by HHS.

- States are only eligible for federal matching funds according to the schedule laid out in the ACA, which provides a 100% federal match in Federal Fiscal Years 2014, 2015 and 2016. That match rate moves down incrementally between 2017 and 2020, staying at a 90% match in perpetuity beyond 2020. According to the FAQ therefore, in order to take full advantage of the 100% match states must adopt the expansion in 2014.
- Some states have already committed to the expansion, some have said they will not expand and many, including Colorado, have been waiting for guidance from the federal government so they may fully understand their options. Nevada's Brian Sandoval this week became the first Republican Governor to adopt the expansion describing it as the right thing to do.

Reportedly other Republican leaders in Nevada have endorsed his decision. Colorado Governor John Hickenlooper has not yet made a decision. Secretary Sebelius wrote in her letter to the Governors: "We continue to encourage all states to fully expand their Medicaid programs and take advantage of the generous federal matching funds to cover more of their residents."

For more on the expansion:
50 reasons why the Medicaid expansion is good for states

For an updated map of states: Map of Medicaid Expansion by The Adivosry Board Company

Statement of National Association of Public Hospitals and Health Systems: "The agency's guidance follows the letter and spirit of the law and takes an important step toward significantly reducing the ranks of the uninsured.

Denver Post's coverage this week

Additional federal guidance on exchanges, market reforms and consumer assistance
In addition to clarifying that states may not partially expand Medicaid, the FAQ provides guidance on a number of issues regarding exchanges and market reforms. This guidance clarifies a number of key issues that will help to guide the development of Colorado's health insurance exchange and how it will ultimately interact with Medicaid. What follows are some highlights from the guidance:

Essential Health Benefits. The FAQ clarifies a number of issues concerning the development of an Essential Health Benefits (EHB) package in states. We have previously written a great deal about EHB development efforts in Colorado. Starting in 2014, the EHB package will serve as the minimum

set of benefits that insurance companies must cover for all health plans, both in out of the health insurance exchange. The federal government issued guidance in December 2011, that proposes a process for states to establish an EHB package. The HHS bulletin suggests that instead of a single standard for defining the EHB, the department will allow states to benchmark to a "reference plan" based on a currently available health plan in the state, modified as needed to meet the EHB requirements found in the Patient Protection and Affordable Care Act (PPACA). Colorado selected as its reference plan the largest small group product in the state, which is the Kaiser Ded/CO HMO1200D plan.

The EHB package must be supplemented with benefits to ensure that it provides coverage of ten mandatory categories of services. The FAQ clarifies that if a state's reference plan provides any services at all within the ten mandatory categories of services, there is no requirement to supplement that category with additional benefits. We are concerned that this guidance could result in insufficient coverage of certain services, particularly behavioral health and rehabilitative/habilitative services, which often place treatment caps and other limitations on services.

Navigator Program. The FAQ discusses the Federal Government's plan to operate Navigator programs in Federally-Facilitated Exchanges (FFEs). Colorado, which is establishing its own state-based exchange, will not participate in an FFE. The guidance on Navigators does clarify that states cannot require Navigators to hold an insurance broker/agent license, which a number of states (not Colorado) have been pursuing. However, states may require certification or licensure that is specifically tailored to the Navigator program. In August, the Colorado Health Benefit Exchange (COHBE) approved a set of high-level guiding principles concerning the Navigator program.

The FAQ also clarifies a number of issues concerning Federally Facilitated Exchanges that will not likely pertain to Colorado. However, the FAQ document does suggest that FFEs will be funded through fees assessed on insurance carriers that participate in the exchange equal to 3.5 percent of premiums sold in the exchange. The Colorado exchange must be financially self-sustaining starting in 2015. The COHBE Board of Directors began discussions of a sustainability model at its December 10 board meeting. We will examine the financial sustainability of the exchange in future updates.