Health Law and Policy Update:
July 20, 2012

We do not feel like we can publish today without acknowledging the horrific events that unfolded last night in Aurora. Our thoughts are with the community of Aurora and all of those affected. We understand thatBonfils Blood Center is suggesting that people consider donating in the coming days to help replenish their supply.

This week's updates

- Colorado should consider all the benefits of Medicaid expansion
- Dual Eligible Demonstration Proposals Raise Serious Questions
- New tool calculates rebates that insurers must pay their customers

What's New

Colorado should consider all the benefits of Medicaid expansion

The Medicaid expansion in the Patient Protection and Affordable Care Act (ACA) provides Colorado with an unprecedented opportunity to help cover low-income uninsured Coloradans. Given the financing provided by the federal government, expanding Medicaid is a great deal for Colorado and an important opportunity for low-income, uninsured Coloradans. The recent Supreme Court decision has created some questions about how and whether states will proceed with implementation of the Medicaid expansion, but we do know a few things for certain.

First, the ACA's requirement that states expand the Medicaid program to cover all eligible persons under 133 percent of the federal poverty level (about $14,850) for individuals **is constitutional**. The Court ruled that only the enforcement mechanism--withholding all of a state's current federal Medicaid funding for failure to expand--is improper.

Second, the federal government will provide states with 100 percent of the funding for the expansion through Federal Fiscal Year 2016, phasing down to 90 percent in 2020 and beyond. With this kind of financing available to states, Colorado must carefully consider all of thebenefits of proceeding with expansion. In addition to the fiscal incentive of enhanced federal financing, the expansion will inject millions of dollars into the Colorado economy. The Robert Wood Johnson Foundation reported that the Medicaid Expansion could save Colorado at least $361 million by reducing the costs of providing care to the uninsured. Further, we must carefully consider the fact

that funding provided to hospitals for providing care to the uninsured and indigent populations is scheduled to decrease because more people are expected to have health insurance after 2014. As a result of this decrease in funding, failure to expand Medicaid could leave Colorado hospitals in a adverse position. In fact, this week, citing the burden of uncompensated care on Colorado hospitals, the Colorado Hospital Association was reported as supporting the Medicaid expansion. If more eligible individuals in Colorado are covered by Medicaid, then Colorado hospitals can reduce the costs associated with providing care to the uninsured that are then shifted to Colorado taxpayers and the privately insured.

A few states have begun releasing analyses about the benefits of expansion. A new fact sheet from Virginia shows that without the Medicaid Expansion, the state could lose billions of dollars in federal funding. Analysis from Arkansas explains that the Medicaid expansion could save that state $372 million.

In addition to the economic benefits to the state, the Medicaid expansion provides a critical point of access to affordable coverage for thousands of uninsured Coloradans. This is a benefit that holds much more than a dollar value. In Colorado, the Medicaid expansion to individuals under the age of 65 with incomes below 133 percent of poverty will primarily benefit individuals without dependent children and low-income parents. Currently, Colorado has a small program for adults without dependent children that is limited to 10,000 individuals who make about $90 or less per month. The Colorado Health Institute estimates that there are about 197,000 adults without dependent children in Colorado with incomes below 133 percent of poverty.

Colorado parents with incomes between 100 percent and 133 percent of poverty ($19,000 to $25,000) are the other beneficiaries of the Medicaid expansion. Currently, under Colorado law, parents are eligible up to 100 percent of poverty. The expansion will help align parent eligibility for Medicaid with their children's eligibility for Medicaid. According to the Colorado Health Institute, 21,300 parents in Colorado will be newly eligible for Medicaid under the expansion from 100 percent to 133 percent of poverty.

Colorado's path toward health reform historically has included Medicaid expansion as a key component. Examples include the Colorado Blue Ribbon Commission on Health Care Reform and the 2009 Colorado Health Care Affordability Act. In 2008, the bipartisan Blue Ribbon Commission issued a report recommending that Colorado expand its Medicaid program to persons under 205 percent of poverty. The Commission saw this as an important step towards covering the uninsured and reducing the effects of cost shifting. In 2009, Colorado took a significant step toward

implementing some of the 208 Commission's recommendations when the General Assembly passed the Colorado Health Care Affordability Act (House Bill 09-1293). The Act created a hospital provider fee, the revenue from which is used to compensate hospitals for care to the indigent population and to expand Medicaid coverage to low-income and vulnerable populations.

In the coming weeks and months, Colorado should carefully study and consider all the benefits of this unprecedented opportunity for Medicaid expansion. The benefits to the health care system, the Colorado economy, and uninsured Coloradans greatly outweigh the costs.

Advancing the Debate

Dual Eligible Demonstration proposals raise serious questions

In May, Colorado submitted a proposal to the federal government to undertake a demonstration project designed to improve care coordination for dual eligible persons. Dual eligibles are seniors and people with disabilities who are enrolled in both Medicaid and Medicare. They often have significant health and/or long term care needs. There are about 70,000 dual eligibles in Colorado, and the state proposes to use this demonstration project to move most of them into the Accountable Care Collaborative (ACC) program. Payment system reforms will likely play a central role in future health reform measures both at the state and federal level. Demonstration programs, such as the ACC program and Dual Eligible Demonstration, may serve as the foundation for these future reforms.

The Affordable Care Act (ACA) established the Federal Coordinated Health Care Office under the Department of Health and Human Services. That Office is charged with more effectively integrating benefits for dual eligible individuals and designing initiatives that improve, align and coordinate their care. Colorado was one of fifteen states selected last year to receive a $1 million planning grant to design a dual eligible demonstration proposal. Twenty-six states have now submitted proposals for financial alignment between the programs. States have proposed to either adopt a capitated or a managed fee for service alignment model. Colorado proposed a managed fee for service approach using the Accountable Care Collaborative program as the vehicle for care coordination.

Demonstration projects have long been used by the federal government to test and evaluate new models for delivering and paying for health care in Medicaid and Medicare. Historically, demonstrations have enrolled limited, targeted groups of clients and program results have been rigorously evaluated. Those projects that demonstrate success may move beyond a demonstration phase and are sometimes adopted through Congressional action amending the Medicaid or Medicare programs.

The duals initiative has come under significant criticism recently because of the size of the demonstration, the potential loss of freedom of choice for program beneficiaries and the emphasis many states' proposals are placing on cost containment. The Director of the Federal Coordinated Health Care Office, Melanie Bella, announced early on that as many as two million duals eligibles might be enrolled in the demonstration, and state submissions propose to enroll as many as three million. Enrollment of that many beneficiaries would make this the largest Medicare demonstration ever authorized.

On July 10, Senator Jay Rockefeller, Chairman of the Senate Finance Subcommittee on Healthcare, sent a letter to HHS Secretary Kathleen Sebelius in which he said that while he fully supports the goals of the Federal Coordinated Health Care Office, the strong emphasis on savings in the Financial Alignment Initiative seems to be in direct conflict with the statutory goals for the program, none of which mentions savings. He also reminded HHS that demonstration projects are designed to test and weigh the benefits of changes before they are implemented on a large scale.

The "most important goal of the Coordinated Care Office," he said, "is to improve the quality of care for each of the different sub-populations of dual eligibles-whether or not such approaches save money." The Senator raised concerns about the overall scale of the project - some states (including Colorado) are proposing to enroll virtually 100% of their dual eligibles into the demonstration. He also emphasized that duals must retain the same rights of access and choice of Medicare programs as other Medicare enrollees. Many states, including Colorado, are proposing a passive enrollment model whereby people are assigned to the demonstration and must opt out of the program. Placing the burden of opting out of coverage on frail and elderly beneficiaries, said Senator Rockefeller, is not an adequate substitute for affirmative consent. Alternatives, such as effective outreach and education campaigns that encourage people to choose to participate in the program should be fully considered.

MedPAc- the Medicare Payment Advisory Commission - weighed in on the demonstration proposals in a letter on July 11th. Issues raised by MedPAc included the scope of the demonstration, the availability of meaningful opt-out provisions in a passive enrollment model and "financing and the approach to achieving savings."

On the heels of these letters, Modern Healthcare reported this week that Melanie Bella plans to keep enrollment in the pilot at less than two-thirds of what states have proposed in their applications - fewer than two million people. Modern Healthcare said that Ms. Bella will accomplish this reduction by denying pilot applications that include elements not allowed when CMS proposed the program. Such disallowed elements are state-proposed "lock-out" periods, during which enrollees could not opt out of the pilot and return to the standard Medicare-Medicaid program for dual

eligibles. Ms. Bella said that the agency will begin announcing which state pilots it has approved "soon," and on a rolling basis. She remains squarely behind the idea of passive enrollment.

CCLP has participated actively in the public process designed to solicit comments on Colorado's Duals Demonstration proposal. We believe this program offers the state an extraordinary opportunity to align and improve the quality of care for dual eligibles. In order to accomplish program goals, however, we believe Colorado must design a meaningful stakeholder process that involves dual eligbles in the design of the program. We are concerned about passive enrollment and agree with Senator Rockefeller that it imposes too great a burden to ask frail and elderly persons to opt out. We too are concerned about program financing, however, the details of Colorado's proposal are not specific enough at this point for meaningful comment. Finally, CCLP believes the state must set and realize readiness targets before we enroll anyone in the program. Today this program is about care coordination, and we are grateful that Colorado is not one of the states proposing a capitated managed care program. However, payment reform is on the horizon in Colorado, and the design of this demonstration project may very well serve as the foundation for significant payment reform in Medicaid and Medicare down the road.

What you can do

The Department of Health Care Policy and Financing is in the process of creating a subcommittee to work on the duals project. We strongly encourage those interested to nominate qualified people to serve on this Dual Eligibles Advisory Sub-Committee. It's critical that duals and their advocates help to shape the direction of Colorado's demonstration project. The nomination form and materials are available here. Applications are due by July 27th.

New tool calculates rebates that insurers must pay their customers

A provision of the Patient Protection and Affordable Care Act (ACA) requires health insurance companies to meet certain targets, known as medical loss ratios (MLRs), or send rebates to their customers. The MLR measures the percent of premium dollars spent on delivering patient care versus the percent spent on administration, agent commissions, profit and other costs. The requirement is designed to help customers get more value for their premium dollar. Beginning in 2010, small group and individual plans were required to spend at least 80 percent of premium dollars on medical care and large group plans were required to spend at least 85 percent. The federal government recently announced that over 200,000 Coloradans will receive over $27 million in rebates (approximately $227 per family) from insurance companies that did not meet the MLR requirement in 2011. Insurance companies must pay these rebates by August 1, 2012.

This week, HealthCare.gov launched a new tool that allows individuals to look up the average rebate amount that each health insurer in the state must pay. For example, Colorado Choice Health Plans must pay back $403 on average to each of its subscribers in small group plans, UnitedHealthcare must pay $483 to each of its subscribers in large group plans, and Humana must pay $319 to each of its subscribers in large group plans. Individuals and employees may see these rebates in the form of either a rebate check in the mail or a direct reduction in future premiums. Readers can use the tool linked above to look up average rebates and MLR compliance by their insurance company.