

NEWLY REVISED



20 Common Nursing Home Problems—and How to Resolve Them

By Eric Carlson

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Health Care Reform Implementation Update

The passage of the Affordable Care Act (ACA) directed sweeping reforms to the nation's health care system. However, the enactment of the legislation in March 2010 only represented the beginning of a lengthy and challenging process to improve the health care system. While the federal government has already taken steps to implement provisions of the ACA, the responsibilities will increasingly move towards state governments in the years ahead. As such, there is still much important work to do for both national and state advocates. Through a series of Health Alerts and Special Reports available on our Web Site, NSCLC aims to provide important updates and guidance to legal advocates in order to more effectively monitor implementation. This alert highlights two developing issues.

Temporary High-Risk Insurance Pools

HHS announced that it would reduce premiums and eligibility requirements for participants in the Pre-Existing Condition Insurance Plan (high-risk pools). These changes will take effect on July 1, and will help save participants up to 40% on their premiums in states where the federal government operates the pools.

A major goal of the ACA is to prevent insurance companies from discriminating against consumers. Starting in 2014, the ACA bans insurance plans from excluding coverage based on a pre-existing condition. Prior to this date, the ACA helps individuals who have been unable to secure insurance due to this discrimination through establishing temporary high-risk pools that are already in place and operational.

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The ACA outlined guidelines for these pools such that either individual states or the federal government could operate the program. For states that are operating the plan, HHS informed them of the opportunity to modify current premiums. The ACA regulates the program's minimum benefits and cost-sharing, and individuals are only eligible if they have a pre-existing condition and have not had creditable health insurance for the previous six months. These pools will expire in January 1, 2014, at which point participants will transition to coverage in the state health exchanges.

While roughly 18,000 beneficiaries currently participate in the pools, HHS believes that more individuals will join the program due to lowering costs and expanding outreach. It is important to note that these high-risk pools are only temporary measures designed to serve as a "bridge" until private insurance market regulations become fully implemented in 2014. Thus, while these high-risk pools may not be a perfect solution, they have the potential to serve a crucial role to help individuals who need insurance now and have been unable to gain coverage for several months.

Medicaid Maintenance of Effort Requirement

U.S. House and Senate Republicans have introduced bills (both named the "State Flexibility Act") to eliminate the ACA's Medicaid Maintenance of Effort (MOE) requirement. The bill has been introduced by Congressman Phil Gingrey (R-Ga.) in the House (H.R. 1683), and by Senator Orrin Hatch (R-Utah) in the Senate (S. 868).

The ACA's MOE prohibits a state from making more restrictive its Medicaid eligibility standards, methodologies, or procedures than they were as of March 23, 2010, the date of the ACA's enactment, until such time as the U.S. Department of Health and Human Services (HHS) verifies that the state's insurance exchange is fully operational (which states are required to have operational by 2014). A primary goal of the ACA is to expand coverage to the uninsured, most of whom will be able to shop for an insurance policy on state-operated health insurance exchanges beginning in 2014. Many uninsured individuals

will become eligible for Medicaid as of 2014, when the program is expanded to low-income people under the age of 65 who make less than 133% of the federal poverty level (FPL) in 2014. Until the Medicaid expansion occurs and states develop their exchanges, the MOE prohibits states from reducing their Medicaid enrollment.

However, as with other significant aspects of the ACA, congressional Republicans are seeking to repeal the MOE provision so as to permit states to restrict eligibility standards for Medicaid. While this legislation is expected to pass in the Republican-controlled House of Representatives, it would face significant hurdles in the Democratic-controlled Senate. Repealing the MOE provision would almost certainly negatively impact the low-income elderly and those with disabilities. The Congressional Budget Office (CBO) projected that this would result in a decrease of Medicaid enrollment of roughly 133,000 in 2013. As such, the fight to protect this MOE provision will remain central during the next few months.

Questions about these issues? Contact [Gene Coffey](#).

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