

State Coverage Expansion a Casualty of Recession

BY DENISE NAPOLI

WASHINGTON — Massive budget shortfalls in 40 states coupled with greater demand for Medicaid coverage made it tough for states to expand health care coverage for their residents last year, according to the annual survey of state health care and insurance legislation conducted by the Blue Cross Blue Shield Association.

However, the American Recovery and Reinvestment Act—better known as the stimulus packages—does promise to make things easier in 2009, according to Susan Laudicina, director of state policy and research at the Blue Cross Blue Shield Association. “The money in the stimulus act is certainly going to help states avoid deep cuts to the Medicaid program. Is it adequate? Probably more money is needed.”

Nevertheless, according to Ms. Laudicina, states see better times ahead. “What’s happening right now is governors are actually redoing their budgets. States are immediately factoring [the stimulus money] in. In many cases, it is closing the budget gap, and in some cases, they are avoiding cuts.”

According to the annual State of the States report, the economic crisis meant that most expansion efforts fell short in 2008, even in high-profile states with

governor backing, like California, New Mexico, and Pennsylvania.

“There has not been a consensus [to mandate universal coverage] since Massachusetts, now going on 3 years ago,” said Ms. Laudicina. Still, some states are now developing universal care strategies that they will try to pass into law in 2009, she said, including Connecticut, Hawaii, Minnesota, Oregon, and Washington. “Now that Obama is pledging to reform some things this year, and put \$634 billion in his budget for use in future reforms,

does that mean the states are going to hold off [on these plans]?” said Ms. Laudicina in an interview. “Frankly, since we don’t know when a national healthcare reform bill will be enacted, we don’t know the tools that will be used...I expect that states such as Oregon...and Minnesota and Connecticut are interested in crating commissions are going to go ahead. They’re going to plan all they can. They’re going to assume that they’re going to be big players in whatever national bill comes down the pike.”

The economic crisis meant that most Medicaid expansion efforts fell short in 2008, even in high-profile states with governor backing, like California, New Mexico, and Pennsylvania.

The State of the States report also showed that expansion of coverage for children was not spared from states’ fiscal problems last year, according to the report. Nonetheless, some states did modestly expand their Children’s Health Insurance Programs (CHIP), including Colorado, Florida, Kansas, and Minnesota.

In New Jersey, the Health Care Reform Act (SB 1537) mandated coverage for all children under age 18 years, though without any minimum benefit requirements. “Parents can comply with the mandate program by purchasing a licensed private product or by enrolling in Medicaid or CHIP,” according to the report.

However, the funding source for such an expansion has yet to be determined, as does the enforcement mechanism.

The survey also reported on health care transparency efforts. In the 20 states that introduced such bills in 2008, nine laws were enacted, Ms. Laudicina said. Some of these, like HB 1393 in Colorado, require hospitals to display

charges for common inpatient procedures on a publicly accessible Web site. Others, like Louisiana’s Right to Know Act (SB 287), require that the state’s department of health and hospitals display not only cost data, but also data on quality measures among medical facilities, individual physicians, and health plans.

Regarding health information technology measures, Ms. Laudicina said that over the past 3 years, 33 states have enacted legislation promoting the adoption of electronic medical records, and bills are pending in 12 more. And the financial incentives for electronic medical records adoption in the stimulus package should mean that even more physicians and facilities implement them voluntarily.

However, concerns about compliance with yet-to-be-set federal health IT standards will likely cause some states to put IT legislation on the back burner.

Other proposals considered by states in 2008 included mandated coverage of adult dependent children until age 25, 26, or even 30 years, said Alissa Fox, senior vice president of the Office of Policy and Representation at the Blue Cross Blue Shield Association. This possibility will remain on states’ agendas in 2009.

The report is based on a survey of the 39 independent Blue Cross and Blue Shield companies across the nation. ■

Supreme Court Rules That FDA Approval Does Not Bar Suits

BY ALICIA AULT

In an eagerly anticipated opinion, the U.S. Supreme Court has upheld a lower court ruling that Food and Drug Administration approval does not give pharmaceutical companies immunity from product liability lawsuits.

The justices voted 6-3 to affirm the judgment of the Vermont Supreme Court that federal law did not preempt Diana Levine’s claim of inadequate warning on the label of promethazine (Phenergan). Ms. Levine received the drug by intravenous push and subsequently lost her arm. She was awarded \$6.7 million by a Vermont jury.

A majority of justices rejected the argument by Wyeth Pharmaceuticals Inc., maker of Phenergan, that it was impossible for the company to simultaneously comply with both federal and state laws and regulations.

Wyeth could have unilaterally strengthened the label at any time without input or clearance from the FDA, wrote the justices, concurring

with the lower court opinion. Wyeth’s argument that following the duty to warn under state law would have interfered with the FDA’s power to preempt state law was “meritless,” according to the majority opinion.

Justice Clarence Thomas voted with the majority, agreeing that Wyeth could have changed its label and complied with both state and federal laws. But he said he disagreed with the majority’s more far-reaching conclusions about preemption, specifically a tendency to override state laws when they were perceived as an impediment to enforcing federal statutes.

Justice Samuel Alito and Justice Antonin Scalia, joined by Chief Justice John Roberts, dissented, writing that “this case illustrates that tragic facts make bad law. The court holds that a state tort jury, rather than the [FDA], is ultimately responsible for regulating warning labels for prescription drugs.” That premise is not consistent with previous rulings, they wrote.

Indeed, just last year the

U.S. Supreme Court ruled in *Riegel v. Medtronic Inc.* that FDA approval conferred special protection against product liability suits involving medical devices.

Pharmaceutical Research and Manufacturers of America was still reviewing the opinions in *Wyeth v. Levine*. “We continue to believe that the expert scientists and medical professionals at the FDA are in the best position to evaluate the voluminous information about a medicine’s benefits and risks and to determine which safety information to include in the drug label,” PhRMA Senior Vice President Ken Johnson said in a statement.

Consumer advocacy group Public Citizen called the ruling a broad rebuff to the industry’s attempt to duck tort damages. Brian Wolfman, director of Public Citizen Litigation Group, said the organization was “extremely gratified” that the court “upheld the traditional right of patients harmed by defective and mislabeled drugs to sue drug companies.” ■

Obama Proposes Bundled Hospital-Physician Pay

BY ALICIA AULT

If President Obama sways Congress with his plans for health reform, hospitals and health providers would receive a bundled payment for care provided in the hospital and during the first 30 days after discharge.

The proposal was submitted as part of the president’s budget “blueprint” in late February. A full budget plan is expected to be released some time this month. It’s a long way from there to the proposal’s becoming law; in some cases, proposals will require congressional action, while in others, they will be accomplished through federal rule making.

Even so, this is not the first time that bundling has been mentioned as a cost-saving mechanism for federal health programs.

The Medicare Payment Assessment Commission (MedPAC) backed bundled payment in its June 2008 report to Congress, and the Centers for Medicare and Medicaid Services (CMS) began a 3-year, five-hospital demonstration project of the concept in January.

Along with bundling pay-

ments, the Obama budget also proposed paying less to hospitals with high readmission rates during the 30-day postacute period. The combination of bundling pay and reducing payments should save “roughly \$26 billion of wasted money over 10 years,” according to the budget blueprint. That money would be contributed to the \$600 billion reserve fund dedicated to financing health reform.

There were few other details offered by the administration. But in December, the Congressional Budget Office analyzed a proposal to bundle payments and estimated that it would create \$950 million in savings from 2010 to 2014.

In a note to clients after the blueprint release, experts at Washington Analysis Corp. who follow health policy said, “We expect Congress to consider this idea, especially since this concept has been put forward for several years by CMS, MedPAC and others.”

Washington Analysis said that it also expected to see a proposal to penalize hospitals for high readmission rates in the 2010 hospital payment rule. ■