



National Association  
OF  
State Head Injury Administrators

# Capitol News!

April 1, 2010 -- Vol. 7, Issue 3

Dear NASHIA Member,

Welcome to Vol. 7, Issue 3, of **Capitol News**, which you receive as a NASHIA member. **Capitol News** provides an update of Congressional and Administration activities, legislation and policies that affect individuals with traumatic brain injury and their families. In addition to **Capitol News**, the legislative grid has been updated and is available on the NASHIA webpage, [www.nashia.org](http://www.nashia.org), along with other public policy materials. The grid is a way for NASHIA to track legislation that is monitored and supported. Please feel free to share with others in your State.

NASHIA participated in a very successful Brain Injury Awareness Day sponsored by the Congressional Brain Injury Task Force. A summary of the day's event is included in this publication, and is also posted on NASHIA's Facebook Fans page.



## This Week in Congress

The House and the Senate are on spring recess this week and will reconvene April 12<sup>th</sup>. Most will be in their home districts, which means it's a good time to connect and discuss TBI issues and funding.

## Legislation Signed

### Health Care Reform

On Tuesday, March 23<sup>rd</sup>, President Obama signed H.R. 3590, the Patient Protection and Affordable Health Care Act (P.L. 111-148), which reforms the nation's health care system. One week later, March 30<sup>th</sup>, he signed the Reconciliation Act of 2010 known as the "fix it bill". The House passed the Senate's version of H.R. 3590 on Sunday, March 21<sup>st</sup>, along with the Reconciliation Act that made changes to H.R. 3590. The Senate took up the reconciliation bill after the health care reform bill became law, and passed the bill with two exceptions, which required the bill to return to the House. Then, on Thursday night, March 25<sup>th</sup>, the House of Representatives passed the bill again with the Senate amendments.

Although the reconciliation bill primarily focused on fiscal items relating to health care, it also changed student loans by prohibiting private lenders from originating student loans. The two minor provisions that were stricken by the Senate pertained to the student loan provisions (Pell Grants). By the Senate striking the provisions, it required the bill to return to the House.

### Overview

Overall, the new law expands health care coverage for 32 million Americans currently without coverage. The health care reform requires Americans to have health insurance by 2014, and those who do not, will be fined. Individuals earning \$14,404 or less and families (of four) earning \$29,326 or less would be exempt from paying the fine.

The reform legislation prohibits insurance companies from discriminating because of pre-existing conditions; from dropping coverage due to a person's illness; extends to the age of 26 that children may remain on their parent's insurance; prohibits lifetime and annual caps; reduces disability health disparities; and prohibits discrimination based on health status, as well as those that focus on wellness and prevention. Seniors on Medicare will pay less for their prescription drugs because the legislation closes the "donut hole" in existing coverage. The Medicare donut hole refers to the difference of the initial coverage limit and the catastrophic coverage threshold, as described in the Medicare Part D prescription drug program. After a Medicare beneficiary surpasses the prescription drug coverage limit, he or she is financially responsible for the entire cost of prescription drugs until the expense reaches the catastrophic coverage threshold.

The legislation defined essential health benefits for health care plans, and they include rehabilitative and habilitative services and devices; mental health and substance use disorder services, including behavioral health treatment; preventive and wellness services and chronic disease management; pediatric services, including oral and vision care. The new law also:

- Includes an extension of the exceptions process to the Medicare therapy caps on physical, occupational and speech language therapies;
- Creates a high-risk pool to provide immediate assistance to those currently uninsured with pre-existing conditions;
- Provides increased Federal financial support to States to assist in the Medicaid eligibility expansion;
- Includes the Community First Choice Medicaid Option effective October 1, 2011; and the CLASS ACT provisions;
- Increases Medicaid reimbursement for primary care physicians and pediatricians to Medicare rates for 2013 and 2014; and
- Includes an additional \$11 billion for Community health centers, doubling the number of patients who can be treated regardless of their insurance or ability to pay.

Some reforms take place soon after the plan becomes law, including coverage of policyholders' children up to age 26 and excluding children's pre-existing conditions from coverage. The Kaiser Family Foundation has prepared an overview of the implementation timeframe which is available at:

<http://www.kff.org/>.

### **Health Insurance Exchanges**

Individuals and small businesses which are unable to afford to purchase insurance on their own will be able to pool together and choose from a variety of competing plans with lower premiums. The legislation establishes State-based health insurance exchanges to make a range of health coverage options available to individuals and small employers and foster competition among insurance companies based on the price and quality of their products. Plans would have to meet minimum standards regarding coverage and cost-sharing protections for enrollees.

### **Long-Term Support**

Disability and senior advocates lobbied heavily for inclusion of the Community Living Assistance Services and Supports (CLASS) Act and the Community First Choice Option - both of which are included in the new law. NASHIA supported both of these provisions. The CLASS Act, which was sponsored by the late Senator Ted Kennedy, establishes a new voluntary national insurance program financed by payroll deductions to provide benefits to adults who become severely functionally impaired. The Community First Choice Option will give States the choice of providing home and community based services to Medicaid recipients instead of nursing homes. Under the provision, States can qualify to receive more Federal matching funds to support community living if they eliminate caps on the number of individuals who can live in the community. Also, the legislation extended the Federal Money Follows the Person program until 2016.

### **Protective Services**

The health care reform bill includes the Elder Justice Act, which will provide the first ever funding for State and local Adult Protective Services (APS) Programs. APS responds to and investigates reports of abuse, neglect and exploitation of older persons and of younger adults with disabilities and takes protective measures to insure the safety of the victims. Until now there has been no dedicated funding stream for these services. The Act authorizes up to \$100 million in funding per year, which will provide an estimated 1,700 protective services investigators throughout the country.

The health care reform legislation also includes the Patient Safety and Abuse Prevention Act, which creates a national program of criminal background checks for persons seeking employment in nursing homes and other long-term care facilities.

## Legislation

### FY 2011 Budget

The budget resolution is scheduled be taken up after the spring recess. While the budget resolution is not a spending or appropriations bill, as such, it does provide Congress a guideline on spending, revenue, borrowing and economic goals, and contains spending limits for discretionary spending -- which includes funding for TBI Act programs, which are considered discretionary. The report that accompanies the resolution is called the 301(a) allocation, which is given to the House and Senate appropriation committees/subcommittees and other committees that would have jurisdiction on spending or revenue bills. Although Congress has not always agreed to a concurrent budget resolution, the resolution is intended to provide the appropriations subcommittees the amount of money they have to spend in each of 19 broad spending categories (known as budget "functions") and how much total revenue the government will collect, for each of the next five or more years.

NASHIA signed on to a letter circulated by the Coalition for Health Funding, along with nearly 285 organizations, as well as three former Surgeon Generals and two former acting SGs, urging Congress to authorize \$67.1 billion in FY 2011 for discretionary health spending. The letter was faxed to the budget committees and the personal offices of their members.

### FY 2011 TBI Appropriations

The Congressional Brain Injury Task Force circulated a "dear colleague" letter requesting support for additional funding for TBI Act programs and NIDRR TBI model systems (15 co-sponsors); and a "dear colleague" letter requesting support for increased TBI funding for the Department of Defense. Both letters were sent to the chair and ranking member of the House Appropriations Committees that have responsibility for the spending bills for Departments of Health and Human Services, Education and Defense. The TBI Act/NIDRR funding letter is posted on the NASHIA website: [www.nashia.org](http://www.nashia.org). The TBI stakeholders (BIAA, NASHIA and NDRN) are in the process of circulating a sign on letter to CCD and other organizations in support of the TBI funding requests.

### Medicaid Restoration Act

On March 9th, 2010, Reps. Tammy Baldwin (D-WI) and John Sullivan (R-OK) introduced H.R. 4787, the Medicaid Services Restoration Act of 2010. This legislation will help ensure that vital Medicaid services and options are protected for children and youth involved in our nation's child welfare and foster care systems, individuals with disabilities, and children and adults with mental illness.

The legislation provides a definition of therapeutic foster care in Federal statute for the first time and also permits States to use reasonable and efficient payment methodologies for reimbursement of these services. Therapeutic rehabilitative services include reasonable and efficient payment methodologies for rehabilitative services; clarification of coverage of EPSDT services for children receiving inpatient psychiatric hospital services; and third party liability clarification relating to diagnostic screening, preventive and rehabilitative services. Additionally, should an individual State so wish to utilize it, the bill creates a new medical assistance category under Medicaid for which TFC services could be directly billed. It also protects and supports case management services and codifies the Olmstead Act. NASHIA signed on in support for of this legislation. The bill is the same as S. 1217 that Rep. Stabenow (D-MI) introduced June 9, 2009.

## Congressional Appointments

### National Commission on Fiscal Responsibility and Reform

The Speaker of the House Nancy Pelosi (D-CA) appointed the final three members of President Obama's National Commission on Fiscal Responsibility and Reform: Representatives John Spratt (D-SC), Xavier Berra (D-CA) and Jan Schakowsky (D-IL). The commission is designed to work in a bipartisan way to propose steps to address the nation's long-term debt, bring down the deficit, and ensure that the Federal government returns to fiscal discipline. The Commission will also be focusing on Social Security, Medicare and Medicaid programs.

## Administration

### Appointments

#### CMS

President Obama will soon name Dr. Donald M. Berwick as administrator of the Centers for Medicare and Medicaid Services (CMS). Dr. Berwick, a pediatrician, is President of the Institute for Healthcare Improvement in Cambridge, Mass. In 1998, he was a member

of an advisory commission appointed by President Clinton that recommended a patient's bill of rights and steps to reduce medical mistakes. From 1996 to 1999, Dr. Berwick was the first independent member of the board of trustees of the American Hospital Association. In his new post, Dr. Berwick will be responsible for administering Medicare and Medicaid and developing regulations for the new health reform law.

### **NIDRR**

On March 25<sup>th</sup>, the Administration announced that Lynnae Ruttledge, who was appointed by President Obama as the Commissioner of the Rehabilitation Services Administration (RSA) on January 4<sup>th</sup>, will also serve as Acting Director of National Institute on Disability and Rehabilitation Research (NIDRR). During the interim, Ruth Brannon has served as the Acting Director of NIDRR. Ruth Brannon will now continue as the Director of Research Sciences and both she and Tim Muzzio, Director of Program, Budget and Evaluation, will directly report to her in their area of responsibility. At this time, the agency is not filling the Deputy position.

### **CDC Issues New TBI Report and Statistics**

During the Congressional Brain Injury Task Force Awareness Day Briefing, held March 17<sup>th</sup>, Dr. Rick Hunt, Director of Centers for Disease Control and Prevention's (CDC) Division of Injury Response, announced CDC's new data and report on TBI. The report, "Traumatic Brain Injury in the United States: Emergency Department Visits, Hospitalizations, and Death," is based on data from 2002-2006 and identifies the leading causes of TBI and incidence by age, race, and gender. According to the report, TBIs contribute to nearly a third or 30.5 percent of injury-related deaths in the United States. A link to the report is posted on the NASHIA website: [www.nashia.org](http://www.nashia.org) or you may go to [http://www.cdc.gov/traumaticbraininjury/tbi\\_ed.html](http://www.cdc.gov/traumaticbraininjury/tbi_ed.html).

### **US Department of Education Releases Summary of State Laws on Restraints and Seclusions**

The U.S. Department of Education has released a summary of State laws, regulations, policies, and guidelines regarding the use of restraint and seclusion techniques in schools. The report is available at <http://www.ed.gov/policy/seclusion/seclusion-state-summary.html>.

Secretary Arne Duncan sent a letter to the States and Territories urging them to review and revise their State policies to ensure that students are protected from being unnecessarily restrained or secluded. In the past several years, positive behavior support (PBS) strategies have emerged as the method of choice toward challenging behavior in special education settings.

### **US Justice Department Releases Study on Crimes Against Persons with Disabilities**

The first national study on crime against persons with disabilities by the US Department of Justice reveals that in 2007, persons ages 12 or older with disabilities experienced about 716,000 nonfatal violent crimes, including rape or sexual assault (47,000), robbery (79,000), aggravated assaults (114,000) and simple assaults (476,000). They also experienced about 2.3 million property crimes during the year. The risk of violence was higher for young and middle-age persons with a disability than those of similar age groups without disabilities. Violent crime against females with a disability (35 per 1,000 persons age 12 or older) was almost twice the rate for females without a disability (19 per 1,000 persons age 12 or older). More than half of violent crimes against people with disabilities were against those with more than one type of disability. Persons with cognitive disabilities had a rate of nonfatal violent crime higher than the rates for persons with other types of disabilities.

To read the report go to <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd07.pdf>.

### **Other**

#### **Congressional Brain Injury Task Force Awareness Day**

Rep. Bill Pascrell, Jr. (D-NJ), co-chair of the Congressional Brain Injury Task Force, told Awareness Day Fair participants that around 1,000 people attended the Fair and the Briefing this year during the events held March 17<sup>th</sup> in our nation's Capitol. The Fair provides the opportunity for Federal and national organizations, including NASHIA, to exhibit materials to promote awareness of brain injury, prevention, rehabilitation and community resources to Congressional members and staff. It also provides an opportunity for organizations to network among one another.

During the Briefing, Dr. Rick Hunt announced new TBI statistics and also highlighted CDC's work on prevention of sports related concussions. CDC's "Heads Up" educational initiatives have been adopted in emergency departments, doctor's offices, playing fields, homes and schools nationwide. These initiatives provide key information to health care providers, patients, school professionals, sports coaches, parents, teens and youth on how to prevent, recognize, and manage TBIs. These materials are available on the CDC website, [www.cdc.gov](http://www.cdc.gov).

Bruce Allen, General Manager of the Washington Redskins provided an overview of the NFL's efforts to prevent and treat concussions. The NFL partnered with CDC to develop PSAs on sports related concussions and he showed a video sponsored by both. He also said the Redskins invited 500 area high school football coaches to observe how the Redskins run a football camp and to attend a symposium on concussions.

NASHIA, NDRN, CarePath and St. Joseph's Healthcare System sponsored the reception held after the Briefing. William A.B. Ditto, Chair of NASHIA's Public Policy Committee, was the emcee for the reception. To see pictures and highlights of the event go to NASHIA's Facebook Fans page.

This update was prepared by Susan L. Vaughn, Director of Public Policy. William A.B. Ditto, MSW, is Chair of the NASHIA Public Policy Committee.

*The National Association of State Head Injury Administrators assists State government in promoting partnerships and building systems to meet the needs of individuals with brain injuries and their families.*

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