

February 4, 2011

Federal Legislative Update

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AAP President to Participate in Conference Call Next Week with First Lady on *Let's Move!* Anniversary

On **Tuesday, February 8**, AAP President O. Marion Burton, MD, FAAP, will join First Lady Michelle Obama in an open conference call marking the first anniversary of [*Let's Move!*](#), her initiative to end childhood obesity. All AAP members are invited to join this important conference call.

In honor of the initiative's first anniversary, Dr. Burton will discuss childhood obesity prevention along with the First Lady, U.S. Surgeon General Regina M. Benjamin, MD, MBA, and American Academy of Family Physicians (AAFP) Past President Lori J. Heim, MD, FAAFP. The call will focus on the success of the initiative to date and outline new commitments from the AAP and other partners to reduce childhood obesity.

WHAT: Conference Call with First Lady Michelle Obama, AAP President Dr. Burton, U.S. Surgeon General Dr. Benjamin and AAFP Past President Dr. Heim

WHEN: Tuesday, February 8 at 2:30PM EDT

Call Number: (866) 259-6033

Title (in lieu of passcode): *Let's Move!* Medical Community Call

As part of its [commitment to *Let's Move!* last year](#), the AAP called on every pediatrician to calculate body mass index for children over the age of two at every well-child visit. The AAP also encouraged its members to write "prescriptions" for healthy, active living—including good nutrition and physical activity—at every well-child visit. These are available for [download](#) in both English and Spanish.

Next week, the AAP will announce the rollout of the next phase of its partnership, [*Let's Move! in the Clinic*](#), an opportunity for all health care providers to engage in meaningful quality improvement around care delivered to patients around healthy weight.

Tune in to Tuesday's conference call for more details about this opportunity and how to become involved, and visit the AAP Department of Federal Affairs' member center [resource page](#) devoted to the *Let's Move!* initiative for more information on the Academy's evolving partnership.

Affordable Care Act Lawsuits and Congressional Hearings Continue

On Monday, U.S. District Court Judge Roger Vinson of the Northern District of Florida issued a ruling on the 26-state lawsuit filed in March 2010 by former Florida Attorney General Bill McCollum. The ruling declared the Affordable Care Act's individual mandate provision, which requires individuals to purchase health insurance or pay a penalty, unconstitutional. What was less expected about the ruling was its scope: Judge Vinson declared the entire health reform law unconstitutional based on the individual mandate provision alone.

The AAP released a [press statement](#) expressing disappointment with the ruling and advocating for preserving and strengthening the Affordable Care Act.

Yesterday, U.S. District Judge Keith Starret of the Southern District of Mississippi dismissed a lawsuit challenging the constitutionality of the Affordable Care Act's individual mandate brought by Mississippi Lieutenant Governor Phil Bryant. In his ruling, Judge Starret determined that those filing suit had failed to fully demonstrate that their constitutional rights were being violated.

So far, two federal judges have upheld the individual mandate provision in the law, and two federal judges, Judge Vinson of Florida and U.S. District Court Judge Henry Hudson of the Eastern District of Virginia, have deemed the individual mandate unconstitutional. Neither Judge Vinson nor Judge Hudson granted an explicit injunction of the Affordable Care Act, which would have suspended implementation of the law.

Although Judge Vinson's overall ruling deemed the Affordable Care Act unconstitutional, he did side with the AAP on the issue of Medicaid. The Academy previously submitted an amicus [brief](#) to the Florida case, arguing that the law's Medicaid expansion to all U.S. citizens whose incomes are below 133% of the federal poverty level is indeed constitutional, which Judge Vinson supported in his ruling Monday evening.

The Obama Administration is appealing the Virginia decision to the 4th Circuit Court of Appeals and the Florida decision to the 11th Circuit Court of Appeals.

Meanwhile, on Wednesday, the Senate Judiciary Committee held a hearing, [The Constitutionality of the Affordable Care Act](#), chaired by Senate Majority Whip Dick Durbin (D-Ill.). This hearing was the second in the Senate on the health care overhaul since the new Congress convened on Jan. 5. The first hearing, [The Affordable Care Act: The Impact of Health Insurance Reform on Health Care](#)

[Consumers](#), was held last Thursday, Jan. 27, by the full Senate Health, Education, Labor, and Pensions Committee.

Federal Budget and Appropriations Update

On Thursday, Rep. Paul Ryan (R-Minn.) set an overall federal government non-security discretionary spending level at \$420 billion for the current fiscal year, which ends Sept. 30, 2011. This marks a reduction of \$43 billion, or 9.3% below the Fiscal Year (FY) 2010 level, which is the current Continuing Resolution (CR) level.

Also on Thursday, House Appropriations Chairman Hal Rogers (R-Ky.) released the allocations to the House appropriations subcommittees. The total allocation for the Labor-HHS-Education Subcommittee (which allocates most child health funding) is \$157.02 billion, a 4% cut from FY10 levels, or \$6.565 billion below the current CR.

Now that an overall FY11 allocation for the Departments of Labor, Health and Human Services, and Education has been set, the subcommittee will proceed with assigning a funding level to each program. More specifics are expected next week.

AAP Celebrates CHIPRA's Second Anniversary

Today is the second anniversary of the enactment of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). The AAP released a [statement](#) commemorating the occasion and the importance of CHIPRA for children's health care and calling for defense of the CHIP and Medicaid programs during these difficult budget times.

Cindy Mann, Centers for Medicare and Medicaid Services (CMS) Deputy Administrator and Director of the Center for Medicaid, CHIP, and Survey & Certification, held a conference call yesterday afternoon [highlighting CHIPRA's second anniversary](#) and sharing [new data](#) on children's enrollment in Medicaid and CHIP as well as new opportunities to meet the *Connecting Kids to Coverage Challenge* launched last year by Secretary Sebelius. The AAP is a national partner in the *Challenge*, which aims to reach five million children who are eligible but not enrolled in Medicaid and CHIP over the next five years. Secretary Sebeli

On Tuesday, the Commonwealth Fund released its 2011 [State Scorecard on Child Health System Performance](#) and a [podcast](#) featuring quotes from AAP President O. Marion Burton, MD, FAAP, and AAP Immediate Past President Judith S. Palfrey, MD, FAAP. While tremendous strides have been made for children's health care coverage, as the State Scorecard demonstrates, there is still a great deal of work left to be done as the number of uninsured children continues to vary widely from one state to the next.

HHS Sends Guidance to Governors on Sustaining Medicaid Programs

On Thursday, U.S. Department of Health and Human Services (HHS) Secretary Sebelius sent a [letter](#) to governors highlighting resources, tools, and the flexibility available to states for maintaining their Medicaid programs in light of their difficult budget challenges. The extension of the increased federal medical assistant percentage (FMAP) funding for Medicaid is set to expire in June 2011. Governors

have raised concern over the Affordable Care Act's requirement that eligibility levels for Medicaid and the Children's Health Insurance Program (CHIP) must be maintained at the levels in effect before the law was passed.

In a Jan. 7 [letter](#) addressed to the Administration and congressional leaders, 33 governors requested that the maintenance of effort (MOE) requirement be removed from the Affordable Care Act and the economic stimulus package. In her response yesterday, Secretary Sebelius listed a variety of cost-saving mechanisms that states can adopt in order to sustain their Medicaid programs:

- modify optional benefits;
- provide health homes to high-cost Medicaid beneficiaries (those with chronic conditions);
- alter state-specific rates for purchasing drugs; and
- use federal audit contracts to cut down on fraud.

The Secretary also offered to send senior leadership from HHS to states to meet individually with governors' staff to discuss states' priorities and how HHS can help them be achieved. HHS will also host a series of "virtual" meetings with state health policy advisors and Medicaid directors to share information about promising Medicaid cost-saving initiatives underway in one or more states that HHS is prepared to support in other states on a fast-track basis.

Pediatrician Offers Recommendations to IOM on Pediatric Drugs Study

AAP Committee on Drugs Chair Daniel Frattarelli, MD, FAAP, delivered comments Wednesday before an Institute of Medicine (IOM) panel that will be writing a report on two AAP-championed pediatric drug laws, the Best Pharmaceuticals for Children Act (BPCA) and the Pediatric Research Equity Act (PREA). Dr. Frattarelli detailed the Academy's long-time involvement in advocating for these laws and the study of drugs in children. The AAP made recommendations to the committee on how best to assess the programs and evaluate their benefits for pediatrics. The committee's report is due next year. The Academy will be advocating strongly for the reauthorization of BPCA and PREA in 2012.

Administration Urges Participation in Pre-existing Condition Insurance Plans

On Wednesday, officials from the U.S. Department of Health and Human Services (HHS) reached out to AAP staff to discuss the Pre-Existing Condition Insurance Plan (PCIP) program, an option for children and adults with pre-existing conditions to attain health insurance coverage. The state-based PCIP program was established under the Affordable Care Act, and is for children and adults who are U.S. citizens, have been uninsured for at least six months and have a pre-existing condition that has prevented them from attaining health insurance coverage.

The PCIP is a transitional program available for children and adults in all 50 states and the District of Columbia who have been denied health insurance because of a pre-existing condition. The program will be available until 2014, when state-based health insurance exchanges will be established to provide access to coverage for all Americans, regardless of their health status.

Children must be uninsured for at least six months in order to be eligible for coverage under a PCIP, and this waiting period may present a barrier to care for children who are oftentimes in urgent need of services to manage complex health conditions. While not perfect, the PCIP program does provide one more option for children who might otherwise be without any insurance at all. Benefits under PCIPs include physician’s services, hospital care, and prescription drugs, and unlike many private insurance plans currently on the market, those enrolled in a PCIP will not be charged higher premiums because of pre-existing conditions. Visit www.pcip.gov for more information on state-by-state eligibility requirements.

2010 Dietary Guidelines Released

On Monday, Secretary of Agriculture Tom Vilsack and Secretary of Health and Human Services Kathleen Sebelius announced the release of the [2010 Dietary Guidelines for Americans](#). The Dietary Guidelines are the federal government's evidence-based nutritional guidance to promote health, reduce the risk of chronic diseases, and reduce the prevalence of overweight and obesity through improved nutrition and physical activity.

The 2010 Dietary Guidelines for Americans include 23 key recommendations for all Americans age 2 years and above, and six additional key recommendations for specific populations, including women who are or may become pregnant.

The new guidelines focus on balancing calories with physical activity, and encourage Americans to consume more vegetables, fruits, whole grains, fat-free and low-fat dairy products, and seafood, and to consume less sodium, saturated and trans fats, added sugars, and refined grains.

Health Reform Implementation: Regulations Update

The AAP submitted comments to the following Affordable Care Act regulation this week:

Regulation	Description	AAP Action
Interim Final Rule on Medical Loss Ratio (MLR) Requirements Under the Affordable Care Act	<p>This is the interim final regulation implementing medical loss ratio (MLR) requirements for health insurance issuers offering group or individual coverage.</p> <p>The AAP highlighted the following areas for improvement: the inclusion of pediatric-specific criteria in quality measurements, disallowance of advertising expenses as medical costs, and inclusion of care coordination activities.</p>	<p>Submitted Comment on Jan. 31, 2011</p>