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healthlawadvocates
Lawyers Fighting for Health Care Justice



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Via Fax at 617-573-1890 and masshealthpublicnotice@state.ma.us

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Kristin Thorn, Medicaid Director
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place, Room 1109
Boston, MA 02108

RE: Comments on Consumer Medical Debt and the Health Safety Net (HSN) Proposed Regulations under 101 C.M.R. 613

Dear Director Thorn:

Thank you for your ongoing efforts with respect to the Commonwealth's implementation of the Affordable Care Act (ACA) and for your leadership regarding the preservation of health care access for the most vulnerable residents in the Commonwealth.

Health Law Advocates (HLA) is a non-profit public interest law firm that provides free legal representation to low-income Massachusetts residents who have been improperly denied access to or billed for health care. We have extensive experience representing low-income consumers with unaffordable medical bills, particularly hospital bills. Consequently, we have a thorough understanding of the profound impact that medical debt has on individuals and families.

Medical debt is different than other kinds of debt. Consumers do not incur medical debt voluntarily and medical debt is usually unforeseeable. Not only are most medical expenses unanticipated, but the cost of health care is exorbitant and usually unknown by patients. As a result, low-income consumer medical debt must be regulated in a manner that provides ample protections and opportunities for consumers to obtain relief.

We believe that several important changes to the draft regulations will prevent low-income consumers from unnecessarily incurring unaffordable medical debt and enable providers to receive the reimbursement to which they are entitled. We therefore submit these comments to urge you to: abandon "Countable Income" as an eligibility test for the HSN's Medical Hardship Program; preserve the HSN for low-income residents who, based on good faith justifications, cannot afford premiums and are terminated from coverage; and, clarify providers' responsibilities on advising patients on their right to apply for public health coverage programs.

I. MEDICAL BILLS, PARTICULAR HOSPITAL BILLS, ARE A LEADING CAUSE OF CONSUMER DEBT AND CONSUMERS WOULD BENEFIT FROM CONTINUED HSN PROTECTIONS

According to a 2012 Blue Cross Blue Shield of Massachusetts Foundation (BCBS Foundation) report, 17.5% of Massachusetts adults had problems paying medical bills in the past 12 months.ⁱ Among adults with household income less than 300% of the FPL, 26.1% had problems paying medical bills in the past yearⁱⁱ. A 2011 study published in the American Journal of Medicine found that illness and medical bills contributed to 52.9% of all Massachusetts bankruptcies.ⁱⁱⁱ The BCBS Foundation report found that 13.6% of Massachusetts adults did not get needed health care because of costs in the past 12 months, while 19.4% of adults under 300% of the FPL went without needed care due to cost.^{iv}

The BCBS Foundation study also revealed that among all Massachusetts adults with problems paying medical bills, 54% had trouble paying hospital bills.^v The same study showed that even though the state and other entities invest heavily in Massachusetts' Health Safety Net program to shield those who are low-income and uninsured or undersinsured from hospital bills, 53.3% of adults under 300% with trouble paying medical bills specifically had difficulty paying hospital bills.^{vi}

HLA's extensive experience in representing low-income consumers confirms that bills from Health Safety Net providers are a leading cause of medical debt among low-income consumers in the Commonwealth. Over the past year, for example, we have commenced representation of an increasing number of individuals and families with medical debt. When we examined the 72 cases involving medical debt opened between October 2012 – March 2013, we found that 53 (or 73%) of these cases involved bills from hospitals that are HSN providers. These HLA statistics demonstrate that low-income consumers continue to incur hospital debt despite the fact that this population should have had numerous coverage options under the HSN, which reimburses hospital for services rendered.

II. USE OF "COUNTABLE INCOME" AS A MEANS TEST WILL CAUSE CONSUMER CONFUSION AND DELAYS IN ACCESS TO HSN'S DEBT RELIEF PROVISIONS

We believe that using "Countable Income" under 101 C.M.R. 613.05 will not ameliorate -- and may increase -- incidences of consumers incurring hospital debt. Although the HSN requires hospitals to help patients apply for publicly-subsidized insurance in a timely manner and to submit patient applications for the Medical Hardship Program, many consumers will be left out of the process. That is because the proposed rules do not synch proof of income standards with income tests for other public programs. Section 613.05 of the proposed regulations would impose a financial burden on consumers -- to supply proof of pre-tax income of the debtor -- rather than to use standards already in place, which take into consideration adjusted gross income and household size.

Modified adjusted gross income (MAGI) is the cornerstone of the Commonwealth's implementation of the Affordable Care Act and the financial screening tool by which individuals and families at or less than four hundred (400%) per cent of the FPL will be deemed eligible for HSN benefits. Specifically, MAGI is the income test across almost all public health insurance and benefits programs under EOHHS, the Health Connector, and the HSN in Massachusetts. Because MAGI will become effectuated for eligibility verifications under the Commonwealth's implementation of the ACA and because it will also be the standard to assess HSN benefits, then it is known and identifiable to consumers and should likewise be the means test with respect to the HSN's Medical Hardship Program. No other program, except HSN's Medical Hardship Program, would employ "Countable Income" under the proposed regulations. Not only would consumers be in a better position to comply but with income verification requirements but the use of MAGI would also reduce administrative costs.

III. LOW INCOME CONSUMERS WHO FOR GOOD CAUSE JUSTIFICATIONS DID NOT MAKE PREMIUM PAYMENTS SHOULD MAINTAIN HSN PROTECTIONS

We believe the HSN regulations should provide protections for consumers who, due to unforeseen circumstances such as temporary income changes or other justifiable circumstances, are unable to make health care premium payments should not incur a penalty under the HSN regulations.

Proposed Section 613.04(1)(a) of the new regulations raises concern for those low income individuals and families who cannot afford employer sponsored insurance or Health Connector coverage. Disadvantaged households that are terminated from Health Connector health insurance programs for their failure to pay premiums should be deemed low-income patients and entitled to HSN benefits and protections. Such protection can be accomplished through a robust hardship waiver programs and reasonably accommodated with continued HSN benefits.

IV. PROVIDER RESPONSIBILITIES REGARDING ADVISING PATIENTS ON THEIR RIGHT TO APPLY FOR PUBLIC PROGRAMS SHOULD BE CLARIFIED

The HSN regulations have previously required providers to advise patients of their right to apply for MassHealth and other publicly-subsidized health coverage programs. Although the most reasonable interpretation of these past regulations is that they intended providers to advise patients of this right during the registration process after reviewing patients' insurance status, the regulations should be made more explicit. Many providers, if they advise patients of this right at all, do not so advise them of their right to apply for publicly-subsidized health coverage programs until after the patient has incurred medical debt and it is too late to apply for a program that will cover the debt.

We strongly suggest amendments to 613.08(2) to alleviate the problem of providers not helping patients apply a timely way for public programs that

will prevent them from incurring medical debt. For example, section 613.08(2)(a) should read:

(a) “*During registration*, providers must advise patients of the right to:

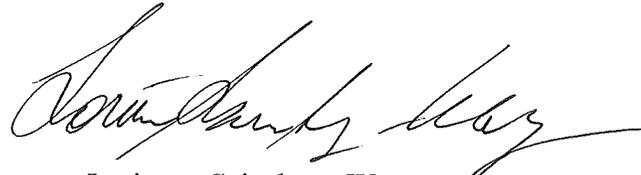
- (1) Apply for MassHealth, the Premium Assistance Payment Program operated by the Health Connector, a Qualified Health Plan, Low Income Patient determination, and Medical Hardship; and

Thank you very much for considering our views on these important matters. Please feel free to contact the undersigned if we can be of any additional assistance with respect to these proposed regulations.

Respectfully submitted,



Matthew Selig
Executive Director



Lorianne Sainsbury-Wong
Litigation Director

ⁱ Sharon K. Long et. al., *Health Reform in Massachusetts as of Fall 2010*, Blue Cross Blue Shield Foundation, 8 (Jan. 2012) available at www.urban.org/uploadedpdf/412491-Health-Reform-in-Massachusetts-as-of-Fall-2010.pdf

ⁱⁱ *Id.*

ⁱⁱⁱ David U. Himmelstein, Elizabeth Warren et. al., *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 AM. J. MED. 741-46 (2009).

^{iv} *Id.*

^v *Id.*

^{vi} *Supra* ii at 60.