

A PUBLICATION OF THE AMERICAN HEALTH LAWYERS ASSOCIATION

HEALTH LAWYERS NEWS

VOLUME 6 • NUMBER 3 • MARCH 2002

The Federal Employees Health Benefits Program and Managed Care: Why Are HMOs Leaving the Program?

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Benefit, Eschews New Medicare Cuts**

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**Scully Tells Lawmakers That Another
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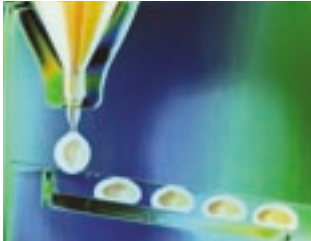
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On the Cover

The last six years have seen a growing number of health maintenance organizations terminating their participation in the Federal Employees Health Benefits Program (FEHBP). The feature, written by Christine C. Rinn, of McDermott, Will & Emery, discusses the effects of this exodus and identifies some of the reasons why HMOs no longer want to participate in the FEHBP.

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Focus on Compliance Services

Mission Statement

The mission of the American Health Lawyers Association is to provide a forum for interaction and information exchange to enable its members to serve their clients more effectively; to produce the highest quality non-partisan educational programs, products and services concerning health law issues; and to serve as a public resource on selected healthcare legal issues.

American Health Lawyers Association Diversity Statement

In principle and in practice, the American Health Lawyers Association values and seeks diverse and inclusive participation within the Association regardless of gender, race, creed, age, sexual orientation, national origin, or disability. The Association welcomes all members as it leads health law to excellence through education, information and dialogue.

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The Importance of Medicare and Medicaid

As we look ahead to AHLA's annual Institute on Medicare and Medicaid Payment Issues, to be held in Baltimore April 3 to 5, we cannot overstate the profound importance of these entitlement programs to healthcare and healthcare law. Nor can we overstate the importance of education and dialogue on the relevant legal issues to the quality and effectiveness of Medicare and Medicaid. It is fair to say, I think, that healthcare law, as we know it today, was born in the 1960s with the passage of the landmark legislation beginning these programs and nurtured by new legislation and regulations related to Medicare and Medicaid ever since—PSROs, prospective payment, the fraud and abuse laws, Medicare+Choice, to name a few. Indeed, there have been approximately 700 pieces of Medicare/Medicaid-related federal legislation since 1996.

Medicare spending is projected to reach \$259 billion in 2002. The number for Medicaid spending in 2002 is projected to reach \$233 billion. Government purchasers in 1999 accounted for approximately 45% of all healthcare spending. CMS has 4,600 employees; state Medicaid agencies approximately twice that; and Medicaid/Medicare contractors approximately 24,000 employees in the aggregate. And, most importantly, these programs pay for the care of approximately 75 million poor and/or older Americans.

Vision Statement:
Leading health law to
excellence through
education, information
and dialogue.

The notion that Americans have a fundamental "right to healthcare" continues to be an important element in the ongoing debate over the United States healthcare system. At the same time, equally strong support

exists for controlling costs, for keeping government activities and spending in healthcare in check, and for rejecting the idea that "everything must be available to everyone." Hard choices about allocation of healthcare services will continue to be necessary. This dual-edged and contradictory focus in healthcare policy contributes its share to an already fragmented system.

The reasons for the pluralism of the healthcare "system" are not hard to pinpoint. Historically, professional practice and organized forms of service developed from many separate and largely private beginnings that were not perceived for many years as interdependent or requiring coordination. Health professional groupings have always fought and continue to fight for autonomy and self-determination. Moreover, the government generally has entered gingerly into their territory. Public decision makers have consistently respected the role of private organizations in healthcare delivery, and governmental activity has largely been directed toward supplementing and filling out these private efforts. Thus, while the

governmental role in healthcare has necessarily expanded in response to social conditions and public demands, it has generally grown with restraint.

The fact is that the healthcare system is a mixed public-private system for powerful historical reasons and will remain mixed. There appears to be no coalition forming on the horizon attempting to bring about dramatic change one way or the other. The key questions, therefore, concern the appropriate degree of centralization or decentralization in both market and regulatory approaches, and the proper mix between the two approaches. The trend remains toward gradual, partial, but steady increases in the role of the federal government in both allocating benefits and controlling costs.

Nevertheless, as we have seen in recent years, legislative debate in healthcare remains contentious and at key times on key issues can produce deadlock. Public sector leaders frequently call for private sector leaders to step forward to lead by example to help reduce the demand on and need for legislators to legislate and regulators to regulate. Visionary leadership in both the public and private sectors will no doubt be necessary to chart a course that allows for simultaneous improvements in cost efficiency, quality, choice, and access. Today, leaders in both the public and private sectors regularly refer to healthcare as a public-private partnership. The success or failure of that partnership will affect, for better or worse—all of our lives and our children's lives—for the foreseeable future.

Health Lawyers has a role in this partnership. As the leading source of health law information and dialogue, we can contribute to the continued forging of a partnership that works. At the Institute on Medicare and Medicaid Payment Issues, the Fraud and Compliance Forum, and other programs, we feature both government and private sector speakers and work to enhance dialogue between them. Tom Scully, the Administrator of CMS, will be the keynote speaker at the Institute and a participant in Health Lawyers' newly launched Public Interest speakers series, "Conversations with Health Policymakers," as will Alex Azar, General Counsel of HHS. Ruben King-Shaw, CMS Deputy Administrator, addressed our Annual Meeting last summer and Janet Rehnquist, Inspector General of HHS, addressed our Fraud and Compliance Forum last fall. CMS is emphasizing an "open door" approach to information exchange with providers and beneficiaries. Health Lawyers will continue to participate in and contribute to that exchange, in pursuit of its non-partisan mission.



Doug Hastings
Doug Hastings
President