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# Long Term Care Newsletter

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## Nebraska Medicaid Expansion: Myth or Fact By Michael W. Khalili

In 2013, the Nebraska Legislature will make important decisions affecting the health care of the state's residents including whether or not to expand Medicaid. This expansion was originally part of the Affordable Care Act passed by Congress in 2010, but last year's U.S. Supreme Court decision upholding the law made this provision optional for the states.

President Obama thinks his health care law makes states an offer they can't refuse. Here's the offer and its effects:

- If states expand their Medicaid programs to cover millions of low-income people now left out, the federal government will pick up the full cost for the first three years and 90 percent over the long haul.

- Adding up the Medicaid costs under the law, less than \$100 billion in state spending could trigger nearly \$1 trillion in federal dollars over a decade, according to the nonpartisan Urban Institute.
- A major worry for states is that deficit-burdened Washington sooner or later will break its word on the 90-percent deal. The regular Medicaid match rate averages closer to 50 percent. That would represent a significant cost shift to the states.
- Many Republicans also are unwilling to keep expanding government programs, particularly one as complicated as Medicaid, which has a reputation for being inefficient and unwieldy.

While some experts pre-

dicted that an Obama victory would lead to swift, widespread acceptance of Medicaid expansion, that has not been the case. In the Nebraska Legislature, Republicans still outnumber Democrats nearly 2 to 1, but the party disparity has shrunk with the newly elected state senators. The new balance features 30 Republicans, 17 Democrats and two independents. The newly elected senators could increase the likelihood that lawmakers approve a measure to expand Medicaid coverage, despite opposition from the conservative lawmakers and Republican Gov. Dave Heineman who attacks it as unaffordable.

Nationally, Gov. Heineman

(continued pg. 3)

## Influenza Reaches Epidemic Levels By Laura K. Essay

According to the Centers for Disease Control and Prevention (CDC), influenza reached epidemic levels during mid-January. According to CDC, the current outbreak is one of the worst in over ten years, with 41 states experiencing widespread flu activity. Influenza is typically most prevalent in late January or February, but the seasonal

flu has spread across the country early this year.

CDC continues to recommend the influenza vaccine for people who have not yet been vaccinated this season. The vaccination protects against the three influenza viruses that research indicates will be most common during the season.

Further, CDC recommends

an antiviral treatment as early as possible for people who get sick and are at high risk for flu complications, which includes adults 65 years of age and older. This group is more likely to suffer from complications, including pneumonia, bronchitis, sinus infections, ear infections, and worsening of chronic health (continued on pg. 3)



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*Valentine's Day began as a celebration of one or more early Christian saints named Valentinus who is said to have been imprisoned for performing weddings for soldiers forbidden to marry and for ministering to Christians. During his imprisonment it is said he healed the daughter of his jailer and legend says he wrote "from your Valentine" in his farewell to her prior to his execution.*



## Hospice Care Fined for HIPAA Violation

By Chuck E. Wilbrand

The Department of Health and Human Services will receive a \$50,000 settlement from Hospice of Northern Idaho for a breach of protected health information under the Health Insurance Portability and Accountability Act (HIPAA) Security Rule. The breach occurred in June 2010 when the hospice care lost a laptop that contained unencrypted patient health information for 441 patients. According to McKnight's Long-Term Care News, it is the first fine ever for a breach of HIPAA's Security Rule involving protected health information of fewer than 500 patients.

HHS Office of Civil

Rights fined Hospice of Northern Idaho even after the hospice care had self-reported the lost laptop in February 2011. The Office of Civil Rights investigated the Hospice Care in June 2011 and issued a fine. The Office of Civil Rights found that the hospice failed to have portable device security policies in place and the hospice did not conduct an accurate and thorough enough security risk analysis of losing the laptop.

HIPAA's Security Rule is meant to protect patient health information and requires that healthcare facilities ensure that electronic patient health information remains confidential while it is transmitted or main-

tained on portable devices. The Office of Civil Rights determined that Hospice of Northern Idaho did not evaluate the impact and risks involved in the maintaining of electronic patient health information on the laptop.

Due to the violations HHS and the hospice care have agreed to a corrective action plan. This plan sets forth that Hospice of Northern Idaho must investigate and report incidents where compliance with the Security Rule is not followed by a member of the hospice. This corrective action plan will last two years.

## DHHS Issues Omnibus Rule

By Tammy Schroeder

The U.S. Department of Health and Human Services (DHHS) issued their "omnibus" Health Insurance Portability and Accountability Act (HIPAA) rule on January 17, 2013. The new rule covers a wide range of things but its most notable provision is the expansion of direct liability for breaches to contractors, subcontractors and "business associates" of health care providers, plans and insurers.

The omnibus rule has gone from the risk of significant harm standard to a requirement of the covered entity notifying someone of a breach unless they can show that there is a low

probability that protected health information has been compromised.

The rule extends the Privacy and Security Compliance obligations to business associates as required by the Health Information Technology and Clinical Health Act (HITECH). It makes the business associate directly liable under HIPAA and subject to civil and possibly criminal penalties.

The definition of business associates includes subcontractors of the business associate whose work involves protected health information. DHHS explains in its publication of the rule that there should

be a contract between the covered entity and business associate. A sample business associate agreement provisions and what exactly such a contract should contain may be found at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/contractprov.html>.

The omnibus rules goes into effect March 26, 2013. Covered entities and business associates have until September 23, 2013 to comply with the rule and any existing business associate agreements must comply with the new rule by September 2014.

## Influenza Epidemic (continued from pg. 1)

problems, which may result in hospitalization or death.

It is important to take action in an effort to reduce the number of residents and staff affected by influenza. Facilities are encouraged to take the following steps to prevent an influenza outbreak:

- Provide the influenza vaccination to residents and staff;
- Wash hands frequently;
- Cover your mouth and nose when coughing or sneezing;
- Avoid touching your eyes, nose or mouth;

- Clean and disinfect surfaces and objects that may be contaminated with germs;
- Post signs at facility entrances requesting individuals with flu-like symptoms to reconsider their visit.

Further steps should be taken if symptoms of influenza are present in the facility. Common symptoms include a fever of 100°F or higher, coughing, a sore throat, a runny or stuffy nose, headaches, body aches, chills, fatigue, nausea, vomiting, and diarrhea. To manage the influenza outbreak, facilities are encouraged to:

- Post signs at facility entrances warning visitors if signs and symptoms of influenza are present in the facility;
- Provide masks for individuals with symptoms, and for those who have not received the influenza vaccination;
- Avoid close contact with individuals with symptoms, and;
- Encourage employees to stay home if they have symptoms of influenza.



## Report finds that Nursing Facilities Face More Medicare Cuts Due to Fiscal Cliff Package *By Jeanelle R. Lust*

The Alliance for Quality Nursing Home Care (AQNH) released new data from Avalere indicating that provisions in the American Taxpayer Relief Act (ATRA) contained in the fiscal cliff package will further reduce Medicare payments for skilled nursing facility care—adding to the \$65 billion in SNF Medicare reductions already scheduled to take effect.

When residents receive therapy services in nursing homes, payments often are made through Medicare Part B. Un-

der Part B, inpatient and outpatient providers are paid under one fee schedule, although the severity of patient illness and the degree to which patients are clinically compromised is much greater in nursing facilities than for outpatients. Thus, it is more expensive to provide multiple therapy treatments to nursing home residents. In 2012, Medicare reduced a portion of Part B payments when patients receive multiple therapy procedures on the same day by 20 percent for outpa-

tient settings and 25 percent for inpatient settings like skilled nursing facilities. Under ATRA the payments will be further reduced starting on April 2, 2013.

“Extrapolating from the CBO estimate of \$1.8 billion in savings over ten years (FY 2013—FY 2022), we estimate the ATRA provision will cut payments to SNFs by approximately \$600 million over that period,” said Emil Parker, an Avalere Director.

kans will be Nebraska’s hospitals. They’ve got a 29 million dollar dog in the fight. That’s how much hospitals in the state now get from the federal government under Medicaid’s Disproportionate Share Hospital (DSH) program. The money goes to hospitals that treat uninsured and underinsured patients and accumulate higher-than-average amounts of uncompensated care.

Prior to the U.S. Supreme Court’s decision to make Medicaid expansion optional, hospitals nationally agreed to give up their DSH payments to help pay for the federal health care overhaul. In return, they expected to see their uncompensated care figures go down as an expansion of Medicaid reduced the number of patients without coverage. The Supreme Court’s ruling has now changed the landscape of the predicted health care and hospitals now face a possible future in which they lose their DSH payments and still have to take care of large numbers of low-income, uninsured people.

## Nebraska Medicaid (continued from pg. 1)

is not the only governor opposing the expansion of Medicaid as 13 Republican governors continue to oppose expansion, and 17 governors, including two Democrats, are undecided. Seventeen states and the District of Columbia have said they’ll take it and that group includes three Republican-led states, Arizona, Nevada and New Mexico. Arizona Gov. Jan

Brewer was prominent among GOP leaders who tried to get the law overturned. An additional 11 states, all led by Republicans, say they want no part of it. The remaining states are considering their options.

On January 23, 2013, Nebraska Senator Kathy Campbell introduced a legislative bill to expand the change provisions relating to the medical assis-

tance program. (See LB577). If the Nebraska Legislature thinks it’ll ultimately end up taking the deal, there’s a big incentive to act now: The three years of full federal funding for newly eligible enrollees are only available from 2014 through 2016.

Amongst the strongest lobbyists for expansion of the State Medicaid program to cover almost all low-income Nebras-

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