Legislative and Regulatory Update

Unless otherwise noted, for further information on any of these issues, please contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169 or slitch@aapd.org.

FEDERAL NEWS

$10 Million for Pediatric Dentistry Training Included in FY 2017 Senate Labor-HHS-Education Appropriations Bill

The Senate Labor, Health and Human Services, and Education Appropriations Subcommittee approved a FY2017 funding bill on June 7, followed by full Appropriations Committee passage on June 9, 2016 by a 29-1 vote. The approved bipartisan legislation will include a $2 billion increase for medical research by the National Institutes of Health and includes funding for issues affecting oral and overall health, education, job training, and opioid abuse prevention.

The AAPD is pleased with the $10 million that was provided for pediatric dentistry in the Senate bill. This is one step towards reaching our top FY 2017 federal appropriations priority of including $35.873 million for the HRSA Title VII Primary Care Dental Training Cluster and related oral health programs, with not less than $10 million for Pediatric Dentistry Training programs—including continuation of new dental faculty loan repayment program awards. The following report language was included:

“Training in Oral Healthcare: The Committee provides $35,873,000 for the Training in Oral Health Programs, which includes not less than $10,000,000 each for general and pediatric dentistry. Funds may be used to expand training … and may also be used to plan and operate training programs, as well as to provide financial assistance to students and residents. The agency is directed to provide continuation funding for predoctoral and postdoctoral training grants initially awarded in fiscal year 2015 and for Section 748 Dental Faculty Loan Program grants initially awarded in fiscal year 2016.

The Committee strongly encourages HRSA to restore the position of Chief Dental Officer with executive level authority and resources to oversee and lead HRSA dental programs and initiatives.”


Background: The authority to fund pediatric dentistry residency training under Title VII was first enacted under the health Professions Education Partnership of 1998. This expanded the existing General Dentistry training authority by providing “start-up funds” to increase Pediatric Dentistry positions at existing programs or initiate new programs. Under the 2010 Affordable Care Act, Title VII was expanded to create a primary care dental funding cluster under Section 748 of the Public Health Service Act. Authority was broadened to allow use of funds for faculty development, predoctoral training, and faculty loan repayment. The AAPD has long advocated for this latter initiative due to the significant difficulties in recruiting qualified individuals to fill faculty positions.

Analysis: This outcome is one step towards meeting the AAPD’s final FY 2017 federal appropriations goals. The AAPD is especially pleased that report language was included recognizing the importance of continuing the Dental Faculty Loan Repayment awards that are expected to be announced later this summer. The AAPD also strongly supports the restoration of a Chief Dental Officer position at HRSA. The AAPD especially thanks Congressional Liaison Heber Simmons, Jr. and Mike Gilliland and Kate McAuliffe at Hogan Lovells in Washington D.C. for their efforts on these appropriations issues. The AAPD also thanks all those members who participated in the 2016 Public Policy Advocacy Conference in Washington, D.C. where they advocated for this funding.

The AAPD also acknowledges our joint efforts with the ADA, ADEA, and AADR.
Regulations Implementing Section 1557 of ACA Impose Significant Burdens on Dental Offices

The very first “Litch’s Law Log” in PDT from almost a decade ago dealt with legal requirements for hearing impaired and limited English proficiency patients: http://www.aapd.org/assets/1/7/2940.pdf. In that article the following point was made:

“The Office of Civil Rights (OCR) for the U.S. Department of Health and Human Services has stated that if a health care provider treats Medicaid-eligible patients, foreign language assistance should be provided at no cost to the health care provider’s entire limited English proficient population! The guidance arguably exceeds federal regulatory authority.”

Now, under the Section 1557 non-discrimination provision of the Affordable Care Act (ACA), the implementing regulations have a broad and burdensome reach: http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html.

This regulation requires that dentists who receive federal financial assistance, such as those participating in Medicaid or CHIP, will have to post notices in the top 15 languages spoken in the state that free language assistance services are available, and make sure interpreters (including bilingual staff) are “qualified.”

The AAPD is working with ADA in analyzing this new regulation. More information will be disseminated shortly. Before OCR issued the regulation, the ADA commented on the burden the rule would have on dental practices. The ADA has requested additional clarification about the rule from the Office for Civil Rights.

STATE NEWS

Settlement Reached in Florida Medicaid Litigation

A decade-old class-action lawsuit brought on behalf of 2 million children who depend on Florida’s Medicaid system for care was recently settled, with an agreement that agencies responsible for running the system continue to improve medical and dental care—including raising reimbursement rates.

The lawsuit was filed in 2005, arguing that Florida Medicaid reimbursements were so low they fell short of federal standards and discouraged doctors from seeing patients.

The litigation was brought by the Florida chapters of the American Academy of Pediatrics and the American Academy of Pediatric Dentistry, the Public Interest Law Center, and the law firm Boies Schiller & Flexner LLP. In 2014, after a 90-day trial where pediatric dentist and AAPD Dental Quality Alliance representative Dr. James J. Crall was an expert witness, a federal judge ordered the state to settle with the plaintiffs.

The settlement must be approved by the federal court where the suit was filed. The proposed settlement is lengthy, but an initial review by ADA legal staff indicates that it will affect dental care delivery in the state in the following ways:

- The state’s Agency for Health Care Administration (AHCA), which runs the Medicaid program, agrees to increase access to and utilization of pediatric dental services.
- AHCA will study network adequacy standards and make these standards part of Medicaid managed care contracts; AHCA will work with the Florida Academy of Pediatric Dentistry before finalizing standards.
- AHCA will impose incentives and contractual penalties for managed care organizations (MCOs) achieving or failing to achieve network adequacy standards; similar incentives or penalties will be applied for meeting metrics used to evaluate program improvements.
- AHCA will improve its outreach to enrollees on the availability and importance of dental care.
- The order sets out utilization benchmarks to be met or exceeded. It also provides for corrective action for failing to meet benchmarks; this corrective action could include targeted research into barriers to dental care, incentives or penalties for plans that fail to meet these standards, and outreach to enrollees on oral care importance.
- AHCA will afford dentists serving Medicaid enrolled children a reasonable opportunity to earn increased payment rates; the increase must be sufficient to incentivize dentists in such a way that all of the interim utilization benchmarks set forth in the agreement are achieved. Increased payment rates must be in an amount equal to at least the 50th percentile of commercial dental insurance payments for pediatric dental care services furnished in Florida.

The settlement also requires the state to pay $12 million in legal fees to the firms and parents of the families that brought the suit.

For more background on the case and the Dec. 20, 2014, District court ruling against the state, visit http://www.aapd.org/federal_judge_rules_that_florida_medicaid_program_violates_federal_law/.