

# Rhode Island Business Group on Health

## Issue Brief

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**January 6, 2009**

## **Rhode Island News:**

### **House Finance Committee Posts Hearing Notice on Global Medicaid Waiver**

The House Finance Committee has scheduled a hearing on the agreement with the federal government to allow Rhode Island a waiver on Medicaid spending regulations to reduce costs.

The hearing on the agreement, known as the Global Medicaid Waiver, has been posted for Friday, Jan. 9, at 10 a.m. in Room 35 in the basement of the State House. Public testimony will be taken. The committee has also posted a second hearing date, Monday, Jan. 12, at 1 p.m., in case more time for testimony is necessary.

Earlier this month, the federal government approved Rhode Island's application for a waiver seeking extraordinary flexibility in its use of Medicaid funding in exchange for limiting its Medicaid spending to \$12 billion over the next five years. The current year's state budget relies on a \$67 million savings expected as a result of the waiver. The General Assembly has 30 days from the agreement, which was announced Dec. 19, to take any action on it, otherwise it becomes effective as written.

The General Assembly's 2009 legislative session begins Tuesday, Jan. 6.

## **Federal News: Revised Family and Medical Leave Regulations Effective January 16, 2009**

The United States Department of Labor (DOL) has released final revised regulations for the Family and Medical Leave Act (FMLA), which go into effect on January 16, 2009. The FMLA applies to private sector employers with 50 or more employees, public agencies, and certain Federal employers.

The revised regulations provide new tools for employers to administer FMLA more effectively, but will require updating of FMLA policies, forms, and information posters. Some of the notable changes in the regulations include:

- **Clarification of the Definition of a "Serious Health Condition"** – Currently a "serious health condition" is defined as an illness, injury or impairment, or physical or mental condition, that involves inpatient care or "continuing treatment" by a health care provider.

The serious health condition needs to involve more than three consecutive full calendar days of incapacity plus two visits to a health care provider. The final rules clarify that the two visits to a health provider must occur within 30 days of the beginning of the period of incapacity and that the first visit must take place within 7 days of the first day of incapacity. Where there is one treatment by a provider and a continuing regimen of treatment required, the one visit to the health care provider must take place within 7 days of the beginning of the period of incapacity. For a chronic serious health condition (one that continues over an extended period of time, requires periodic visits for treatment and may cause episodic rather than continuous periods of incapacity), the definition of “periodic visits” is at least two visits to a health care provider per year.

- **Perfect Attendance Awards** – Under the final rules, employers are allowed to deny a “perfect attendance” award to an employee who takes FMLA leave as long as it treats employees taking non-FMLA leave in an identical way.
- **Employers’ General Notice Obligations** – The final rules require covered employers that do not have an employee handbook or similar written materials describing benefits and leave to post a general FMLA notice even when they have no eligible employees. An FMLA notice must be provided to each employee when he or she is hired and must be in a language in which the employee is literate. The posting requirements may be satisfied through an electronic posting as long as it meets the regulatory requirements and all employees and applicants have access to electronic information. Paper copies must be posted in locations readily visible to employees who do not have access to company computers and to applicants who apply via non-electronic means. The final rules include a [new model poster](#).
- **Modification of Employer Notice Requirements** - The individual notice requirements under Section 825.301(b) of the current regulations have been separated into two new notice requirements or phases: “Eligibility/Rights and Responsibilities” notice and “Designation” notice.” Employers now have up to five business days after the employee requests leave (instead of within two business days) to notify the employee whether they are eligible or ineligible for FMLA leave or if additional information is required in order to make a final determination. The Designation notice is used to inform the employee that leave will be designated and counted as FMLA leave.
- **Different Medical Certifications for Employee and Family Members:** Recognizing that employers could benefit from having greater insight into the reasons why employees could not perform essential job functions, the DOL has created a new medical certification form for use in evaluating the medical need for leave prompted by an employee’s own serious health condition. The DOL also created a separate medical certification form for use when employees request leave to care for a family member with a serious health condition. This form seeks information on the type of care being provided by employees.
- **Guidance for Implementing Expansions of FMLA under the National Defense Authorization Act for 2008** - The final regulations provide specific guidance for administering changes to FMLA expanding the rights of members of the armed forces and military families enacted as part of the National Defense Authorization Act for 2008.

A more comprehensive summary of the final FMLA regulations and additional new administrative forms can be found on the [DOL website](#).

## **Mental Health Parity Law Enacted: Effective Date Corrected**

When Congress passed and President Bush signed into law the [Emergency Economic Stabilization Act of 2008](#) (H.R. 1424) on October 3, 2008, the Act included a measure on mental health parity. For employers with 50 or more employees, the measure requires equity in the provision of mental health and substance-related disorder benefits under group health plans and prohibits discrimination on the basis of genetic information with respect to health insurance and employment. Therefore, under this new law any limits on mental health treatments must be no greater than the limits placed on medical and surgical benefits.

Congress passed legislation (S. 3712ES) **correcting** the effective date from January 1, 2009 to January 1, 2010. President Bush signed this bill into law on December 23, 2008, making it Public Law 110-460.