

THE 2008 DISABILITY POLICY SEMINAR

THE ARC, AAIDD, AUCD,
UCP AND NACDD
FACT SHEET

ADMINISTRATIVE ACTIONS WOULD RESTRICT ACCESS TO CRITICAL MEDICAID SERVICES

Background

Medicaid is a lifeline for people with disabilities. It is the nation's primary way of financing and delivering community-based health and long-term services to children and adults with disabilities. Medicaid serves nearly 60 million low-income Americans, including an estimated 9.9 million people with disabilities and accounts for an estimated 86% of public spending on developmental disabilities services.

Over the past year, the Bush Administration's Centers for Medicare and Medicaid Services (CMS) has issued six Medicaid rules, in either proposed or final form, which together would have a devastating impact on Medicaid beneficiaries or the safety net providers that serve them. Taken together, these rules will reduce federal financing for Medicaid by \$15 billion over five years. The President's FY 2009 budget proposes \$17.4 billion in legislative changes to Medicaid over five years and additional administrative rules are likely pending. These regulatory changes will shift significant Medicaid costs to states at a time when the economy is in a downturn and many states are either experiencing declining revenues—or bracing for revenues to start falling. Preventing implementation of these regulations is the top priority for all Medicaid stakeholders, including the disability community.

Three of the six rules will be particularly harmful to Medicaid beneficiaries with disabilities and their providers. If implemented, these regulations will result in the loss of critical services for Medicaid eligible children and adults with developmental disabilities.

1) Rehabilitation Services Option

CMS issued a proposed rule on 8/13/07 which would generate \$2.3 billion in savings over 5 years by restricting the scope of eligible rehabilitation services and eliminate coverage for day habilitation services for individuals with developmental disabilities. The proposed rule appears to prohibit people with “mental retardation and related conditions” from receiving nearly all services through the rehabilitation option. In particular, longstanding day habilitation programs for persons with developmental disabilities would be eliminated (these programs enable an individual to maximize independent living skills) under the rehabilitation and clinic options. The only way that Medicaid could pay for habilitation services would be through waiver programs or ICF/MR programs. Since waiver programs are capped with waiting lists, this would reduce the number of individuals who can access these critical services. In addition, since eligibility criteria for the rehab option differs from eligibility for the waiver, there will be some people who will lose services if habilitation is covered only through the waiver.

2) School-Based Administrative and Transportation

CMS issued a final rule on 12/28/07 that would generate \$2.8 billion in cuts over 5 years by prohibiting Medicaid payments for administrative activities (including outreach, enrollment and support in gaining access to Medicaid's Early, Periodic, Screening, Diagnosis and Treatment (EPSDT) benefits services) performed by schools and transportation of school-age children. School districts believe that this rule, if implemented, would force them to significantly reduce related services (e.g. physical, occupational and speech and language therapies) and classroom aides provided to students with disabilities in special education.

3) Case Management

CMS issued an interim final rule on 12/04/07 that becomes effective on 03/03/08 that would generate \$1.3 billion in cuts over five years by restricting the scope of case management services and targeted case management (TCM). The TCM rule makes it significantly more difficult for individuals transitioning from institutions to the community by limiting federal reimbursement for transitional case management from the last 180 days of an individual's institutional stay to the last 60 days. In many cases, due to the lack of affordable and accessible housing and challenges in securing support services, it is difficult to impossible to transition to the community in 60 days.

Action Taken by Congress

The Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173) contains a six month moratorium (until June 30, 2008) for CMS' rehabilitative services and school based administration/transportation rules. Rep. John Boozman (R-AR) has introduced a one year moratorium bill (H.R.4355).

Senator Norm Coleman (R-MN) and Rep. Keith Ellison (D-MN) have introduced legislation (S. 2578/H.R. 5173) to impose a one year moratorium on the Medicaid interim final case management rule.

Senators Edward Kennedy (D-MA) and Gordon Smith (R-OR) and Reps. John Dingell (D-MI) and Ed Whitfield (R-KY) introduced the *Protecting Children's Health in Schools Act of 2007* (S. 578/ H.R. 1017), which clarifies that schools can use Medicaid funding for certain transportation and administrative claims, and tightens reporting and documentation requirements to avoid abuse.

Recommendations

- Extend the six month moratoria on the CMS rehabilitative services and school based administration/transportation rules through H.R. 4355 or other legislative vehicles;
- Co-sponsor legislation (S. 2578/H.R. 5173) to impose a one year moratorium on the CMS case management rule; and
- Co-sponsor the *Protecting Children's Health in Schools Act of 2007* (S. 578/H.R. 1017).

Relevant Committees

Senate Finance Committee

House Energy and Commerce Committee

For more information, please contact The Arc and United Cerebral Palsy Disability Policy Collaboration (202-783-2229), Association of University Centers on Disabilities (301-588-8252), American Association on Intellectual and Developmental Disabilities (202-387-1968), or National Association of Councils on Developmental Disabilities (703-739-4400).

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