



National Association of State Medicaid Directors

an affiliate of the American Public Human Services Association

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THE HONORABLE HARRY REID
MAJORITY LEADER
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WASHINGTON, DC 20510

THE HONORABLE MITCH MCCONNELL
MINORITY LEADER
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Dear Majority Leader Reid and Minority Leader McConnell:

I am writing today regarding the Medicaid Safety Net Act of 2008 (H.R. 5613). The American Public Human Services Association and its affiliate, the National Association of State Medicaid Directors urge you to support the passage of this important piece of legislation.

Medicaid provides comprehensive health coverage to 62 million U.S. citizens, including on average 1 out of every 3 children in the nation, including children in foster care and child welfare programs. Medicaid is the largest payer for long-term care services and provides long term care supports in community-based and in-home settings, as well as in nursing homes, for millions of senior citizens and adults and children with disabling conditions. Medicaid is the largest insurer of non-aged adults with disabilities, is often a source of support for people with disabilities who can return to the work force, and plays an increasingly important role in offering coverage to low income working Americans, especially parents, as coverage in the employer sector declines.

Medicaid in the states is a program under considerable stress. The major source of that stress is a slowing economy, which increases the demand for Medicaid services just as state revenues are least able to support the growth in demand. A second source of stress for states is the recent, dramatic change in federal policy as expressed in a series of proposed and enacted federal Medicaid regulations. The Center for Medicare and Medicaid Services (CMS) has issued at least 15 proposed regulations over the last two years, 10 of those within the last six months. Seven sets of regulations have been flagged by states as causing potential significant harm to the ability of states to appropriately serve the Medicaid population. This collection of regulations impacts a broad range of Medicaid services and activities, including reimbursement for safety net providers; reimbursement for out-patient services in hospitals;

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the support of the cost of medical residents who provide substantial amounts of care to Medicaid consumers; services to people with mental illness; the design of home and community based waiver programs for the elderly and people with physical and developmental disabilities; the facilitation of service access for adults and children with the most complex medical, emotional and social services needs; and the ability of states to support school-based efforts to enroll needy children into Medicaid coverage.

HR 5613 would place these proposed regulations under a moratorium until April 1, 2009. State Human Services Directors and state Medicaid directors are strongly supportive of efforts to provide a “time out” on these regulations to allow a careful consideration of the impact of proposed policy changes on the vulnerable people served by states.

CMS states that the regulations are in response to abuse within the states; however, AHPA and NASMD believe that, generally, this is not the case. Rather, many of these regulations represent significant changes in long-standing federal policy. It is important to note that some of the proposed regulations contain provisions that Congress rejected during debate over the DRA of 2005. In addition, many of the regulations were issued as interim final regulations or with only brief public comment periods, and there has been inadequate opportunity for public input on these proposals. As a result, the proposals appear to have unintended consequences on good programs and will limit legitimate services to vulnerable people.

NASMD has been clear in our interactions with CMS that we do not seek to defend inappropriate excesses in federal claiming, and Directors have not asked CMS to walk away from these issues. Rather, NASMD believes that CMS has, in most instances, already found strategies to successfully identify and remediate areas of clear excess. In recent years, CMS has put in place new informal or formal guidance on IGTs, CPEs, and school administrative claiming, just to name a few. Congress has enacted reforms to targeted case management, clarifying important parameters regarding benefit design and how Medicaid interfaces with other public programs. In addition, Congress has authorized increased funding for CMS auditors, both to monitor state fiscal arrangements and to increase provider reviews.

The apparent focus of some of the regulations to assure that “no loopholes” remain regarding federal financing has resulted in overly-broad changes and prohibitions that are throwing the figurative baby out with the bath water. As one example, some school administrative claiming arrangements in the past may have charged excessive costs to Medicaid. However, a school nurse who works today to help a child with untreated medical needs enroll in the Medicaid program is not an abuse of the system. It is a critical component of an effective Medicaid program. But under the school services regulations, this legitimate activity would be prohibited from receiving Medicaid support.

NASMD urges the Senate to support HR 5613, giving states, federal policy-makers, consumers and providers a period of time to understand and prevent the unintended consequences of these regulations, and to revisit and debate the wisdom of the proposed changes to federal policy. We need an opportunity to find the right balance between federal clarity and state flexibility, between absolute assurances that federal funds are never “over-used” and the imperative for states to be able to meet the needs of the elderly, children with

special health care needs, and other persons with complex, chronic or disabling conditions. Finally, we need more realistic timeframes for implementation of new regulations, particularly for regulations that change existing federal policy as reflected in years of approved state plans.

Thank you for your interest in this issue. If we can provide further information or assistance, please contact Barbara Coulter Edwards, Interim Director of NASMD, at (202) 682-0100.

Sincerely,



David Parrella, Chair
NASMD Executive Committee



Jerry Friedman, Executive Director
APHS

cc: The Honorable Nancy Pelosi, Speaker of the House of Representatives
The Honorable John Boehner, Minority Leader of the House of Representatives
Senate Finance Committee
House Energy and Commerce Committee
Kerry Weems, CMS
Herb Kuhn, CMSO
Matt Salo, Director of Health Legislation, NGA
Joy Wilson, Director of Health Policy, NCSL
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