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ADMINISTRATION MOVES TO WITHDRAW KEY HEALTH SERVICES FROM CHILDREN AND ADULTS WITH MENTAL ILLNESS AND OTHER DISABILITIES

by Judith Solomon

On August 13, 2007, the Centers for Medicare and Medicaid Services issued a proposed regulation that would eliminate federal Medicaid funding for important services provided to adults and children with disabilities (particularly those with mental illness), as well as other beneficiaries.¹ The rule would significantly limit states' ability to provide rehabilitative services, including those designed to enable individuals with disabilities to improve their mental or physical capacities and remain out of an institution.²

In 2004, some 1.5 million people received rehabilitative services through Medicaid, according to a recent report from the Kaiser Commission on Medicaid and the Uninsured. Nearly every state (47 states plus the District of Columbia) provides rehabilitative services for Medicaid beneficiaries.

About three-fourths of the people who receive these rehabilitative services suffer from mental illness.³ Many states use federal Medicaid funds to help support community-based services for people with mental illness as an alternative to institutionalization. States also provide rehabilitative services to children with mental illness and other special health care needs in school-based settings.⁴

In 2005, the Administration tried — and failed — to persuade Congress to restrict rehabilitative services as part of the Deficit Reduction Act.⁵ In its last two budgets, the Administration has announced that it intends to restrict these services anyway, bypassing Congress and acting administratively.

¹ 72 Fed. Reg. 45201–45213 (Aug. 13, 2007).

² In Medicaid, rehabilitative services are defined as “medical or remedial services” recommended by a physician or other licensed health care provider “for maximum reduction of physical or mental disability and restoration of an individual to the best possible level.”

³ Jeffrey S. Crowley and Molly O'Malley, “Medicaid’s Rehabilitation Services Option: Overview and Current Policy Issues,” Kaiser Commission on Medicaid and the Uninsured, August 2007.

⁴ Because of the Early and Periodic, Screening, Diagnostic and Treatment (EPSDT) program, which requires that states provide all medically necessary services to children that can be covered under Medicaid, rehabilitative services are required for children. In contrast, states have the option of whether to provide rehabilitative services to adults, though (as noted) nearly every state does so.

⁵ Testimony of Dennis Smith, Senate Committee on Finance, June 28, 2005, at <http://www.senate.gov/~finance/hearings/testimony/2005test/DStest062805.pdf>

The most significant change in the proposed rule would prohibit the use of federal Medicaid funds for rehabilitative services that are “intrinsic elements” of another program, such as foster care or child welfare. The Administration claims that beneficiaries can get the services through the other program, so Medicaid support is not necessary. The reality is very different. In most cases, the other program has limited funds and expects Medicaid to pay for rehabilitative services for Medicaid beneficiaries. Without Medicaid funding, many beneficiaries would simply not receive these health care services.

The proposed rule also prohibits the use of federal Medicaid funds for therapeutic foster care, designed for children with serious mental illness. For most children, therapeutic foster care — in which children are placed in a private home with foster parents who are specially trained to help them improve their condition — is an alternative to more costly care in a residential treatment program or psychiatric hospital.⁶

The proposed rule would also eliminate coverage for “day habilitation” programs, which are designed to help people with intellectual disabilities (formerly called mental retardation) and other developmental disabilities acquire the skills they need to live in community-based settings and remain out of institutions. For example, these programs help people with their communication and social skills and maximize their ability to perform activities of everyday life.

In 1989, Congress — concerned about efforts to eliminate Medicaid coverage for day habilitation services — barred the Secretary of Health and Human Services from restricting such coverage unless the Secretary also specified which of these services could be covered elsewhere in Medicaid. The Administration’s proposed rule does not do that. Instead, it simply eliminates coverage for all day habilitation services, which is likely to cause many vulnerable Medicaid beneficiaries to lose this critical form of assistance.

Last year, the National Governor’s Association (NGA) called on the Centers for Medicare and Medicaid Services to withdraw the proposed rule. The NGA noted that the proposal represents “a significant departure from states’ authority to provide necessary health-related services for Medicaid enrollees.”⁷

Recognizing the imminent harm that this regulation poses, Congress acted on a bipartisan basis at the end of last year to delay implementation of this regulation, as well as of the school-based services regulation, which would eliminate federal Medicaid matching funds for Medicaid outreach and enrollment activities undertaken by school personnel.⁸ These moratoria expire at the end of June. To prevent the Administration from making an “end run” around Congress to reshape Medicaid in ways that Congress never intended (and in some cases expressly rejected), Congress will need to extend these moratoria and to enact new moratoria to block other harmful Medicaid rules.⁹

⁶ *Mental Health: A Report of the Surgeon General*, 1999 at http://mentalhealth.samhsa.gov/features/surgeongeneralreport/chapter3/sec7_1.asp

⁷ Letter from Raymond C. Sheppach, Executive Director, NGA to Kerry Weems, Acting Administrator, CMS, October 10, 1007, available at www.nga.org

⁸ See Section 206, The Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law No: 110-173.

⁹ For more details about other Medicaid regulations, see Allison Orris and Judith Solomon, “Administration’s Medicaid Regulations will Weaken Coverage, Harm States, and Strain Health Care System,” Center on Budget and Policy Priorities, revised March 4, 2008, <http://www.cbpp.org/2-13-08health.htm>.