

~UNITED STATES CONGRESS~

For Immediate Release
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CHAIRMEN QUESTION MEDICAID RULE'S POSSIBLE NEGATIVE EFFECTS *Cuts to public nursing homes and hospitals could keep some Americans from getting care*

Washington, DC – The Chairmen of Senate and House panels with jurisdiction over the Medicaid program are questioning whether proposed changes to the program could keep some Americans from getting the medical care they need. A new rule would, among other adjustments, cut Medicaid payments to public hospitals and nursing homes to exactly the cost of care, while private hospitals and nursing homes would still be able to make a profit when they're paid. This could force some facilities to offer fewer health services to Medicaid patients or even to close their doors. Senators Max Baucus (D-Mont.) and Jay Rockefeller (D-W.Va.) and Representatives John Dingell (D-Mich.), Frank Pallone (D-N.J.) and Henry Waxman (D-Calif.) raised their concerns in a letter to Health and Human Services Secretary Michael Leavitt.

"Medicaid rules made in Washington have real effects for folks back home, and I don't want this proposed rule to keep patients from getting treatment," said Baucus. **"Cutting Medicaid costs on the front end doesn't do a lot of good if more Americans end up without the health care they need."**

"This proposed rule singles out safety net providers and undermines their ability to continue providing care to the impoverished and uninsured," said Rep. John D. Dingell, Chairman of the Committee on Energy and Commerce. **"And this comes at a time when we should be strengthening the safety net and covering more of the uninsured. Our priorities need to be with the people we serve."**

"All the indications are if this proposed regulation goes into effect, it will have a devastating affect on America's safety net hospitals, institutions that provide critical emergency services, and the very places we need to rely on if we face new terrorist attacks," said Rep. Waxman. **"CMS appears to have moved forward without any sense of the damage this rule could cause, and we think they owe the Congress-and the American public-that information."**

"It's the old one-two punch. Last year, the Republican Congress granted the Bush Administration wide latitude to reduce Medicaid benefits which millions of people depend on. Now, they want to go after the health care providers and weaken the health care safety-net," Rockefeller said. **"We should be making it easier not harder for people to get the medical care they need."**

"The Bush administration has proposed to make sweeping changes to the Medicaid program through regulations without the consultation of Congress," said Rep. Pallone. **"It is disingenuous for the President to say he wants to reduce the number of uninsured Americans while proposing regulations that could effectively gut the very program that provides health care services to millions of low-income families."**

Under the proposed rule from the Centers for Medicare and Medicaid Services (CMS), while public nursing home and hospital payments would only receive Medicaid payment equal to the cost of services being provided, all other health providers would be able to receive the regular Medicaid rate, which could take into account profit and overhead costs for the business. The cuts in payments would also limit the ability of public nursing homes or hospitals to contribute towards the state costs toward Medicaid, which will not only reduce the funds states get from medical facilities but could also cause them to lose federal matching funds.

The Chairmen have asked for a response from CMS by March 26, 2007. The text of their letter follows here.

March 12, 2007

The Honorable Michael O. Leavitt
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Re: File Code CMS-2258-P

Dear Mr. Secretary:

As the chairmen of the House and Senate committees and subcommittees with jurisdiction over both the Medicaid program and the Health and Human Services' administration or its oversight, we have grave concerns about the proposed rule (CMS-2258-P) entitled "Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnership," issued January 18, 2007.

As currently proposed, the rules to implement this provision are not sufficiently clear and will result in unintended harmful consequences. We request that you respond to the attached questions no later than Monday, March 26, 2007, and that our comments be placed in the public record of the rulemaking.

The proposed rule seeks to narrow the definition of government-related health providers and thus limits the funding sources available to States to finance Medicaid. It singles out public providers to limit their reimbursement to cost through the use of certified public expenditures. We are chiefly concerned that the proposed rule will have a severe adverse affect on the Nation's public safety net and the ability to deliver critical health services to Medicaid beneficiaries and the uninsured. It could also lead to widespread bed closures and loss of vital yet often unprofitable services that benefit communities, such as trauma centers, burn units, and emergency departments.

We believe that limiting reimbursement to Government healthcare providers to "cost," as defined in the proposed rule, will effectively eliminate the ability of States to sufficiently fund their portion of Medicaid matching funds, greatly limiting the delivery of necessary healthcare services to low-income Americans. Additionally, we are concerned that the narrow definition of Government healthcare providers will eliminate or reduce funding to State university hospitals, public nursing homes, and other providers, thereby eliminating or reducing access to health care for millions of the Nation's low-income beneficiaries and the uninsured.

Finally, we are concerned that the policy could adversely affect inpatient capacity and community access to vital services such as trauma centers at a time when our Nation is faced with significant public health threats.

The attached questions should help clarify the scope of the rule and the effect it will have on these providers and the low-income and uninsured beneficiaries they serve.

If you need further information, please contact any of us, or have your staff contact Bridgett Taylor with the House Committee on Energy and Commerce at (202) 225-2927, Karen Nelson with the House Committee on Oversight and Government Reform at (202) 225-5051, or Alice Weiss with the Senate Committee on Finance at (202) 224-4515.

Sincerely,

John D. Dingell, Chairman
House Committee on Energy and Commerce

Frank J. Pallone, Jr., Chairman
Subcommittee on Health
House Committee on Energy and
Commerce

Henry A. Waxman, Chairman
House Committee on Oversight and
Government Reform

Max Baucus, Chairman
Senate Committee on Finance

John D. Rockefeller, Chairman
Subcommittee on Health Care
Senate Committee on Finance

Attachment

cc: The Honorable Leslie V. Norwalk, Acting Administrator
Centers for Medicare and Medicaid Services

Attachment
Letter dated March 12, 2007

Questions for the Hon. Secretary Leavitt
From Hon. John D. Dingell, Hon. Frank J. Pallone, Jr., Hon. Henry A. Waxman,
Hon. Max Baucus, and Hon. John D. Rockefeller

Quantifying the Impact of the Regulation

1. How did the Centers for Medicare and Medicaid Services (CMS) construct the estimate of reduction in Federal Medicaid outlays? Specifically:

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- a. What savings are associated with each component of the regulation (i.e., limit to cost, definition of unit of government, retention provision, etc.)?
 - b. How were savings estimated for FY2007?
 - c. What are the specific policy changes and assumptions that drive differential year-over-year increases? For example, the increase in Federal savings is approximately \$300 million between FFY 2008-09 and 2009-10 but the increase is only \$30 million between FFY 2010-11.
2. What is the individual state-by-state Federal Medicaid dollar impact by class of facility of: cost limits for public providers; changes in the definition of public hospitals; changes in the definition of certified public expenditures; changes in UPL policy; limits on IGTs and DSH? Please provide answers for both waiver and non-waivered States.
 3. Please provide a list of affected States and facilities and a list of States and facilities already in compliance.
 4. Please explain how the rule will affect States' existing waiver budget neutrality calculations. Will States have to recalculate their budget neutrality cap as a result of the rule? If so, which States will be adversely affected?

Other Questions and Clarifications

1. The Medicaid program has a longstanding history of serving as the principal financial support of the safety net and ensuring access for vulnerable populations—including Medicaid patients and the uninsured—who might otherwise go without care. The regulatory impact analysis asserts that this rule's effect on actual patient services will be minimal (p.49). Please produce the economic and other assumptions used in arriving at this estimate.
2. Section 1903 defines units of local government as a city, a county, a special purpose district, or other governmental unit of State. This regulation narrows that definition dramatically by requiring the entity to have taxing authority in order to be considered a unit of government. Congress's broader definition provides States with much more leeway to identify for themselves which entities are units of local government. Please justify your policy rationale for such a restrictive definition. Please list the entities that, by this definition, would be excluded that are currently considered a unit of local government.

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