DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, MD 21244-1850

Center for Medicaid, CHIP and Survey & Certification

CMCS Informational Bulletin

DATE: May 27, 2011

FROM: Cindy Mann, JD
Director
Center for Medicaid, CHIP and Survey & Certification (CMCS)

SUBJECT: Recent Developments in Medicaid

CMCS is pleased to release this Informational Bulletin highlighting several announcements from Medicaid, including:

- A Notice of Proposed Rule Making on Access to Covered Medicaid Services,
- A State Medicaid Director letter providing guidance on the use of administrative funds to support Health Information Exchange,
- A new draft preprint state plan page for use in implementing Concurrent Hospice Care for Children in Medicaid and CHIP.

Standards Assuring Access to Covered Medicaid Services

On Friday, May 6, 2011, a Notice of Proposed Rule Making (NPRM) regarding Access to Covered Medicaid Services was published in the *Federal Register.* This proposed rule amends existing Federal regulations to create a standardized, transparent process for States to follow as part of their broader efforts to "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available to the general population in the geographic area" as required by section 1902(a)(30)(A) of the Social Security Act. The proposed rule affects only Medicaid fee-for-service payments. We are eager to receive comments from States and other stakeholders on the proposed rule.

The regulation implements a long standing statutory provision. Currently, CMS requests that a State provide us information about access when it seeks a rate change, but we have not provided guidance to States on what is expected. Partly as a result, the courts have stepped in. The proposed rule does not create a new federal access standard. Instead it proposes a process and a framework for States to analyze data available to them that they believe is relevant to their State, their beneficiary population and their delivery system, to ensure that beneficiaries have access to covered services.

The NPRM also proposes to clarify and amend the regulations at 42 CFR 447.205, which require States to issue public notice to their providers when changing Medicaid payment methods and standards. The proposed changes to the public notice requirement intend to alleviate confusion regarding when States must issue notice to providers and recognize electronic media as a means to issue the notices.

To read the regulation and for instructions on submitting comments on this NPRM, please visit: http://www.gpo.gov/fdsys/pkg/FR-2011-05-06/pdf/2011-10681.pdf All comments on this NPRM must be received no later than **5 p.m. on July 5, 2011** via one of the following methods:

- Electronically at http://www.regulations.gov. Follow the "submit a comment" instructions,
- By regular mail,
- By express or overnight mail, or
- By hand or courier to the DC or Baltimore locations.

Addresses for the last three options are provided within the NPRM at the above link.

Use of Administrative Funds to Support Health Information Exchange as part of the Medicaid EHR Incentive Program

On May 18, 2011, CMCS released a State Medicaid Director's (SMD) letter, available at http://www.cms.gov/smdl/downloads/SMD11004.pdf, providing further guidance to State Medicaid Agencies regarding the implementation of section 4201 of the American Recovery and Reinvestment Act of 2009 that established the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs.

This letter builds upon an SMD letter released on August 17, 2010, (http://www.cms.gov/smdl/downloads/SMD10016.pdf) that provided guidance to States on allowable expenses for activities supporting the administration of the Medicaid EHR Incentive Program. The August 17, 2010 SMD letter outlined CMS expectations relating to activities and potential State expenditures that may be eligible for the 90 percent Federal Financial Participation (FFP) for the purposes of administration and oversight of the EHR Incentive Payments. In addition, that letter provided initial direction regarding State Medicaid agencies' role in promoting EHR adoption and Health Information Exchange (HIE).

The May 18, 2011, SMD letter provides more detailed guidance about the potential roles that States might play in the development and sustaining of HIE and permissible use of FFP. Specifically, the letter outlines our approval criteria as it pertains to States' involvement in HIE activities whose costs are divided equitably across other payers along the fair share principle, are appropriately cost-allocated, leverage efficiencies, and that are developmental and time-limited in nature. This letter also reiterates the principle that the 90 percent FFP would not be available for on-going HIE costs where these services are fully operational.

Section 2302 of the Affordable Care Act – Concurrent Hospice Care for Children in Medicaid and CHIP

A State Medicaid Director's (SMD) letter was released on September 9, 2010, providing guidance to States on the implementation of section 2302 of the Affordable Care Act, entitled "Concurrent Care for Children." (https://www.cms.gov/smdl/downloads/SMD10018.pdf) In the letter we noted that CMS was revising the Medicaid State plan hospice preprint page of Attachment 3.1-A and 3.1-B to reflect this new feature of the hospice benefit. We are now providing a "draft template" to be used when submitting revised pages to your State's plan amendment (see Enclosures). This template should be used until such time as the OMB-approved preprint is available. States are now required to amend State plans as necessary to add the hospice concurrent care legislation requirement, by checking the box in section 18 marked "Provided in accordance with section 2302 of the Affordable Care Act."

As background, section 2302 of the law amends section 1905(o)(1) and 2110(a)(23) of the Social Security Act to remove the prohibition of receiving curative treatment upon the election of the hospice benefit by or on behalf of a Medicaid or CHIP eligible child. In the September 29, 2010 letter, CMS clarified that hospice services are covered under the Medicaid and CHIP programs as an optional benefit, but also that the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provision requires Medicaid and CHIP programs operating as Medicaid expansions to provide all medically necessary services, including hospice services, to individuals under age 21. In order to qualify for the hospice benefit in either Medicaid or CHIP, a physician must certify that the eligible person is within the last 6 months of life.

This provision was effective upon enactment of the Affordable Care Act on March 23, 2010. Therefore, under Medicaid, and CHIP programs operating as Medicaid expansions, we expect States to continue to provide medically necessary curative services, even after election of the hospice benefit by or on behalf of children receiving services effective on March 23, 2010. States operating stand-alone CHIP programs that offer the optional hospice benefit must now provide it concurrently with medically necessary curative services.

Questions regarding the Concurrent Care for Children may be directed to Linda Peltz, Director, Division of Benefits and Coverage, Disabled and Elderly Health Programs Group, at 410-786-3399, or via email at linda.peltz@cms.hhs.gov.

I hope you will find this information helpful. Thank you for your continued commitment to Medicaid and CHIP.

Enclosures

State/Territory_____

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

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15. a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with section 1902(a)(31)(A) of the Act, to be in need of such care.

[ ] Provided [ ] No limitations

[ ] With limitations* [ ] Not Provided:

b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

[ ] Provided [ ] No limitations

[ ] With limitations* [ ] Not Provided:

16. Inpatient psychiatric facility services for individuals under 22 years of age.

[ ] Provided [ ] No limitations

[ ] With limitations* [ ] Not Provided:

17. Nurse-midwife services

[ ] Provided [ ] No limitations

[ ] With limitations* [ ] Not Provided:

18. Hospice care (in accordance with section 1905(o) of the Act).

[ ] Provided [ ] No limitations [ ] Provided in accordance with section 2302 of the Affordable Care Act

[ ] With limitations* [ ] Not Provided:

***Description provided on attachment**

State/Territory: _____

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE MEDICALLY NEEDY

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c. Intermediate care facility services.

/ / Provided / / No limitation / / With limitations*

15. a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with section 1902(a)(31)(A) of the Act, to be in need of such care.

/ / Provided / / No limitation / / With limitations*

b. Including such services in a public institution (or district part thereof) for the mentally retarded or persons with related conditions.

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***Description provided on attachment-**
