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A CENTRAL PILLAR OF TEXAS HEALTH CARE IS AT RISK

Federal Medicaid Rules Would Cost Texas $3.4 Billion

Texas Medicaid is the predominant health safety net for 2.8 million seniors, Texans with disabilities, and low-income children. Medicaid provides over $13 billion in federal funds for health and long-term care to the poorest and most seriously disabled Texans in 2008. Medicaid's contributions are critical, because they also support the safety net that must care for another 5.7 million Texans who remain uninsured—care funded largely through local health care spending that is not matched with Medicaid's federal funds. Federal Medicaid officials are trying to impose a number of rules that, if implemented, would make program cuts that would threaten our most vulnerable citizens, limit our ability to serve more low-income children in CHIP, and shortchange taxpayers at the same time. Texas Medicaid officials estimate that these rules would cost Texas Medicaid $3.4 billion in lost federal support over five years. The cuts would force Texas to cut services for children with disabilities and frail seniors as well as support for safety net hospitals, or else raise taxes to make up the lost federal funds. Governor Rick Perry, the National Governors Association, and the National Association of State Medicaid directors all have urged Congress to stop the rules from taking effect, and Congress is now debating bills that would delay the rules for at least a year. In every case, these rules attempt to impose harsher policies than underlying federal law, and in many cases policies that have been specifically rejected by Congress. Read more about the rules and how you can help prevent these cuts below.

The Rules

Eight different federal rules or directives from the current presidential administration would have dramatic effects on Medicaid across the country, and a ninth would also force cut-backs in CHIP. The rules would affect the following:

Medicaid Support for Public Hospitals and Institutions: This rule would reduce payments to some public hospitals and other public health care providers, and make others ineligible for any Medicaid funding at all. **Estimated loss to Texas Medicaid: $2.24 billion over 5 years; elimination or reduction of care for over 185,000 Texans.**

School-based Medicaid Services: This rule would eliminate current federal funds for outreach, enrollment assistance, and coordination of health care services by schools, and would eliminate current funding for transporting children with special health needs to school. **Estimated loss to Texas Medicaid: $48.8 million over 5 years; elimination of federal school transport funding for 14,500 Texas students.**

Rehabilitation Services: Federal Medicaid officials would re-define rehabilitation to exclude a range of services currently covered by Medicaid. This would force dramatic cuts to early childhood intervention services, mental health rehab care, and adult day care. **Estimated loss to Texas Medicaid: $356.3 million over 5 years; loss of services for 21,000 elderly Texans (many will be forced into more expensive nursing home care), and 4,000 to 5,000 children from birth to age 3 with serious developmental delays.**

Targeted Case Management: Drastic limits would be imposed on federal Medicaid funds for case management services, going beyond what Congress enacted in the 2005 Deficit Reduction Act. This rule would force cuts in case management for children in foster care, abused elders, children who are blind or visually impaired, people with

physical or mental disabilities in community programs, and those trying to move from institutions to the community. **Estimated loss to Texas Medicaid: $430.9 million over 5 years; and losses of services for many thousands of enrollees.**

Graduate Medical Education: The Centers for Medicare and Medicaid Services (CMS) is proposing to completely eliminate special Medicaid funding for teaching hospitals to help cover the cost of training doctors. Texas Medicaid had proposed to revitalize its "GME" program, which was cut in 2003 as part of a broad package of Medicaid and CHIP cuts. Governor Perry noted in his letter to CMS that Texas faces serious provider shortages, and that "this rule could not have come at a worse time." **Estimated loss to Texas Medicaid: $348.3 million over 5 years; affects the teaching hospitals which provide about half of the hospital care delivered to Texas Medicaid enrollees.**

Provider Taxes: Federal law has long limited states' use of taxes on health care providers as a state revenue source for Medicaid, and this rule would further limit their use. While controls on these taxes are needed to prevent abuses, Texas has used provider taxes appropriately to improve payment rates and quality of care in programs for Texans with mental retardation (ICF-MRs), and the Code Red task force has recommended creating hospital and surgical center taxes to raise additional Medicaid federal dollars that could be used to improve access to care. Thirty-five states have quality assurance fees or provider taxes that produce similar matches. **Estimated loss to Texas Medicaid for the ICF-MR tax: $11.5 million over 5 years; reduced funding for facilities providing care to Texans with mental retardation and fewer future Medicaid revenue options.**

Outpatient Clinic and Hospital Facility Services: This rule both reduces the kinds of outpatient hospital services states can pay for and restricts reimbursement rates for such services as hospital-based physician services, children's medical care, routine vision services, annual check-ups, and vaccinations. **HHSC has <u>not</u> estimated the loss to Texas Medicaid, but notes that limiting hospitals' ability to provide preventive care may increase demand for care in the emergency room.**

Departmental Appeal Board Procedures: The rule guts the independence of the DAB, created 30 years ago to serve as the impartial arbiter in disagreements between the federal government and the states on Medicaid and other Social Security Act programs. This change would allow the federal HHS Secretary to overturn DAB rulings, eliminating the DAB's "checks and balances" role, and according to the National Governors Association, "leav(ing) states without a fair and objective means for disputing the department's – or its agencies' – decisions."

The proposed rule would also give standing to non-binding departmental documents such as litigation briefs, memos, and emails that interpret federal laws and regulations, giving them equivalent authority to statute and regulations even when those interpretations are not required by the underlying law.

The National Association of State Medicaid Directors has questioned the "misleading" process under which this rule was promulgated, noting that the rule was published on December 28 with only a 30-day comment period. Of even graver concern, the rule was published through the Centers for Medicare and Medicaid Services, despite the fact that nothing limits the scope of the rule; rather, the rule "appears to be applicable to all departments within HHS." **Estimated loss to Texas: the state Medicaid program would have no process for challenging federal HHS directives, regardless of federal law.**

Capping and Rolling Back CHIP and children's Medicaid Income Limits: On August 17, 2007, CMS issued a guidance letter affecting states already covering or planning to cover children with incomes above 250% of the federal poverty level (FPL). The letter announced a CMS policy (not included in any federal law or rule) that in order to obtain federal funds to cover children in moderate-income families, states must: (1) enroll 95% of all children eligible for Medicaid and SCHIP with family income above 250% of the FPL, and (2) ensure that employer-sponsored insurance for children below 200% of

the FPL has not dropped by more than two percentage points over the prior five years. If states meet those standards, the directive required that they also impose a 12-month waiting period for children's coverage and the highest premiums and co-pays allowed by law.

Participation rates in children's Medicaid and CHIP can only be modeled, since the U.S. Census only produces inexact estimates of uninsured children, and these must then be matched to state Medicaid and CHIP enrollment data. A recent study estimated that the national average participation rate in children's Medicaid and CHIP is 74%, and Texas is scored at below 70%. HHSC estimates that before 2003 cuts, Texas CHIP participation never exceeded 85%. The highest recorded participation rate was Vermont's 92%, and no other state has a rate greater than 90%.[1] For this reason, the 95% or better participation standard is widely regarded as an effective prohibition of coverage of children above 250% FPL.

Before the directive, 14 states had implemented CMS-approved programs to cover children above 250% FPL, and another 10 states had passed laws to do so. Because the guidance said that states could not enroll new children, Hawaii, New York, and New Hampshire projected that children above 250% FPL enrolled in their programs would drop by 76% to 97% within two years. Since August, CMS has denied expansion plans of Ohio, New York, Louisiana, and Oklahoma (the latter two cutting back their expansions to 250% FPL in response). Illinois and Wisconsin have opted to cover their expansions with state funds only. Denials have been extended to children's Medicaid; in December 2007 the Bush Administration rejected Ohio's proposal to cover 35,000 more children between 200% and 300% FPL under its Medicaid program. Federal officials informed the Ohio program that they are now applying the Aug. 17 letter's CHIP criteria to Medicaid coverage of children as well.

A multi-state lawsuit was filed in October 2007 by New York, Illinois, Maryland, and Washington against the Bush Administration for violating SCHIP provisions through issuing the directive. Five chairs of Congressional committees with health care jurisdiction asked CMS to rescind the August 17 directive, and letters from the National Association of State Medicaid Directors and the National Governors Association have expressed alarm and concern about the CMS actions.

Last week, a CMS official testified before the Senate Finance Subcommittee on Health Care saying that CMS' review of 17 states covering children above 250% FPL had found that 9 had met the terms of the directive. It is unknown what measures CMS used to make this determination, and no information was available for the other 8 states. The Congressional Research Service testified at the same hearing that under one method, no state covers 95% of low-income children, while under another every state does, and concluded that the policy currently lacks clear and valid standards.[2] **Estimated loss to Texas: state may not be able to access federal CHIP funds to help insure 279,000 uninsured children who live in families between two and three times the poverty line.**

National Numbers

The most recent Congressional Budget Office (CBO) estimates "scored" reduced funding for states from the Medicaid rules at approximately $17 billion over five years, but the actual estimated impact may be closer to $34 billion because CBO's method assumes only a 50% probability these regulations will actually be finalized and implemented.[3] A survey of state Medicaid programs by the U.S. House Committee on Oversight and Government Reform found that the 43 reporting states (including Texas) projected losses of $49.7 billion over the same five years.

Bills Filed to Suspend Rules

House Energy and Commerce Committee Chairman John Dingell and Congressman Tim Murphy (R-PA) have introduced H.R. 5163, which includes moratoria on seven of the Medicaid rules described in this paper (i.e., does not include the DAB rules or the CHIP/children's Medicaid directive). This bill was marked up on April 9 and approved by the health subcommittee, with Congressman

Joe Barton (R-TX) expressing optimism that the White House will accept (not veto) the bill.

On the Senate side, S. 2819 by Rockefeller, Kennedy, and Snowe would extend or impose moratoria on all eight Medicaid rules, as well as the CHIP/children's Medicaid rules.

What You Can Do

Many national trade associations for health care providers (e.g., children's hospitals, family physicians, pediatricians, OB-GYNs, community health centers, and public hospitals) have communicated their strong opposition to these rules, to Congress.[4] However, it is likely the Texas delegation has not heard directly from many other constituents or consumer advocates on the topic. Here are some considerations for weighing in:

- Messaging should be simple: explain the harm of the rules, and ask House members to support the bill to delay them and to get it signed into law. (Don't worry about what bill it may ultimately be part of.)
- The fiscal impact of these rules on cash-strapped state budgets could not come at a worse time, and these issues should be resolved when they can be fully reviewed and debated by Congress.
- While Congressman Barton is supportive of the House bill, Congressman Michael Burgess has voiced opposition to the moratoria. All of the Texas delegation to the U.S. House and both of our Senators should be encouraged to support the bills to delay these harmful rules.
- Ask Governor Perry and other state leaders to encourage our Texas U.S. Senators and Congressmen and women to support the rule delays moratoria and get them passed into law.

Resources

National Governors Association: http://www.nga.org, click on "Letters."

National Association of State Medicaid Directors (NASMD) http://www.nasmd.org/Home/home_news.asp.

Center for Children and Families (CCF) Georgetown University's Health Policy Institute (HPI): http://ccf.georgetown.edu/.

Governor Perry's letter to Congress on five Medicaid rules: http://www.cppp.org/research.php?aid=762.

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[1] "Moving Backward: New Federally Imposed Limits On States' Ability to Cover Children," Center for Children and Families, Georgetown University Health Policy Institute, August 2007.

[2] "August 17th SCHIP Letter: 95% Enrollment Target for Eligible Low-Income Children," Congressional Research Service, April 9, 2008.

[3] "Administration's Medicaid Regulations Will Weaken Coverage, Harm States, And Strain Health Care System," Center on Budget and Policy Priorities, revised March 2008; Congressional Budget Office, Medicare, Medicaid and SCHIP Administrative Actions Reflected in CBO's Baseline, February 29, 2008, at: http://www.cbo.gov/budget/factsheets/2008b/medicaremedicaid.pdf .

[4] Partnership for Medicaid health care providers' February 2008 letter to Congress at http://www.cppp.org/research.php?aid=762.